

ALASKA LEGISLATURE

1148

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

22



Someone's home alone in one household in four About 22 million people lived alone in 1989, says the Census Bureau in a new report on hous-



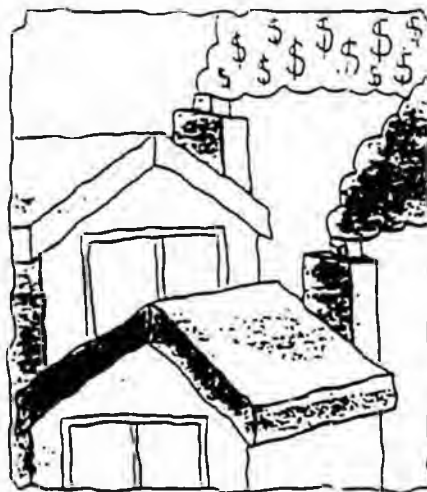
ing characteristics. That's twice as many as in 1970. Women living alone outnumbered solo men by three to two, were older (median age 66 vs. 42) and were more likely to own their own homes (53 percent vs. 38 percent). However, people living alone were more likely to rent (53 percent) than own (47 percent) their homes.



Early voting procedures bring out crowds Voters turned out in large numbers to cast their ballots early in Colorado, Oklahoma and Texas, the three states that offered early voting last November. In Texas, 73 percent of those registered voted in the 1992 general election and about 30 percent of those voters took advantage of the opportunity to vote in person before election day. (Statistics for Colorado and Oklahoma were not available at press time, but officials expected comparable percentages.) In every state, eligible residents can mail in absentee ballots before the scheduled election date, but this was a new wrinkle: Residents were allowed to vote in person, before election day, at designated polling places. Oklahomans could vote before Election Day at county board of election offices. Most of Colorado's early voting was at county clerks' offices, although local jurisdictions were authorized to designate additional locations. Early voters in Texas could cast their ballots in a variety of polling places, including shopping malls and mobile voting booths in some jurisdictions.



Barking up the wrong log Woodburning stoves and fireplaces create about 22 percent of Denver's visible air pollution (the "brown cloud"), so last fall Denver and its suburbs started offering a combination of waivers of sales taxes and permit fees to homeowners who switch to cleaner natural gas and other heating systems. Gas logs are the cheapest alternative, and some 2,500 homeowners have collected about \$75,000 in rebates to install them. Now, however, the Regional Air Quality Control Council says the gas logs are very energy-inefficient, sending 85 cents of every natural-gas dollar straight up the flue, sucking the warm air out of a house and pulling cold air in. (Adding to the



problem is the requirement that fireplace dampers remain open 24 hours a day to prevent carbon monoxide buildup.)



New research on education finance Analysis of federal aid to education by Deborah Verstege, an associate professor at the University of Virginia Curry School of Education, showed that federal aid was significantly higher in states that spent the most on education and that the linkage grew stronger over the 1980s. Federal aid to education was significantly higher in wealthy states than in poor states, and significantly lower in states with higher percentages of poor and minority students. In short, she writes, "These data show that federal aid to education exacerbates disparities between the states. . ."



Early retirement programs may not save money According to a story in *The New York Times*, a number of states that have tried to save money by setting up early retirement programs in fact have increased expenses by millions of dollars because they had not only to pay retirees' pensions, they had to replace the workers who retired. New York managed to save money in 1991 by limiting its early-retirement offer to workers in positions that were going to be eliminated. A survey of early retirement programs over two years found that incentives offered by 19 states included state-paid health insurance policies, credit for several years' employment, enhanced pension payments and cash bonuses. Specifics about costs and savings were lacking because the states did not monitor their programs closely. An official of the National Association of State Budget Officers said that often early retirement programs "merely transfer many costs from state operating budgets to the state retirement systems." Actuaries make the point that programs should be set up in such a way that the cost of the retirements and of administration do not outweigh the savings from payroll and benefits.



Get those air quality plans in by November The Clean Air Act requires states to submit plans to the Environmental Protection Agency by Nov. 15 for programs to reduce air pollution from stationary sources. These plans must include the sale of permits by the state agency responsible for air quality to industry for pollutants. The greater the pollution, the higher the fee. Permit fees are expected to amount to \$300 million a year nationwide and will help pay for enforcement. About 15 states have adequate enabling legislation to develop their programs. Failure to develop a program will trigger sanctions such as loss of highway funds. For a copy of the EPA's "Legislative Outreach Briefing Notebook" containing helpful information for state legislators, call Joanna Swanson at (919) 541-5112 or Kirtley Cox (919) 541-5399.

11/16/92

EARLY RETIREMENTS TO REDUCE BUDGETS COST STATES MONEY

POOR PLANNING IS BLAMED

Failures to Limit Programs to Workers in Expendable Jobs Means More Are Hired

By MICHAEL deCOURCY HINDS

Early-retirement programs for state workers, adopted in recent years as cost-cutting measures in 19 states, are actually costing millions of dollars, fiscal experts and state officials say.

The experts said many of the programs had been poorly planned and had failed to cut workers whose jobs were no longer needed, forcing states to hire replacement workers at the same time they were paying retirement benefits to those who had just left.

Many programs also ended up being fiscal schemes in which legislators shifted expenses from state budgets to pension systems, creating heavy future liabilities that will have to be picked up by taxpayers.

Many Retirees Replaced

In 1980, for example, Rhode Island offered generous retirement incentives to 1,500 employees. After the program had been offered, actuaries determined that the state would lose money even if the positions were left vacant for 10 years. The state had to replace virtually all the retirees within a matter of months.

New York is one of the few states that actually handled the program properly, but only because of its bitter experience with a 1983 program that was supposed to save \$50 million and ended up costing \$50 million. Last year, the state limited its retirement offer to workers in positions that were going to be eliminated. It expects \$120 million in savings.

"More states are learning from the mistakes of other states," said Ronald [redacted], a state finance director for the National Conference of State Legislatures. "It's a triumph of hope over experience, as Samuel Johnson said about second marriages in the 18th century."

Fellow-Ups Are Lacking

Early retirement programs come in various forms. Some apply only to workers within a few years of retirement. Some specify length of employment and could affect workers in their

New York Times
11/16/92

States Early Retirement Plans Are Costing Millions of Dollars

Continued From Page A1

health benefits after they retire, which has proved to be expensive. Some offer cash incentives and increased pension payments.

But what the problem programs have in common is that they offer the incentives to all eligible state workers without regard to whether their jobs are essential.

Public employee unions support such programs as humane alternatives to layoffs. Legislators like them because they promise savings. And the programs carry little political risk because states rarely go back and analyze how much the programs ended up costing.

"Governments tend not to document the effectiveness of many of their programs," said David Kehler, director of the New Jersey Public Affairs Research Institute. "And they have very little incentive to document something that may be a failure."

Many Long-Term Burdens

In most recent programs, states encouraged older employees to retire as many as 10 years early by offering them incentives, ranging in cost from \$20,000 per employee to more than \$100,000, said Albert Pike 2d, the senior pension consultant at A. Foster Higgins and Company of Washington, which advises state and local governments on retirement policies.

The Higgins survey of early retirement programs in the last two years found that incentives offered by 10 states had included state-paid health insurance policies, credit for several years' employment, enhanced pension payments and cash bonuses.

Though the survey described the terms of the programs, it was not able to provide many specifics about costs and savings because, the company noted, the states did not monitor their programs closely.

But based on interviews with state officials, Mr. Pike said that when states had carefully managed their programs, especially ones for teachers, they had succeeded in reducing expenses.

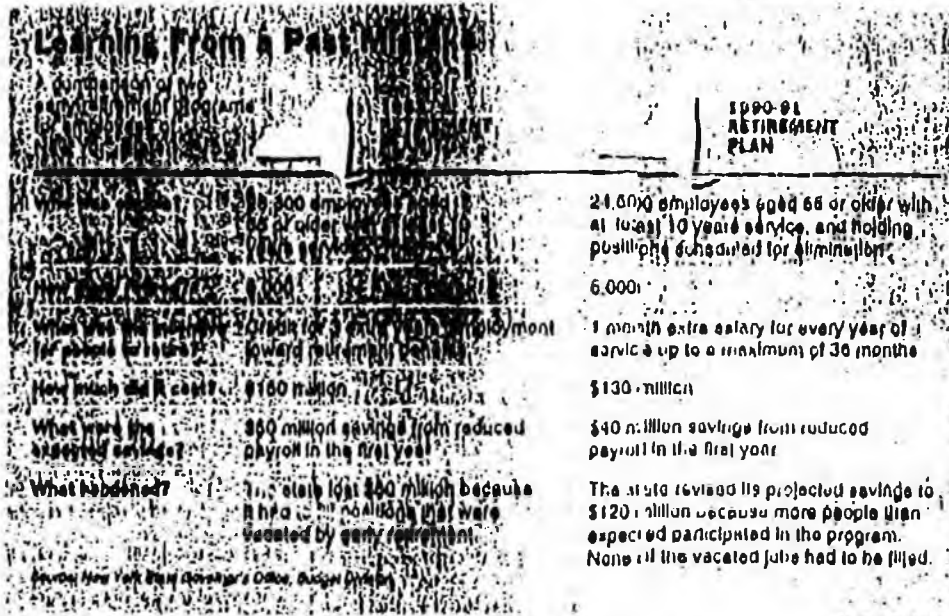
But Mr. Pike said he found that most states were filling vacancies left by retiring workers. And he said that as these positions were filled, the states found their savings evaporating.

York Times

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Few states follow early retirement programs to see if they really work.

In trying to determine why states offered programs that have proved burdensome elsewhere, Mr. Pike said, officials in many state agencies told him they were reluctant to be openly critical of plans that were strongly supported by colleagues, unions and legislators. "The information is out there about these retirement programs," he said, "but people don't like talking about it because they say it can be politically embarrassing."

Other officials in states that offered early retirement in the last few years blame ignorance more than politics. "There's just a blind faith that these things work," said Chuck Polan, Secretary of the West Virginia Department of Administration and a former State Senator.

West Virginia pension officials said that 7,000 people had participated in an early retirement plan offered in 1989, raising the state's annual retirement costs about 20 percent, or more than \$10 million a year. But at the same time, they said, state agencies found they needed the departing workers and soon replaced them, incurring the payroll and benefits costs they had hoped

to eliminate. In addition to the retirement costs, the consequence was a "huge liability" a fifth the state could ill afford it, he said.

Most Programs Mismanaged

"It is common knowledge that these are costly programs, which merely transfer many costs from state operating budgets to the state retirement systems," said Brian M. Rohnerty, executive director of the National Association of State Budget Officers in Washington. In such cases, he said, the state retirement systems usually finance the costs, which sometimes exceed \$100 million in larger states, over two or more decades.

Actuaries say that it is essential to set up the program in such a way that the cost of the retirements and of administering the program will not outweigh the savings from payroll and benefits.

But in practice, studies show, most states mismanage some aspect of the programs and end up spending the money they save. While some states fill vacant positions, others give promotions and raises to remaining employees as they gain seniority.

In Pennsylvania, legislators intentionally ignored the experience of other states last year when they offered an early retirement program, said state Senator Robert J. Mellow, the Republican minority leader and an accountant. "We felt, the studies done in other states would be totally irrelevant," Mr. Mellow said in an interview. "We had to find our own innovative ways to control costs and be humane in downsizing government."

Pennsylvania's program gave automatic credits for service and free health care, two of the most expensive incentives. In April 1990, just before the program took effect, Mr. Mellow told reporters he estimated 3,000 employees would take advantage of the program and, if only 10 percent of the vacancies were filled, the state would save \$85 million in payroll expenses in the first year.

Retirees Paid as Consultants

It is not yet clear if the state will meet its goal that with few limits on participation, 6,700 employees took early retirement, many of them nurses, professors, engineers and others in crucial positions. That led many state agencies to rehire a number of the departing employees as consultants for as long as three months at their old jobs. The state ended up paying them both as retirees and as advisers.

Earlier this year, in a move to reduce staffing in selected agencies and job categories, Pennsylvania laid off 2,000 of its 120,000 employees. But at the same time agencies were laying off workers, they were also permanently filling positions left vacant by early retirees. As of June 30, agencies had filled 3,800 vacancies and had authorization to fill 1,600 others this year.

Vicente R. Vergara, a civil engineer with 25 years seniority, was among the early retirees who continued to work as a consultant. Mr. Vergara, 62 years old, said his early retirement benefits included health care and \$57,000 in monthly payments over three years. In addition, he earned more than \$10,000 working three months as a consultant.

And he said he may be called back for more consulting.

"The program made sense for those who took advantage of it," he said. "But it might have created some disruption because there was no time to turn over responsibilities in an orderly way."

Rapidly Shrinking Expectations

The program's cost to the Pennsylvania retirement system was \$127 million in payments that began immediately, and the state has already scaled down its projections of payroll savings to \$28 million in the first year from \$85 million. "Once you go beyond replacing 50 percent of the retired employees, savings become very difficult," said Anthony Salomone, executive director of Pennsylvania's State Public Employee Retirement Study Commission.

In New Jersey, 2,400 state employees took advantage of an early retirement program last year. State agencies have already filled 1,000 of the positions and may fill the rest, said Richard McGrath, a spokesman for the state Treasury Department. Even so, he said the \$160 million program was expected to generate \$80 million in payroll savings the first year, and less in succeeding years. "If everything holds steady, we will break even in three years," Mr. McGrath said.

New York is one of the few states that monitored its programs and learned from its mistakes. A 1991 program that was supposed to save \$50 million wound up costing \$50 million, said Claudia S. Hutton, a spokesman for Gov. Mario S. Cuomo's budget office. "We had the double whammy of paying for the retirement incentives and replacing nearly everybody," she said.

In 1990 and 1991, the state again offered retirement programs, but Ms. Hutton said they were a part of a larger restructuring effort in which the state offered incentives only to employees in positions it intended to eliminate.

Ms. Hutton said that 4,000 employees participated and that the state expected to save \$120 million by eliminating their positions. The estimate is based on payroll savings for 18 months, which, on average, was the length of time each employee would have remained on the job without the early retirement program.

If New York's experience is any lesson, budget experts say, it is that programs hastily concocted during budget crises will probably not fare well.

"These programs seem to take the heat off the budget for a while, but nobody goes back to see how they really work," said Rita Horwitz, executive director of the Texas Pension Review Board, which surveyed state programs in 1990. "The best we could tell was that the programs were expensive."

More national news appears on page A14.

Pension fund temporarily short

By ED SCHOENFELD

THE JUNEAU EMPIRE

Alaska's public school teachers retirement fund is nearly \$300 million short of what it will need to pay its anticipated debts over the next two decades.

But a study by the Legislature's auditors says the amount is not unusual for a fund its size — about \$2 billion.

And, teacher and school district payments will make up the missing money by the time it is needed, said Randy Welker, who runs the Legislature's audit office.

"It's not that there is any inability to pay current retirees," Welker said.

National Educational Association-Alaska president Claudia Douglas said her group, which represents many of Alaska's public school teachers, agrees with Welker's assessment.

"We're cautiously optimistic that the projections do indicate in the long run that those unfunded liabilities will be made up," she said Friday.

The fund pays pensions to about

3,600 eligible persons, most of whom are retired teachers. Another 9,240 teachers are paying into the program with the expectation that they, too, will earn benefits.

The unfunded portion of the anticipated debt — \$296 million at last count — essentially equals the anticipated pension costs for those teachers still at work.

That part of the anticipated debt, called an unfunded liability, stems largely from changes the Legislature made to the Teachers Retirement System in 1990, said state retirement and benefits director Bob Stalnaker.

The changes created two tiers of fund beneficiaries — teachers hired before June 30, 1990, and those hired after that date.

Those hired earlier were grandfathered into an older, more expensive retirement system that allows retirees to collect a pension at age 55, or 50 under early retirement.

Teachers hired later are in a less expensive system. They have to wait until age 60 to collect a pension, or 55 if they take early retire-

ment. They also have to pay their own health insurance premiums during the time they collect pensions before they turn 60.

The Legislature's changes also included some provisions, such as a more predictable system of cost-of-living raises for pensioners, that have driven up short-term costs.

That, said Stalnaker, has driven up the anticipated debt.

"You get hit with the liability right off the bat, but you experience the savings as you bring on more less-expensive employees," Stalnaker said.

Rather than pay a lot more into the fund for a few years and then greatly reduce payments after that, the system's managers have decided to average out the costs over several decades.

That's why the system's anticipated debt includes an unfunded liability of \$296 million, a figure that is expected to grow higher before it drops, Stalnaker said.

Studies cited by the audit project the unfunded liability will peak at somewhere between \$400 million and \$600 million 10 to 15

years from now, then drop to more than \$160 million in the following five to 10 years.

If the number of teachers in the system grows by as much as 2 percent a year, the fund could end with a surplus of almost \$670 million in about 25 years.

Welker did question the earnings projections of the fund, pointing out that they are higher than those of similar funds elsewhere.

Stalnaker, however, said earnings so far have generally been higher than projected, not lower.

Employees and employers pay a percentage of wages into the fund, based on annual determinations of how much money is needed to maintain a financially sound account.

There have been concerns about the decision to average out annual contributions over several years, which came from political pressure to part from to reduce school district costs by decreasing employer contributions to the fund.

The auditors, however, determined the decision to average costs was not political.

is evening: Juneau residents this evening, as an offshore southern Gulf of Alaska to Yakutat and rain. The National Weather Service is forecasting for the Juneau area

led with the low system moving through the Juneau area will be buffeted by winds from the Stockton, forecaster with the

evening is calling for rain, suspended with gusts to 65 mph, and winds should diminish somewhat

ed at the Federal Building this morning reported morning gusts of 63 mph recorded at Mellakalla's boat har-

uesday and Wednesday: The windings on the district's 1993-1994 budget at district offices at 12th and 13th streets at 7 p.m. Wednesday at Floyd

a budget shortfall of more than \$1 million, Helen McIntyre said today. Administrators, teachers prepared a list of potential cuts in the budget, McIntyre said.

narly due to increases in costs for state and federal dollars re-

at would not impact directly the said.

chool-funding plan: Gov. Walter Dalton's support of three Fairbanks-Valdez Board of Regents for instruction and repair.

Fairbanks Mayor Jim Hayes

Boy breathes life into his best friend

THE ASSOCIATED PRESS

KETCHIKAN — Call it a turnabout on an old cliché. Rob Swift is his dog's best friend.

Hearing neither breathing nor a heartbeat, Rob placed his mouth over the dog's nose and exhaled.

"I had some trouble getting a coal around the nose," he said.



Imperiled Promises

Risk to Retirees Rises As Firms Fail to Fund Pensions They Offer

The Tab May Have to Be Paid
By U.S. Guaranty Agency
And Healthy Companies

Chance of Taxpayer Bailout

By ALBERT R. KARR

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — As Pan American World Airways struggled to survive in the 1980s, the now-defunct airline sent letters to workers' homes, assuring them their pensions were protected under federal law, should worse come to worst.

But after Pan Am entered Chapter 11 bankruptcy proceedings and terminated the pension plan, workers got a jarring surprise. Says Tom Christie, who was a jet-engine repair manager at New York's Kennedy airport: "You think your pension is intact, and then you find out it's not."

Mr. Christie, who lives in North Merrick, N.Y., had been promised that if he left Pan Am, he would get a pension of more than \$1,000 a month when he turned 55 in late 1991. But the federal Pension Benefit Guaranty Corp., which took over the Pan Am plan, determined that it is obliged to pay him only \$596 a month. After being out of work for 10 months, Mr. Christie has taken a job as an aircraft-maintenance analyst at less than half his former pay.

Many Broken Promises

As more giant companies fall on hard times, retirees may face a wave of broken promises. The government, through the PBGC, backstops the pensions of 41 million Americans who have the plans that the U.S. has promised to insure. But often, as with Pan Am's Mr. Christie, pensions promised by employers aren't fully covered by the agency.

Although 85% of PBGC-insured plans are fully funded, the system falls far short of what many pensioners are led to believe is universal government protection under the 1974 law that created the agency. The PBGC currently sets a maximum guarantee at \$29,250 a year. It also discounts retirement payments according to the retiree's age; these reductions can amount to a two-thirds cut for younger retirees. And it doesn't cover most early-retirement supplements, among other exemptions.

SB 111

Not all pensioners stand by law: healthy corporations and taxpayers are at risk, too. With more and more troubled companies underfunding their pensions, the PBGC could someday face an avalanche of terminated plans, much as the federal deposit insurers were snowed under by hundreds of failed thrift institutions in the late 1980s. As a result, companies' premiums to the PBGC could rise.

To cover a growing shortfall in its own funding, in fact, the PBGC says it will have to raise premiums for the pension funds it covers. Unless the government imposes new constraints on corporate underfunding, premiums would have to triple, the agency says — a prospect that angers many companies with fully funded plans. The higher premiums could accelerate the current flight of about 10% of the corporate plans from the PBGC system every year, widening the agency's financing problem by reducing its premium income.

Ultimately, the taxpayers could be left to pick up a sizable tab if a bailout proves necessary.

Relying on the Government

Particularly disturbing to the PBGC is the fact that many companies are doing what Pan Am did — holding back on pension contributions, with the assurance that the government will at least partly honor their promises to their workers. Indeed, many companies have not only short-changed their existing pensions but also made their plans more generous without increasing their contributions.

The plans that the government says are underfunded do meet minimum funding requirements under the law. Pan Am, for example, obtained Internal Revenue Service waivers in the 1980s letting it forgo its usual pension contributions. Companies taking these so-called funding holidays say they will plow money into their plans later, perhaps when times are rosier. But those times may never arrive, and, in the meantime, the underfunders are taking a gamble with their retirees, other companies paying PBGC premiums — and taxpayers.

"Too many employers continue to operate severely underfunded pension plans," says Rep. J.J. Pickle, chairman of the House Ways and Means Committee's oversight subcommittee. The Texas Democrat says they have deliberately continued, "year after year, to make empty pension promises — promises they cannot or do not keep." He warns that unless the pattern stops, "inevitably, Congress will be called upon to bail out the PBGC."

General Motors Corp., for example, has agreed to raise pension benefits frequently since 1983, including \$3 billion of new benefits in 1990, even as its pension-plan underfunding increased \$13 billion, the PBGC says. GM recognizes the pension shortfall and plans to contribute more to its underfunded plans. "Our goal over the long-time horizon is to be fully funded on a real-world or economic basis by the end of the century," a GM spokesman says.

Trans World Airlines and Continental Airlines have each added \$100 million in pension benefits while under Chapter 11 bankruptcy protection, with the bank-

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Imperiled Promises: Underfunding of Pensions Poses Risk for Guaranty Agency, Retirees and Taxpayers

Continued From First Page

ruptcy judges' blessing. And Uniroyal-Goodrich, a Michelin Group unit, lifted benefits in one pension fund by 50% to 80% between 1988 and 1991 from several earlier union contracts, even though the plan was woefully underfunded, the PBGC says. The company disputes the PBGC estimate of how much the plan was expanded.

Many employers, if they're low on funds, "take the path of least resistance" to worker demands for improved wages or benefits, says Howard Weizmann, vice president for benefits consulting at Aetna Life Insurance Co. Since more generous pension benefits are costs that aren't incurred for years — and may be picked up by the government anyway — some companies would rather promise bigger pension benefits than face the immediate costs of higher wages. Mr. Weizmann, a former executive director of the Association of Private Pension and Welfare Plans, an employer group, says many companies consider the PBGC backstop, paid for by corporate insurance premiums, as part of their financial resources. And they regard pension increases as "written on PBGC's account," Mr. Weizmann says. "You can increase benefits because you know that other employers support the system."

Meanwhile, companies can mislead employees as to just how far-reaching that pension support is. On Oct. 5, 1990, the PBGC terminated Eastern Airlines' pension plans, but 20 days later, the airline's pension and insurance director wrote Eastern retirees assuring them that no benefits would be cut and early-retirement payments would continue.

In addition, a later PBGC brochure said the agency guarantees disability payments for disabilities existing before plans are terminated.

Dismayed Former Pilot

Frank Dysart, a former \$60,000-a-year Eastern pilot on disability retirement since 1959 because of an inoperable ruptured disk in his back and a heart condition, says he was assured by the PBGC and Eastern's management that his disability pay wouldn't be affected. But the PBGC slashed it to \$984 a month from \$2,200. And he has written off a promised increase of \$2,500 a month under the company plan.

Mr. Dysart's only health coverage is Medicare even though he now is only 49 years old. And the Pine Lodge, Ga., man says, "I can't even get a job as a newspaper boy, because of my disability." Without \$1,100 a month in Social Security disability benefits, "I don't know what the hell I'd do," he says.

In the fiscal year ended last Sept. 30, the PBGC took over terminated pension plans covering 52,000 people, double the year-earlier total of 26,000. In all, it has assumed responsibility for more than 1.7 million plans, involving 424,000 retirees and workers.

The government insures only "defined-benefit" plans, under which employers promise specific pension payments when a worker retires, and it has to come up with

the money to pay those benefits. Companies with defined-benefit plans must participate in the system, and those choosing to withdraw from it must first restructure their pension plans.

In 71 terminated plans recently studied by the General Accounting Office, the congressional watchdog agency, participants in 31 of the plans lost a total of 12% of the plans' promised benefits.

"Certainly, participants can suffer if their plans terminate," says James Lockhart, who was the PBGC executive director until leaving two weeks ago with the change in administration. President Clinton hasn't named a replacement.

Lawsuits by Retirees

The PBGC has been sued by some retirees, who have charged that the agency unfairly interpreted the law and refused to pay promised benefits. In some cases, the PBGC has been ordered to make certain payments or has agreed to a settlement.

Kathleen Utgoff, who headed the agency until 1989, says it has developed "a basic bunker mentality." The view now is one of "an S&L situation, and they do everything they can to reduce claims," she says. Mr. Lockhart says the agency merely adheres to restrictions under the law.

Addressing the corporate pension underfunding that leads to all these PBGC troubles, Rep. Pickle plans a hearing today on legislation that he introduced along with Sen. James Jeffords, a Vermont Republican. It would force companies with underfunded plans to narrow the funding gap and would limit their ability to raise pension benefits without a commensurate increase in fund assets.

"We want to be careful that legislation doesn't put companies out of business or into bankruptcy" from being forced by Congress to speed up funding, comments Christopher Bowlin, an employee-benefits official at the National Association of Manufacturers. The NAM says scenarios rosier than the one advanced by the PBGC are just as likely, and it doesn't want legislation based on predictions that may not pan out. It also says employees are better off if a company maintains its overall viability, rather than jeopardizing it by trying to fully fund pension plans.

Yet many large PBGC-insured plans — especially in the troubled auto, tire, airline and steel industries — fall short of being fully funded. To spotlight the problem, the PBGC issues a controversial "top 50" list of companies with underfunded plans, ranked by percentage of liabilities — benefit promises — not covered by plan assets.

Mr. Lockhart notes that many companies on the list are in good financial shape and that their pension plans aren't in danger of folding. But he warns that some are so weak that their plans could well be terminated in coming years, transferring the liability to the PBGC and posing a serious financial problem for the agency.

In another House hearing, on Tuesday, Mr. Lockhart said the agency now has a "pessimistic projection" that its \$2.5 billion deficit — the excess of its liabilities over its assets — as of last Sept. 30 could

climb to a \$16 billion to \$28 billion range in a decade. Last year, its worst-case forecast was an \$18 billion deficit in 10 years.

"There are some scenarios where we could get to be a very major crisis," Mr. Lockhart says. "It's hard to predict where the big hits are going to occur, but the big hits can be very, very big."

How did so many pension funds get in this fix? As employers struggle to make ends meet, it's relatively easy to give short shrift to pension plans. The money isn't paid out until workers retire, and then only in monthly increments over decades. Funding can be postponed until a hoped-for sunnier day.

Many companies' malnourished pension plans are traceable to mergers and acquisitions in recent years. When companies acquire a weak operation, they often end up with some underfunded pension plans as well. National Intergroup, for example, took on some sour funds when it acquired Weirton Steel Corp. Also inheriting badly underfunded plans through acquisitions have been American National Can Co., Anchor Glass Container Corp. and Ravenswood Aluminum.

Labor unions play a major role in pension-benefit increases that worsen the underfunding problem. Rather than nailing down hard-cash wage increases, they often find it easier to win benefit gains that won't be paid for years and will be covered by the PBGC if the company falters.

"Instead of increased wages, we bought benefit-type packages every year," says Timothy Buckston, a Cleveland-based official of the United Steelworkers of America. Speaking of benefit increases that the union wrung out of troubled LTV Corp., now under Chapter 11, he says, "They knew the PBGC protection was there." But when the PBGC took over that plan in 1987, it refused to pay a \$400 monthly supplement covering early retirement for shutdowns. The pension dispute exploded into a protracted wrangle between LTV and the PBGC, prolonging the bankruptcy proceedings.

In 1991, Goodyear Tire & Rubber Co., another company on the PBGC top-50 list, granted the United Rubber Workers union a 28% pension-benefit increase when it was heavily underfunded.

New Report Due

At today's congressional hearing, the GAO is expected to release a report on pension-benefit increases granted in 1990 and 1991 by eight large companies with underfunded plans. In that study, the GAO found that the two biggest companies in each of the auto, steel, airline and tire industries had a combined \$5 billion widening of their underfunding gap. The GAO found that 40% of the increase was attributable to moves to expand benefits.

Although many companies with underfunded plans contend that the PBGC overstates the problem, the agency says it may well be underplaying the danger because underfunding often balloons when a plan must be terminated. And the GAO agrees that corporate figures may understate the problem. In a recent report on "hidden liabilities," it said the PBGC had determined that 44 plans it studied had total unfunded liabilities of \$2.7 billion when the plans were terminated, or 58% more than what the companies had shown in their last filings with the government.

No one predicts an immediate crisis. But the problems are building. "We can hide it for a while, but it's going to get worse," Mr. Lockhart warns.

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Source: Pension Benefit Guaranty Corp.

COMPANY	PLAN ASSETS	TOTAL UNFUNDED BENEFIT LIABILITY	FUNDING RATIO	GUARANTEED BENEFIT LIABILITY
Raytheon	\$ 10	\$ 90	\$ 80	11%
LTV	425	3,415	2,990	12
John Marshall	51	124	73	41
Unifirst Goodrich Tire	391	945	554	41
898				
Kayano Commodore	85	205	120	42
195				
New Valley	331	712	381	46
677				
Leaves	129	277	147	47
263				
Sharon Steel	122	243	121	50
231				
Includa Steel	70	132	63	53
126				
Center Heavy Metal	81	151	70	54
143				
Chrysler	4,855	8,874	4,019	55
8,430				
Rockwell Int'l	437	797	360	55
741				
American Nat'l Can	516	929	413	56
883				
Borg-Warner	121	217	96	56
206				
Bridgestone-Frisson	305	546	241	56
519				
Anchor Glass Container	159	281	122	57
267				
Nat'l Intergroup	434	758	325	57
721				
Trans World Airline	592	966	394	60
936				
Occidental Petroleum	115	187	72	62
177				
ACF Industries	124	199	75	62
189				
Budd	333	520	188	64
494				
Cyprus Industries	275	424	149	65
403				
Tenneco	191	294	103	65
279				
Bathorn Steel	3,492	5,347	1,854	65
5,079				
White Consolidated Ind.	230	345	116	67
328				
Forbara	129	189	60	68
180				
Crown Cork & Seal	528	723	195	73
687				
Vally	243	332	89	73
315				
Aluminum Lubrizol	313	426	113	73
405				
Deere	1,185	1,613	428	73
1,417				
R.F. Goodrich	490	661	171	74
628				
Navistar Int'l	2,050	2,759	709	74
2,621				
James River	214	281	68	76
267				
Maxxon	617	810	193	76
769				
ASL Holding	199	257	58	77
244				
General Motors	38,903	50,730	11,827	77
48,194				
Clark Equipment	234	305	71	77
290				
Northwest Airlines	357	460	102	78
437				
Armed Steel	672	867	195	78
737				
Raychem Metals	542	691	149	78
657				
Kohr	326	406	81	80
386				
Honeywell	367	456	90	80
433				
CSX	815	1,008	193	81
958				
Raychem Holdings	727	897	169	81
852				
Goodrich Tire & Rubber	1,146	1,402	256	82
1,332				
Burlington Northern	431	523	93	82
497				
PacifiCorp	478	578	100	83
549				
Nat'l Steel	482	572	90	84
543				
Westinghouse Electric	1,275	1,999	724	88
4,749				
Kimberly-Clark	780	851	73	91
838				
TOTAL	\$10,317	\$90,785	\$28,420	71%
				\$94,615

The 50 companies with the largest unfunded pension liabilities, as a percent of total liabilities. Funded by funding ratio, the percent of liabilities funded. All figures, unless otherwise stated, are in millions of dollars, as of Dec. 31, 1991.

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4433
TOM FINK,
MAYOR

OFFICE OF THE MUNICIPAL MANAGER

April 7, 1993

Senator Drue Pearce, Co-Chair
Senate Finance Committee
State Capitol
Juneau, Alaska 99801

Re: SB 111, Defined Contribution Plan

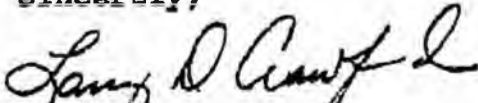
Dear Senator Pearce:

During the course of analyzing the impact to the Municipality of Anchorage of SB 111, Defined Contribution Plan, we consulted with our pension consultants at the Wyatt Company. The attached letter from the Wyatt Company outlines what they consider to be the most major and critical questions they have regarding the proposed legislation.

The Municipality supports the concept of a defined contribution plan since the employee and the employer can plan on the outcome. Under the current system both have to depend upon too many variables in determining funding levels. The amount obligations of many plans in the past have grown at a rate that was never expected. This has been particularly true of retirement medical costs. I'm sure you are aware of what private companies have been going through with Financial Accounting Standards Board (FASB) 106.

We would appreciate the Committee's consideration of these questions prior to taking any action on the legislation, and would like to work closely with you on any proposed changes to the Public Employees Retirement System.

Sincerely,


Larry B. Crawford
Municipal Manager

cc: Senate Finance Committee Members

The Wyatt Company
Consultants and Actuaries

Suite 1910
701 Fifth Avenue
Seattle, Washington 98104-7053

Telephone 206 625 1125
Fax 206 447 8867

Wyatt

March 19, 1993

Ms. Susan Lindemuth
Manager
Records and Benefits
Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99159-6650

RECEIVED
MAR 22 1993

Municipality of Anchorage
PERSONNEL OFFICE

Re: Bill to Create D.C. Plan

Dear Susan:

Thanks for your letter of March 15, 1993. The idea of a statewide defined contribution plan is quite intriguing. As requested, we have prepared a list of major issues and concerns, many of which are reflected in your March 9, 1993 memo to Larry Crawford. The issues are organized under separate subheadings to facilitate your review.

Basic Plan Design

Should employees be covered under a defined benefit or defined contribution plan?

- (a) Do the Bill's sponsors realize that young terminees will get much larger benefits than under the current program (contribution will be stilted away from retirees toward younger terminees)?
- (b) Do the Bill's sponsors realize that they will lose the ability to define a specific retirement target, tailor early retirement incentives (if necessary), disability benefits, or provide post-retirement adjustments?
- (c) Do the Bill's sponsor realize that employee directed investments tend to under perform when compared with employer managed investments?

Ms. Susan Lindemuth
Manager
March 19, 1993
Page Two

Wyatt

Plan Legal Authority

Can the employer "pick-up" a variable employee contribution under IRS Code Section 414(h)? [This appears to negate the legislative change which precluded public employers from sponsoring 401(k) plans.]

- (a) Are there any discrimination requirements?
- (b) Are there any maximum contribution limitations?
- (c) Are there coordination problems with existing plans?

Actuarial Impact

How would contribution rates change for existing covered employees?

- (a) Would current/future retirees ever get cost-of-living adjustments?
- (b) What happens to future actuarial gains/losses?
- (c) What happens to an employer who has no active defined benefit participants, only retirees?
- (d) Would future contributions be based on separate contributing employer characteristics?

Specific D.C. Plan Design Questions

What is the nature of the new plan?

- (a) What are vesting requirements?
- (b) What are investment options?
- (c) What are administrative details?
- (d) Are guarantee burdens placed on sponsoring employers?

Ms. Susan Lindemuth
Manager
March 19, 1993
Page Three

Wyatt

Side Questions

Who would be eligible to purchase health coverage?

Susan, we could certainly provide many, many more detailed questions; but the above ones are so major and critical, it seems like it is best to get them answered, before proceeding further.

I'm interested to see how all of this turns out.

Sincerely,

Dick

Richard R. Joss
Consulting Actuary

RRJ/set
(07969/20/012)

(757-36-1110/00007)

FELY DELOSANTOS
1713 LARCH STREET
KODIAK, AK 99615

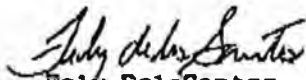
Senator PEARCE
State Capitol
Juneau AK 99801-1182

I am strongly opposed to the passing of senate bill III and I think it wrong to discriminate and segregate state employees when it comes to new or old hire and certified or classified employee retirement benefits.

State employees have worked long and hard years while looking forward to their future retirement. Why take that privilege away from us now? There are people in Alaska who neither work for the state or just move here in order to receive a permanent dividend while some people who have lived here for years and should rightfully receive one are being questioned. Those are the problems that need your attention. Why try to fix it when it isn't broken? Hard working employees needn't be sacrificed at the expense of others.

Please share this letter with the rest of the committee and assure them that I am not the only one with the same view of this subject.

Thank-you for your attention.



Fely DeLosantos
Kodiak Island Borough School District
Classified Employee

1fah

OFELIA F. AURE
1317 LARCH STREET
KODIAK, AK 99615

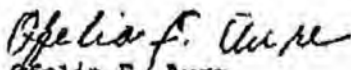
Senator PEARCE
State Capitol
Juneau Ak 99801-1132

Please share this letter with the rest of the committee that I am opposed to the passing of senate bill III. I think it is discriminating to segregate the state employees whether it is certified or classified; new or old hire when it comes to retirement benefits.

As a state employee, I have worked long faithful years while looking forward to future retirement benefits. Why is it that the state is giving away dividends to people who do not even reside in Alaska long enough to be justified worth receiving a dividend or to some people who have moved to Alaska just to receive the benefit when they do not even work for the state? Why sacrifice your hardworking employees when obviously we aren't really the major problem at hand.

Please consider my views on this subject which I am sure aren't going to be the only ones on this matter. Other people feel quite the same as I.

Thank-you for your time.



Ofelia F. Aure
Kodiak Island Borough School District
Classified Employee

APR 06 1993

April 06, 1993

Senator Pearce
State Capitol
Juneau, Ak. 99801-1182

I am writing you in regards to Senate Bill 111, which deals with and if passed will have an effect on the current TRS/PERS system. After having read the SB111 I feel that SB111 would not be advantageous to current TRS/PERS members or new employees, and would in fact probably be the beginning of the end of TRS/PERS. I would request that you help defeat SB111 now while it is in committee.

Respectfully;



Kenneth R. Parker
P.O. Box 3335
Kodiak, Alaska 99615

APR 06 1993

April 06, 1993

Senator Pearce
State Capitol
Juneau, Ak. 99801-1182

Ref. Senate Bill 111

Dear Senator Pearce,

Senate Bill 111 is of great concern to me and most people I've spoken with who are in the PERS/TRS retirement systems. With a new plan in place, what guarantees do we (who are currently on the PERS/TRS systems) have that the current program will have monies left when our turn at retirement occurs?

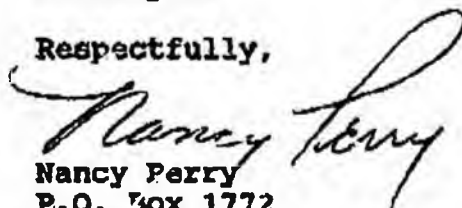
If this bill was a good bill, why was it not made public enough for the unions to hear about it or why are the Senators exempt from it?

Too many questions for a bill to just be passed without the issues being faced first.

Please help us stop this bill while it is still in committee.

Thank you.

Respectfully,



Nancy Perry
P.O. Box 1772
Kodiak, Ak. 99615

April 6, 1993

VIA FAX - 465-3872

Dear Senator Pearce:

As an employee of the Kodiak Island Borough and participant in PERS, I **strongly** urge you and your fellow members of the Senate Finance Committee to vote **AGAINST** Senate Bill 111.

I have spoken with the majority of the employees here at the Borough and at the School District, and it the overwhelming consensus that **no one** wants our retirement program changed.

This new bill would introduce a plan that has not been proven, and would only benefit the few insurance people involved by giving them a commission on someone else's money. Our current retirement program is a good plan and should be left alone.

Please use the power you have been elected to use to truly represent the people who have elected you, and **VOTE AGAINST SENATE BILL 111.**

Sincerely,



Eileen Probasco
PO Box 3149
Kodiak, Alaska 99615

April 6, 1993

VIA FAX - 465-3872

Dear Senator Pearce:

As an employee of the Kodiak Island Borough and participant in PERS, I **strongly** urge you and your fellow members of the Senate Finance Committee to vote **AGAINST** Senate Bill 111.

I have spoken with the majority of the employees here at the Borough and at the School District, and it the overwhelming consensus that **no one** wants our retirement program changed.

This new bill would introduce a plan that has not been proven, and would only benefit the few insurance people involved by giving them a commission on someone else's money. Our current retirement program is a good plan and should be left alone.

Please use the power you have been elected to use to truly represent the people who have elected you, and **VOTE AGAINST SENATE BILL 111.**

Sincerely,



James Woitel
1818 Mission Road
Kodiak, Alaska 99615

APR 06 1993

*****FAX*****

4-6-93

To: Senate Finance Committee Members:

Steve Frank
Drue Pearce
George Jacko
Tim Kelly
Steve Rieger
Bert Sharp
Jay Kerttula

From: Craig Persson
P.O. Box 82324
Fairbanks, AK 99708
Phone #: 457-3727
Work Phone #: 474-2555

REGARDING: Senate Bill 111- Defined Contribution Retirement Plan

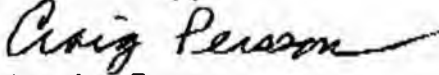
SB111, the Defined Contribution Plan, is a law that will basically set up a two tiered retirement system. I am opposed to this piece of legislation. I offer the following reasoning to my opposition of this bill:

1. Under this bill, the state or public employer has no accountability or responsibility to insure an employee in this new plan receives or maintains a retirement. If another Executive Life fiasco happens with the employee's or retiree's funds the employee or retiree could be left with no or little retirement.
2. This bill contains health insurance coverage for retirees of the new system, but at the retiree's expense. Health insurance is not even partially covered under this bill. In times when health care is so costly this speaks for itself.
3. Under SB111 existing employees may choose to stay in PERKS, TRS, Judicial Retirement System or the University Retirement System. All new employees hired after July 1, 1993 would be under the new Defined Contribution Retirement Plan. The main problem with closing the system to new participants is THE WHOLENESS AND SECURITY OF THE PRESENT RETIREMENT SYSTEMS!!!! New employees in many public and private pension plans, including social security, rely on payments from participants who replace retirees to keep the retirement system sound for the future. Do the underwriters of this bill know what the long term effects will be to

future retirees who stay in the current systems? In 20 to 30 years there will be no one paying into the old systems, but there will probably be at least ten thousand retirees drawing their pension from the old systems. What effect will this have on the PERS, TRS, JFS and University retirement systems?

The current retirement systems in Alaska are sound and have worked well for many years. Splitting the public employee retirement systems into a two tier system will create two systems that are both unknown and insecure for public employees and public employee retirees. The current systems are secure and fair to all employees and retirees.

Sincerely,



Craig Persson

4-6-93

SENATOR PEARCE
SENATE CAPITAL
JUNEAU, AK. 99801-1182

Dear Senator Pearce,

It is my understanding that Senate Bill 111 is being heard in the Senate Finance Committee tomorrow morning, 4-7-93. I believe that this bill is not in the best interests of the State of Alaska or those employees who are now in the PERS retirement system, or those who will enter the system in the future. It is my recommendation and request that you vote AGAINST this bill. Following are my reasons:

1. With no new monies coming into the OLD system, it will not be long before the old system is broke, thus stranding those employees who worked so hard and gave so much to the system and their employers.
2. I do not believe for one minute that this bill was submitted to benefit the employees, rather it appears to me that the sole beneficiary of this bill are those who are connected with insurance agencies and banks who deal with private retirement programs. In other words, this bill is not for us, but is a special interest bill designed by someone who will no doubt benefit from it in some way, either directly or indirectly.
3. The present retirement system works exceptionally well as it is, and yearly REP early retirement offerings will strengthen the system more than any other offering, while at the same time provide new employment opportunities and promotional opportunities for others, thus making employment in Alaska civil service something that can draw the best people.

Again, it is my request and recommendation that you VOTE AGAINST SENATE BILL 111.



MICHAEL H. ANDRE
KODIAK POLICE SERGEANT

April 7, 1992

Senator Pearce
State Capital
Juneau AK 99801-1182

Dear Senator Pearce:

It is my understanding that Senate Bill 111 is being heard at 9:00 am on Wednesday in the Senate Finance Committee. I implore you to vote AGAINST BILL 111.

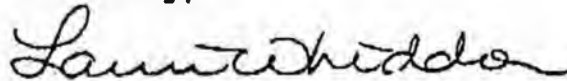
This bill does not appear to be in the best interest of employees currently working under the PERS/TRS system. There are no guarantees that funds will be available in the new plan at the time of my retirement, and if I choose to remain in the old (current) plan, no new monies will be invested into the plan, which could possibly result in bankruptcy at retirement. Either way, it is too much of a gamble to take.

Currently, our present retirement system is satisfactory, some say it is the best in the country; I am against any change that could possibly jeopardize this.

I ask that you please share this letter with the rest of the Committee, and encourage them to VOTE AGAINST SENATE BILL 111.

Thank you for your consideration in this matter.

Sincerely,



Lauri Whiddon
Admn. Asst./City of Kodiak
112-A Five Fingers Court
Kodiak AK 99615

(907) 487-2761/home
(907) 486-8000/work

Senator Pearce:

I am ~~presently~~ planning to retire at the end of this school year. However, Senate Bill 111 has me extremely concerned. Its passage could very well destroy my expectations of a financially secure ~~retiree~~ retirement. I have paid into TRS/PERS for 22 years and want the system to continue as previously ~~exp~~ promised. Please defeat SB 111 immediately.

Sue L. Platt
920 Reynolds
Kodiak
486-5325

Dear Mr. Pearce:

4/6/93

I strongly oppose Senate Bill 111. If this bill becomes law it will greatly jeopardize the current TRS/PERS system 20-30 yrs from now. I paid in to this system for many years + count on it to sustain me for the rest of my life. Please tell the other Senators of my objection. Vote no!

Sincerely,
Mr. & Mrs. Beecher Koduk

April 6, 1993

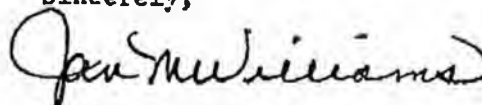
Senator Frank
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Frank:

I have 20 years in PERS. It has worked well! Please do not allow our Retirement System to be changed by "special interest groups".

I would appreciate your help in defeating SB111 and also support from your committee members to defeat this Bill. Thank you.

Sincerely,



Jan M. Williams
P.O. Box 76
Kodiak, Alaska 99615
(907)486-3168

jmw

April 6, 1993

Senator Pearce
Senate Office
Juneau, AK 99801-1182

Dear Senator Pearce:

SB 111 is not supported by the majority. I don't believe there has been sufficient research to implement a change now. I strongly urge you to NOT support SB 111.

Sincerely,



Jennifer Spencer
(907) 486-3183

/js

April 6, 1993

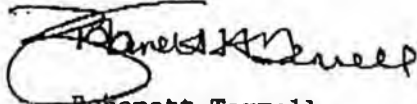
Senator Pearce
State Capitol
Juneau, Alaska 99801-1182

Dear Senator:

In regards to SB 111, give me a break! Why take something away that we as contributing employees have relied on and depend on upon retirement?

I am urging you to take whatever means necessary to DEFEAT SB 111. It is a crock, and is very unfair.

Sincerely,



Robert Terrell
(907) 486-8245

/RT

April 6, 1993
Kodiak, Alaska

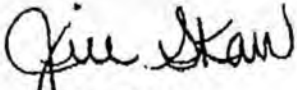
Senator Frank
State Capitol
Juneau, Alaska 99801-1182

Dear Senator:

I am writing in regard to SB 111. I am requesting your support in defeating this piece of legislation. I feel strongly that our retirement system is working very well. Why alter it now? I am baffled about SB 111 and wonder who could possibly benefit by it.

I appreciate your consideration in defeating SB 111.

Sincerely,



Bill Skaw
PO Box 842
Kodiak, AK 99615
(907) 486-5066

April 6, 1993

Senator Pearce
State Capitol
Juneau, AK 99801-1182

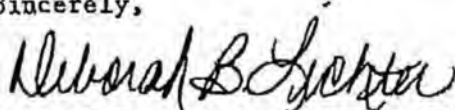
RE: SB 111

I have been involved with the TRS/PERS retirement system since 1974. After paying into it off and on over the past twenty years, I am questioning the reasoning for the change as asked for in Senate Bill 111. I don't believe that the alternative has been researched adequately. Since I am eligible to retire in another 15 years, I am wondering if there will be funds in it for my retirement.

I am writing to ask that you not support this bill. There is not enough legitimate research to support a change in the current TRS/PERS program.

Thank you for your consideration.

Sincerely,



Deborah Bain Lichter, CPS (907) 486-2572

/dbl

cc: Mr. Reiger

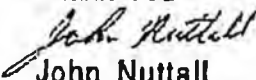
April 8, 1993

Senator Pearce
State Capitol
Juneau, Ak 99801-1182

Dear Senator Pearce,

I am writing to you because I am very concerned about SB 111. I see it as possibly the biggest financial burden to be put on the State since the Mental Health Lands screw up. With the State having the obligation to pay all the present people in the State's Retirement Program, with No new money coming in from new hires, the fund can not last for 50 to 60 years which is the life expectance of the people presently in the system. If the fund runs out of money, which it surely will, the State will find itself with the burden of providing retirement to thousands of retired teachers and public employees who have earned a retirement check. This money will then have to come out of the General Fund rather than from all the employees because the State will have set up a second retirement fund from which they can not draw interest. I urge you to vote No on SB 111 and save the young people of our state this unneeded burden, when the burden should be on the employees of the State as it now is. Don't try to fix something that is not broke just so Insurance companies and investment brokers can make big bucks off the employees of the State of Alaska.

Thank You



John Nuttall

Box 2554

486-5594

Kodiak, Alaska 99615

APRIL 6, 1993

SENATOR PEARCE
CO-CHAIRMAN SENATE FINANCE COMMITTEE
STATE CAPITOL
JUNEAU, AK 99801-1182

DEAR SENATOR PEARCE,

I AM WRITING TO EXPRESS MY CONCERN REGARDING SB 111 WHICH
ADDRESSES CHANGES TO THE STATE EMPLOYEE RETIREMENT SYSTEM.

I FEEL THIS BILL WILL HAVE THE EFFECT OF JEOPARDIZING
RETIREMENT BENEFITS FOR PRESENT WORKERS AND THOSE CURRENTLY
DRAWING BENEFITS.

I AM REQUESTING YOU TO OPPOSE THIS BILL.

SINCERELY,

Marcia A. Stelzer

MARCIA A. STELZER
BOX 2412
KODIAK, AK 99615

Honorable Senator Pearce
State Capitol
Juneau, AK 99615

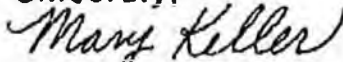
April 6, 1993

Dear Senator Pearce:

I am writing concerning SB 111. I do not feel that the consequences of changing to the proposed system have been thoroughly weighed. Will both systems be solvent at the time of and during all employees retirements?

I hope you will oppose this bill.

Sincerely,



Mary Keller

2886 Turner Lane
Kodiak, AK 99615
486-9231 WK. 486-6325 HM.

April 6, 1993
Kodiak, Alaska

Senator Drew Pearce
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Pearce,

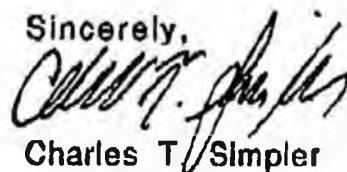
I am writing to obtain your support in opposition to SB 111. This ill-advised piece of legislation serves the interest of no one who is currently under TRS or PERS. In addition, the financial implications of this legislation are at best unknown, and could have the State involved in costly litigation for years to come.

When a system is working, as ours is, why is a major change under way when no one in the system wants to change it? Is this legislation being promoted for the personal interests of those involved in its drafting? I certainly question their motives in coming up with such a piece of irresponsible legislation.

Has this legislation been submitted to the retirement system for financial analysis by their actuaries and if not, why not?

I respectfully request your assistance in supporting the defeat of SB111 and the continuation of our retirement system as it currently is.

Sincerely,



Charles T. Simpler
P.O. Box 465
Kodiak, Alaska 99615
(907) 486-5897

Box 1313
Kodiak, Alaska 99615
April 6, 1993

Senator Druc Pearce, Co-Chair
FAX 465-3872
Senate Finance Committee
State Capitol
Juneau, Ak 99801-1182

Dear Senator Pearce,

I am very concerned about SB 111, from a number of standpoints. I have been teaching in Alaska since 1970. I love what I am doing and feel that I still have something to contribute, so I have no immediate plans to retire. However, I expect the system to be solvent when I do retire and that it will continue to be solvent while I am retired. I believe solvency is in jeopardy with this plan, as no new monies would be injected into the plan.

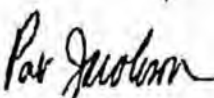
It is my understanding that the current retirement system is in excellent shape. Further it is self-sustaining. Why correct something which isn't broken? Who will this benefit? Will a special interest group benefit at the expense of all public employees? Where are the studies on how the money will be invested, what my return will be, etc.?

I really do not see where the push for this bill is coming from. It seems to me that when we have an excellent system in place, which is self-sustaining, why try to change it? If there is a perceived need to change it, then why not do some studies to see if the concerns are justified and to try to make educated decisions on the best remedy to pursue.

Although I am not one of your constituents, I have been impressed observing you as a legislator for several years and trust that you will continue to make thoughtful, conservative decisions.

Thank you for your time.

Sincerely,


Pat Jacobson
486-3954

April 5, 1993

Senator Steve Frank and Senator Drue Pearce, Co-Chairpersons
Senate Finance Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Finance Committee,

It was a shock to me to learn about Senate Bill 111. This is to let you know that I am opposed to the passage of this bill. Please do not vote to move this bill out of committee. If it does go to the whole Senate for a vote, I ask you to defeat it.

I am a member of TERS and have serious fears about the viability of that system if you choose to suddenly change to this new proposal. Not only do I think that this has not been studied enough to know the long term ramifications, but I personally believe that they will be negative. I cannot see how this move can do anything but harm to the present system and create a weak and undesirable system for future employees.

I am looking forward to the news that this objectionable bill has died in committee.

Sincerely,



Daniel L. Busch
Box 1162
Kodiak, Alaska 99615
907-486-5310

March 31, 1993

Senator Drue Pearce
Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Pearce,

Recently, I have been made aware of Senate Bill 111 and the effect that it will have upon not only my own retirement but the retirement of future Alaskans. This is to let you know that I am vehemently opposed to SB 111.

This bill looks like nothing less than some misguided attempt to throw business to insurance agents who will be able to sell newly retired, older Alaskans a health plan and a paid-up annuity. It also appears to be a sure way to reduce or eliminate the future retirement benefits of present members of PERS and TERS when that fund is depleted. How can supporters of this bill justify themselves? Alaska should be proud to have one of the best and most successful retirement systems in the United States. Why tamper with it?

I certainly hope that you will listen to the opponents of this bill. Please do not vote to move this out of the Finance Committee. If it does go to the floor for a vote, please do not vote in favor of it.

Sincerely,



Randy Reichmann Busch
Box 1162
Kodiak, Alaska 99615
(907) 486-5310

**THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE**

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

January 11, 1993

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF ADMINISTRATION TEACHERS' RETIREMENT SYSTEM REVIEW OF SELECTED FUNDING ISSUES


January 11, 1993

Audit Control Number

02-4447-93

The audit addresses the circumstances surrounding the April 1992 decision of the Teachers' Retirement System Board to adopt an enhanced actuarial projection methodology utilizing population and asset projection features. Additionally, the audit discusses the impact of the enhanced actuarial projection methodology on employer contribution rates and projected funding ratios. It also addresses concerns common to public pensions.

The audit was conducted in accordance with government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.


Randy S. Welker, CPA
Legislative Auditor

S B

1 1 2

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/22/93

FURTHER:

DATE TURNED INTO OFFICE: 3-23-93

The Finance Committee considered **SENATE BILL NO. 112**

"An Act relating to the Uniform Commercial Code; amending Alaska Rules of Civil Procedure 8 and 82, and Alaska Rule of Evidence 402; and providing for an effective date."

and recommends:

[] replace with _____ CS _____ (FINANCE)
 or [] adopt previous _____ CS SB 112 (Jud.)
 [] attaches amendment(s)

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

[] adopts _____ Letter of Intent

[] further referral to the _____

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
<u>DCKED</u>	<u>3-2-93</u>	<u>0</u>	
<u>DOLAW</u>	<u>2-18-93</u>	<u>0</u>	
<u>DNR</u>	<u>3-15-93</u>	<u>0</u>	

[] Appropriation No Fiscal Note

DO PASS.

Tim Kelly
Gregg Decker
J. Cantwell

OTHER RECOMMENDATIONS:

Steve Patten - No Rec
Bob Thomas - No Rec
And No Rec

1. _____

Co-Chair: Signature/Recommendation

2. True League - No Rec

Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 112

3/4/93

CIC then JUD, FIN

Revision Date: _____

Department Affected: Commerce and Economic Development

Title: An Act relating to the UCC

BRU: Banking, Securities and Corporations

Sponsor: Senator Kerttula

Component: _____

Requestor: _____

COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations

Phone: 465-2521
 Date: _____

Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Date: 3-2-93

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SB112

FISCAL NOTE

2/19/93

BILL NO. SB 112

STATE OF ALASKA
1993 LEGISLATIVE SESSION

LFC than 300, FPA

Revision Date: February 18, 1993
 Title: "An Act relating to the Uniform Commercial Code..."
 Sponsor: Senator Kerttula
 Requestor: Senator Kerttula

Department Affected: Department of Law
 BRU: Legal Services
 Component: Operations
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: February 18, 1993
 Date: February 18, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 112

ANALYSIS (Continued):

This bill makes substantial amendments to the state's Uniform Commercial Code (UCC) under AS 45.01- AS 45.09 and AS 45.12. This bill is a major effort to update Alaska's UCC by adding a new article (Art. 2A) on personal property leasing; amending the UCC's Arts. 3 and 4, regarding negotiable instruments and bank deposits and collections; repealing UCC Art. 6, on bulk sales; and making other changes in the UCC that are necessary to accommodate the basic changes being made in the bill. These basic changes have been proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and they are needed to help bring Alaska business and consumers involved in commercial transactions up to date with businesses and consumers in the rest of the country. Because the bill deals with transactions between private parties it will not have a fiscal impact for the Department of Law. To the extent that the bill impacts state-funded loan and investment programs, it should have a beneficial effect.

FISCAL NOTE

3/17/93
TRA when L&C, FID

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

BILL NO. CSSB112(L&C)

Revision Date 15-Mar-93

Department Affected: Natural Resources

Title: "An Act relating to the Uniform
Commercial Code"

BRU: Management & Administration

Components: Recorder's Office

Sponsor: Senator Kerttula

Requestor: Senate Judiciary Committee

Component Serial No. 802

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE fund source:	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current year (FY93) impact: \$

No fiscal impact anticipated

ANALYSIS:

SB112 is a comprehensive revision of the State's Uniform Commercial Code and proposes addition of a new chapter (A.S.45.12) on leases. While the proposed lease provisions are extensive, the impact on the statewide Recorder's/UCC offices should be negligible. Although the new chapter includes extensive provisions relating to commercial leases (rights, remedies, default, warranties, etc.), only leases "intended as security" are entitled to be filed with the Recorder's/UCC offices under Chapter 9 governing secured transactions. This represents no change from existing law which already covers leases intended as security (A.S.45.09.102(b)). Contact with other jurisdictions which have enacted the comprehensive leasing provisions indicates there has been no noticeable impact on filing volumes. The Uniform Law Commissioner has confirmed that the bill as drafted should not present any perceptible burden on the Recorder's/UCC offices and the minor language changes requested by the component in previous sessions have been incorporated. Other provisions of SB112 relating to Chapter 3 (Negotiable Instruments) and Chapter 4 (Bank Deposits and Collections) do not affect the Recorder's/UCC component.

Prepared by: Sharon Young, State Recorder

Phone: 762-2437

Division: Recorder's Office

Date: 15-Mar-93

Approved by Commissioner: Glenn A. Olds

Date: 15-Mar-93

Agency: Department of Natural Resources

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CSS13112

CHANGES TO SB 112

Changes made to SB 112 in Labor & Commerce Committee:

Page 4, line 20: the words "the code" are new, replacing the older citation of specific chapters. Housecleaning change, making the bill easier to read.

Page 4, line 21: "AS 45.12.207" is new, it was inadvertently dropped in the original bill.

Page 48, line 16: the words "subject to B through E" were added. The original bill had "subject to B through D" which is an error in the National version of this bill and that version is being corrected to reflect this new language. Essentially a typo.

Page 86, lines 13-15 were added by the Labor & Commerce Committee then, after further thought, it was determined by the legal experts that this was unnecessary and would be better placed in other existing statutes that don't deal with the Uniform Commercial Code. The Judiciary Committee agreed, and, on March 19th, deleted these lines from the bill during its hearing on CSSB 112.

Page 106, lines 28 & 29: the last sentence of subsection C on this page was added--the language was recommended by Professor Fred Miller, of the University of Oklahoma, and the executive director of the National Conference of Commissioners on Uniform State Laws.

Page 112, line 16: the words "under B or C, and D" were added to replace the words "under B -(das) D" to clarify intent.

Page 112, line 25: the word "or" was changed to "of", correcting a typo.

Page 112, line 28: the word "and" was changed to "or", again correcting a typo.

Page 112, lines 29 & 30: the words "or lessee" were added.

3/26/93

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 112 (Jud)

RLS

Revision Date: _____
Title: An Act relating to the UCC
Sponsor: Senator Kertula
Requestor: _____

Department Affected: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component: _____
COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date: _____

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 3/23/93

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FISCAL NOTE

3/25/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 112 (I&C)

PLS

Revision Date: _____

Department Affected: Commerce and Economic Development

Title: An Act relating to the UCC

BRU: Banking, Securities and Corporations

Sponsor: Senator Kerttula

Component: _____

Requestor: _____

COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date: _____

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 3-24-93

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 19, 1993

WALTER I. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 W. 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P. O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

465-6735

Hon. Drue Pearce
Hon. Steve Frank
Co-Chairs
Alaska State Senate Finance Committee
State Capitol Building, Room 508
Juneau, AK 99811

Re: SB 112

Dear Senators:

The Department of Law has reviewed SB 112 and finds no legal problems.

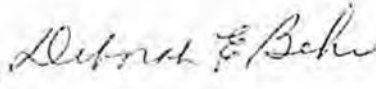
The bill makes important improvements to the Uniform Commercial Code.

We understand that the bill is before your committee and that the bill is scheduled for hearing on Monday, March 22, 1993. We appreciate the early scheduling of this important legislation.

If you have questions, please let us know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:cl

cc: Alaska's Uniform Law Commissioners Delegation
Justice Jay Rabinowitz
Arthur H. Peterson, Esq.
Jerry Kurtz, Esq.
Tam Cook, Esq.
Grant Callow, Esq.

Kris Lethin, Legislative Liaison
Office of the Governor

LAW OFFICES

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Anchorage, Alaska 99501
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Facsimile (907) 274-9649

SITKA:
514 Lake Street
Sitka, Alaska 99835
Telephone (907) 747-3900
Facsimile (907) 747-3990

February 16, 1993

Terry Bannister
Legislative Counsel
Legislative Affairs Agency
130 Seward St., Rm. 405
Juneau, Alaska 99801-2105

HAND DELIVERED

Re: SB 112, UCC misc. (art. 2A, personal property leasing;
arts. 3 & 4, negotiable instruments; art. 6, bulk sales)

Dear Terry:

A copy of Professor Fred Miller's February 11, 1993 reply to my February 5 inquiry about your draft of this bill is attached, along with his marked-up copy of my letter, your page 112, and a sheet of citation updates. SB 112 was introduced last Thursday, February 11.

Fred designated parts of my letter with numbers, and referred to those numbers in his letter. Using the same numbers, here are my comments on his comments:

1. O.k. All of the identified changes should be made.
2. O.k. AS 45.03.102(a) (page 13, line 6, of the bill) should be changed as indicated in my letter, when the art. 4A bill (SB 86) passes.
3. O.k. AS 45.03.415(a) (page 48, line 16) should be changed to refer to "(b) - (e)."
4. O.k. The change in proposed AS 45.12.108(d) (page 93, line 15) has already been made.
5. Add the following sentence to the text of proposed AS 45.12.304(c) (page 106, line 26): "If the certificate of title statute is silent on the issue of transfer, this section controls." This is not a perfect solution, but it states their intent on the basic point, putting it in

Terry Bannister
February 16, 1993

Page 2

Re: SB 112, UCC misc. (art. 2A, personal property leasing; arts. 3 & 4, negotiable instruments; art. 6, bulk sales)

the text rather than "legislative history." It seems like a better approach than other proposals, although I still rather like my "provided by statute" (which Fred said was ambiguous).

6. I believe that Fred is wrong; proposed AS 45.12.--310(e) is not "technically correct." But, what he means by his "(3) and (4) are tied together and subsections (2) and (4) also are tied together," is that paragraph (4) is the constant. I.e, the correct interpretation is, in your and my description, "(2) or (3), and (4)." I also disagree with Fred that the best solution is to leave the provision alone and rely on legislative history, and I suggest that the correction be in the text. The fact that UCC § 9-314(4) (our AS 45.09.314(d), which changed NCCUSL's version to "(a) -- (c)") is also incorrectly drafted in the same way is not a persuasive reason to ignore the problem here. See Fred's corrections in your subsec. (f), which should also be made.

Presumably, these little amendments can be made in the Senate Labor and Commerce Committee. I would guess that Sen. Kerttula will want you to prepare them on an amendment sheet, for ease in presenting them to the committee. So far as I know, the bill has not yet been scheduled for a hearing.

So, that's it for now.

Yours truly,

Dillon & Findley

By: 

Arthur H. Peterson

AHP/sh
Enclosure

cc w/enc.: ✓ Hon. Jay Kerttula (Hand Delivered)
Alaska State Senate

L. S. Kurtz, Jr., Esq.
Anchorage

cc w/o enc.: Prof. Fred Miller, Exec. Dir., NCCUSL
c/o Univ. of Oklahoma College of Law



The
University of Oklahoma

COLLEGE OF LAW
300 Timberdell Road
Norman, Oklahoma 73019-0701
(405) 325-4889
FAX # (405) 325-6282

February 11, 1993

Arthur H. Peterson
Dillon & Findley
One Sealaska Plaza, Ste. 202
Juneau, AK 99801
FAX 907-586-3777

Re: UCC Amendments

Dear Art:

Hopefully this will respond to your letter to me dated February 5, 1993 (enclosed and questions numbered).

1. There are a number of cross references that should be updated, including the two you found. I enclose a sheet where the ones that Jack Burton and I have found to date are listed.

2. I have no idea why ULA drops the language about payment orders in § 3-102(a). That language should appear.

3. I agree with you the reference in § 3-415(a) should be to subsections (b) through (e); apparently we have made an error. I am copying the reporter with this letter, however, just in case I have overlooked something and we would be in error in making the change.

4. I am not sure how to respond because I do not have Alaska Civil Rule 82. It may be helpful to observe that often the specific rule will be construed to control the general rule; your proposed amendment to § 2A-108(4) would simply reflect that approach. Thus it should be okay.

5. The statute and the comment to § 2A-304 I believe are consistent. The statute is a general rule that both the certificate of title act and Article 2A must be considered. The comment says, if when that is done, the certificate of title act does not address the point, then Article 2A will control. This simply states the obvious. The first change to the statute that you propose would change the rule, however, and the second change leaves the matter ambiguous. If a change must be made, I would put in the Alaska legislative history or comments a change to the comment sentence: "If the certificate of title statute, after being consulted on the issue of


transfer, is silent, this section will control."

6. I agree the statement in § 2A-310(5) is unclear; in my opinion it could read: "When under subsections (2), (3) or (4)" However, the section is derived from § 9-314(4) (which reads (1) or (2) and (3)) and we do not want to create a different interpretation. Moreover, since subsections (3) and (4) are tied together and subsections (2) and (4) also are tied together, the provision technically is correct. On balance, I would not change it; if more clarity is necessary, again I would use Alaska legislative history or comments.

By the way, I believe in restyling, your bill substantively changes the section. Your subsection (f) I believe should use "or" and not "and" between (1) and (2), and needs a reference to "lessor or the lessee" in (2). Also note the typo in the lead in.

If you have any other questions, please let me know.

Sincerely,



Fred H. Miller
Kenneth McAfee Centennial Professor of Law
George Lynn Cross Research Professor

/jw

Enclosures

cc: Robert L. Jordan FAX 310-206-7010
Carlyle C. Ring FAX 703-448-2956
John M. McCabe FAX 312-915-0187

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 514 Lake Street
 Sitka, Alaska 99833
 Telephone (907) 747-3900
 Facsimile (907) 747-3990

February 5, 1993

Fred H. Miller, Exec. Dir.
 NCCUSL
 c/o Univ. of Oklahoma, College of Law
 300 Timberdell Road
 Norman, OK 73019

Re: UCC amendments

Dear Fred:

At the request of a senator who has agreed to introduce our UCC changes, I reviewed his draft bill covering arts. 2A, 3, 4, and 6 (repeal). I have some questions.

1. I do not find in any UCC material I have, including West's new 1990 Official Text, an amendment of § 1-201(44) (definition of "value"), to reflect the 1990 renumbering of §§ 4-208 (now 210) and 4-209 (now 211). § 4-208 used to be captioned "Security Interest of Collecting Banks in Items, Accompanying Documents, and Proceeds" and § 4-209 was captioned "When Bank Gives Value for Purposes of Holder in Due Course." In the main part of the West publication, those captions and provisions are in §§ 210 and 211, respectively, and 208 and 209 are on different subjects, the changes being shown in West's Appendix IX, giving the 1990 art. 4 amendments. Am I correct in assuming a direct correspondence, and that no substantive change requires doing something different in that cross reference, other than amending "208" and "209" to read "210" and "211," respectively, in § 1-201(44)? (In a nutshell, what is the reason for that cross reference to 208/210? How does that section affect § 1-201(44)'s definition of "value"?)

✓ Also, no material that I have indicates the amendment of § 2-103(3)'s reference to "'Dishonor', Section 3-507." The "dishonor" reference should now be to § 3-502.

2. Why does the DLA version of § 3-102(a) drop ", to payment orders governed by Article 4A," as I am told it does. Those words appear in the 8 1/2 x 11-inch sheets I received from NCCUSL (dated

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Fred H. Miller, Exec. Dir., NCCUSL
February 5, 1993

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✓ 12/2/91) and in West's 1990 version. Am I correct in assuming that they should stay there?

3. Why does § 3-415(a) refer only to subsecs. (b) -- (d) of that section, and not to (e). Notwithstanding (e)'s condition referring back to (a), all four of the subsections after (a) speak of nonliability or discharge, thus making the general rule of (a) "subject to" (b) -- (e). No?

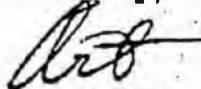
4. § 2A-108(4) provides for attorney fees in an action in which the lessee claims unconscionability, and sets out certain conditions for the award of those fees. Our Civil Rule 82 deals with attorney fees generally, so we need to clarify the relationship between the new statute and the rule. How about our starting the lead-in line of § 2A-108(4) with "Notwithstanding Rule 82, Alaska Rules of Civil Procedure"? That approach would have this statute govern in the particular circumstances described in it.

5. The Official Comment under § 2A-304 says, with regard to subsec. (3), "Where the certificate of title statute is silent on this issue of transfer, this section will control." How does that statement square with the use of "both" in the text? If the comment expresses your intent, shouldn't the text use "either"? Or perhaps say, simply, "provided by statute."

6. In § 2A-310, subsec. (5) says "When under subsections (2) or (3) and (4)" By joining the conjunctive "and" with the disjunctive "or" in the same series, this clause violates an important drafting principle and creates an ambiguity. Does the clause mean "(2), or (3) and (4)" or "(2) or (3), and (4)"? The Official Comment doesn't clarify the matter. Our legislative drafter changed the provision to read as shown on the attached sheet (substituting our (a), (b), (c), etc., for NCCUSL's (1), (2), (3), etc.). What do you think? *OK but subject*

We appreciate your help. Thanks.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh
Enclosure

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Fred H. Miller, Exec. Dir., NCCUSL
February 5, 1993

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cc w/enc.: John McCabe, Legislative Director
and Legal Counsel
NCCUSL

Terry Bannister
Legislative Counsel
Legislative Affairs Agency

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32A-310

1 interests in the whole except as stated in (d) of this section but is subordinate to
 2 interests in the whole existing at the time the lease contract was made unless the
 3 holders of those interests in the whole have in writing consented to the lease or
 4 disclaimed an interest in the goods as part of the whole.

5 (d) The interest of a lessor or a lessee under a lease contract described in (b)
 6 or (c) of this section is subordinate to the interest of

7 (1) a buyer in the ordinary course of business or a lessee in the
 8 ordinary course of business of any interest in the whole acquired after the goods
 9 became accessions; or

10 (2) a creditor with a security interest in the whole perfected before the
 11 lease contract was made to the extent that the creditor makes subsequent advances
 12 without knowledge of the lease contract.

13 (e) When under (b) - (d) of this section, and subject to (f) of this section, a
 14 lessor or a lessee of accessions holds an interest that is superior to all interests in the
 15 whole, the lessor or the lessee may remove the goods from the whole, free and clear
 16 of all interests in the whole, but the lessor or lessee must reimburse a holder of an
 17 interest in the whole who is not the lessee and who has not otherwise agreed, for the
 18 cost of repair of physical injury but not for a diminution in value of the whole caused
 19 by the absence of the goods removed or by a necessity for replacing them. A person
 20 entitled to reimbursement may refuse permission to remove until the party seeking
 21 removal gives adequate security for the performance of this obligation.

22 (f) The lessor or the lessee may remove the goods under (e) of this section

23 (1) on default, expiration, termination, or cancellation of the lease
 24 contract by the other party but subject to the provisions of the lease contract and this
 25 chapter, and

26 (2) if necessary to enforce other rights and remedies of the lessor under
 27 this chapter.

28 Sec. 45.12.311. PRIORITY SUBJECT TO SUBORDINATION. Nothing in
 29 this chapter prevents subordination by agreement by a person entitled to priority.

30 ARTICLE 4. PERFORMANCE OF LEASE CONTRACT.

31 Sec. 45.12.401. INSECURITY: ADEQUATE ASSURANCE OF

1. The reference in UCC § 2-511 to § 3-802, upon enactment of Revised Article 3, should be § 3-310.
2. The reference in UCC § 2-403(4) to Article 6 should reflect the action taken with respect to Article 6, whether repeal or revision.
3. Upon enactment of Article 2A and Revised Articles 3 and 4, definitional cross references in the following sections need attention: § 5-103(3) (reference to "acceptance" should be from § 3-410 to § 3-409); § 9-203(1) (reference to § 4-208 should be § 4-210, and the reference to the "Article on Sales" should be the "Articles on Sales and Leases"); § 9-206(1) (reference to "Article on Commercial Paper (Article 3)" should be "Article on Negotiable Instruments (Article 3)"); § 9-312(1) (reference to § 4-208, should be to § 4-210); § 2-103(2) (reference to "dishonor" and § 3-507 should be § 3-502); § 1-201(44) (reference to §§ 4-208 and 4-209 should be §§ 4-210 and 4-211); § 2-511(3) (reference to § 3-802 should be § 3-310); and § 1-201(3) (reference to § 2A-207 should be added).

4-302 (1) (F)
~~2-103(2)~~
~~§ 3-507~~
 (D) if he is to be

As Articles 2, 5, 8 and 9 are revised in the future, this same issue will present itself. Moreover, to the extent a state enacts revisions out of order, references may need to be amended twice; e.g., if a state were to enact revised Article 5 before revised Articles 3 and 4, the cross references in revised Article 5 would have to be changed to refer to old Article 3, and then again upon enactment of revised Article 3. Finally, some like kind additions to the Official Comments are in order; for example, to add the comparable references to Article 2A in the comments to §§ 1-102 and 1-203. Again, the question asked under the Overview as to Article 1 is raised.

SB 112

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 5, 1993

SUBJECT: Revised UCC bill (Work Order No. 8-LS0227J)
TO: Senator Jay Kerrtula
Attn: Bill
FROM: Theresa L. Bannister *TLB*
Legislative Counsel

This memo accompanies a final version of the above UCC bill. This version contains the changes requested by Art Peterson in his February 4, 1993, letter, except for the cross-reference to AS 45.14, the funds transfer chapter.

Because this bill does not enact the funds transfer chapter, the bill shouldn't include a reference to that chapter. Therefore, the phrase, "to payment orders governed by AS 45.14," is not included in sec. 45.03.102(a). However, you may wish to consider amending the funds transfer bill, SB 86, at some point to amend current AS 45.03.-103(a) by adding this phrase. Then, when both bills pass, the revisor will have legislative guidance that this phrase should be added to the new sec. 45.03.102(a). I have discussed this with Art.

The actual changes made are listed below.

1. The reference to AS 45.04.210 has been added to AS 45.01.201(45). Although it is not entirely clear how the cross-reference to sec. 45.04.210 fits in AS 45.01.201(45), it has been reinserted because it corresponds to a cross-reference in the original text. As Art indicated, he will contact the NCCUSL drafters to attempt to clarify why this cross-reference is included.
2. The phrase, "Notwithstanding Alaska Rule of Civil Procedure 82," was added to sec. 45.12.108(d).
3. The word "filing" was changed to "recording" in sec. 45.12.309(i).
4. The word "times" was substituted for "time" in sec. 45.12.507(a).

Senator Jay Kerttula
February 5, 1993
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5. The commas requested by Art to clarify that "of the type" referred to "default" were inserted where "of the type" occurred: AS 45.12.518(a), 45.12.524(a), 45.12.525(b), 45.12.527(a), and 45.12.529(a) and (e).

6. In sec. 45.12.529(e), "a default" became "default", and "by lessee" became "by the lessee".

CLARIFICATION. Contrary to what I said in my December 31, 1992 memo, the documents published by the National Conference of Commissioners on Uniform State Laws (NCCUSL) are the ultimate authority on uniform state laws, not the publications of the Uniform Laws Annotated (ULA) publications. However, the ULA is a convenient and comprehensive source for determining the content of these laws and the rationale behind them.

If I may be of further assistance, please advise.

TLB:gc:pl
93-108.glc

Enclosure

3B112

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February 4, 1993

The Honorable Jay Kerttula
Alaska State Senate
Room 427, State Capitol
Juneau, AK 99801-1182

HAND-DELIVERED

Re: Your draft bill on Uniform Commercial Code changes: Art. 2A (personal property leasing), Arts. 3 and 4 (negotiable instruments, etc.), and repeal of Art. 6 (bulk sales) LAA Work Order No. 8-LS0227\E

Dear Jay:

As you requested recently, I have reviewed the January 4, 1993 draft of this bill, accompanied by the December 31, 1992 cover memo from Terry Bannister to you. I have addressed the 38 points set out in her memo. The bill should now be ready for preparation in final form and early introduction.

In the art. 2A portion, the bill includes proposed AS 45.12.104(a)(4) (page 92, line 3), originally requested by the Department of Administration to make clear the relationship to the state's Procurement Code (existing AS 36.30). A spot check indicates that it also includes the NCCUSL's 1990 amendments to art. 2A.

As you also requested, you will find attached a brief description of the bill, citing bill section numbers as they appear in this draft. I could not keep it to one page, since the bill covers three major areas of the law and is 136 pages long. I trust that you will find this description helpful for press releases, committee discussion, and floor debate. The Department of Law, the Legislative Affairs Agency, and I have additional background material if you would care to see it.

Here are some changes to be made before introduction:

A. On page 11, line 25, "45.04.210 and" should be inserted in front of "45.04.211," to maintain a direct correspondence with the NCCUSL's numbering changes in art. 4.

The Honorable Jay Kerttula

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February 4, 1993

Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

the appropriate clarification, and most closely tracks the official version.

Phew!!!

Let me know if I can be of further assistance.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh
Enclosures

cc w/enc.: Rest of Alaska's ULC Delegation:

Jay A. Rabinowitz

W. Grant Callow

Tamara Brandt Cook (Hand-Delivered)

L. S. Kurtz, Jr.

Deborah E. Behr (Hand-Delivered)

Terry Bannister, Legislative Counsel (Hand-Delivered)
Legislative Affairs Agency

The Honorable Jay Kerttula
February 4, 1993

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Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

B. On page 13, line 6, after "money," insert, "to payment orders governed by AS 45.14,". This change picks up the NCCUSL's reference to the new art. 4A (funds transfers) in your other UCC bill.

C. On page 111, line 8, "filing" needs to be corrected to "recording," in proposed AS 45.12.309(i). This change from the NCCUSL wording was already made in (j)(2) of that section (page 111, line 13). It accommodates a Department of Natural Resources request, to conform to existing AS 40.17.110(b)(51).

D. On page 119, line 26, change "time" to read "times," to conform to official NCCUSL wording.

E. On page 134, line 8, in proposed AS 45.12.529(e), the "a" in front of "default" should be deleted. On the following line, "the" should be inserted in front of "lessee." These two minor changes conform to the NCCUSL's wording, and correct what appear to be typographical errors.

Here are my comments on Terry's 32 points, using her numbers:

1. Although I would not have made some of the rearrangements that Terry made in the sections cited, I have no real objection to them. While there is a value to maintaining the national sequence of provisions, as well as the national wording, Terry's changes do not do violence to the national approach, and it is most important to get the bill introduced and enacted soon.

2 -- 4. O.k.

5. The insertion of the term "code" is an excellent idea.

6 & 7. O.k.

8. So far as I can tell at the moment, the applicability section (sec. 129) looks good.

9. I have not compared this draft word for word with the NCCUSL version, but, being somewhat familiar with the Alaska Legislature's drafting style, I assume that Terry's miscellaneous style changes are o.k.

10. Terry's cross reference to our existing statutory construction provisions is substantively o.k., and I am not

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Page 3

Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

requesting that the original NCCUSL language be restored. I should say, however, that I am slightly concerned about outsiders looking for the exact NCCUSL language in the cited provisions. But, again, it is most important to get this bill introduced soon, and I am not suggesting a change.

11 -- 13. O.k.

14. As indicated above, in my suggestions for change preceding this list of responses to Terry's points, I believe that the reference to AS 45.04.210 should be reinserted. I will write to the national experts to get their opinion on this. But, for now, it is important to get the bill introduced and moving.

15. Terry's change, based on the ULA version, reflects what appears to be an error in the ULA version. The following words appear in the official publication of the UCC by West Publishing Company under contract with NCCUSL, and should be reinserted in AS 45.03.102(a) (page 13, line 6), following "money": ", to payment orders governed by AS 45.14,".

16 & 17. O.k.

18. I think that Terry is right, but I am writing to the national experts to check on this point. In the meantime, proposed AS 45.03.415(a) (page 48 line 16) should remain as it appears in your draft.

19 & 20. O.k.

21. Terry is correct. The official NCCUSL version poses the two alternatives for subsec. (b). Subsection (c) is supposed to be there, regardless of which alternative is chosen for subsec. c. Terry has chosen Alternative A, and I believe that she has made the appropriate choice, but I will defer to the bankers on this one.

22 -- 25. O.k.

26. Terry's point is a good one. However, I recommend leaving the draft's provision alone and tracking the "official" NCCUSL version of AS 45.04.215.

27. I believe that Terry's draft is appropriate, and that the dollar amount should not be inserted. This is the approach taken

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Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

in prior drafts of this part of your bill, including last legislature's HB 294. I heard no objections to it then.

28. This is a good point, comparable to the one Terry raised in connection with two provisions in your other UCC bill. However, to maintain as much consistency with the "official" NCCUSL version as possible, I recommend that we address the point by amending proposed AS 45.12.108(d), rather than deleting it. In the meantime, I will include this question with those I am sending to the national experts on this subject. My suggestion is that, at page 93, line 15, the following words be inserted in front of "in an action": "Notwithstanding Rule 82, Alaska Rules of Civil Procedure,".

29 & 30. O.k.

31. Again, Terry has raised a good point. I am inclined to think that the provision should be amended (at page 106, lines 25 and 26) simply to say "provided by statute." However, I prefer to leave proposed AS 45.12.304(c) as it appears in the draft until I hear from the national experts on this point.

32. O.k.

33. Another excellent point! I don't know the answer, but recommend keeping Terry's interpretation in the draft until I hear from the national experts. I will ask them about this point too.

34 & 35. O.k.

36. Terry's point is good, proposed AS 45.12.522(b) could be clearer. However, her assumption is correct, and I recommend that her draft's wording be retained until the official NCCUSL version is changed.

37. O.k.

38. Terry's point is good, but I think that her proposed solution is awkward. I recommend inserting commas around the intervening prepositional phrase, so that the references would read as follows: "After default, by the lessee under the lease contract, of the type described" This approach flows, makes

STATEMENT OF
SEN. JAY KERTTULA
ON
S.B. 86 AND S.B. 112
"UNIFORM COMMERCIAL CODE"
BEFORE THE
SENATE LABOR AND COMMERCE COMMITTEE
MARCH 2, 1993

GOOD AFTERNOON. I'D LIKE TO THANK COMMITTEE CHAIRMAN SENATOR KELLY AND THE MEMBERS OF THE LABOR AND COMMERCE COMMITTEE FOR SCHEDULING SENATE BILLS 86 AND 112 FOR A PUBLIC HEARING TODAY. THE BILLS ARE COMPANION PIECES OF LEGISLATION AMENDING ALASKA'S UNIFORM COMMERICAL CODE.

AS SPONSOR OF THE BILLS IN THE SENATE, I WILL PROVIDE A BRIEF OVERVIEW OF EACH BILL. I HAVE ALSO ASKED LEGISLATIVE LEGAL COUNSEL AND REPRESENTATIVES FOR THE DEPARTMENT OF LAW TO BE HERE TODAY TO EXPLAIN SOME OF THE MORE TECHNICAL AND LEGAL ASPECTS OF THESE BILLS.

I WILL BEGIN WITH SENATE BILL 86, ALSO KNOWN AS THE "FUNDS TRANSFERS" BILL.

**SPONSOR STATEMENT-SB 86 AND AB 112
PAGE 2**

GENERALLY SPEAKING, SENATE BILL 86 BRINGS THE FUNDS TRANSFERS PORTION OF ALASKA'S UNIFORM COMMERCIAL CODE UP TO DATE WITH REGARD TO CURRENT ELECTRONIC TECHNOLOGY AS IT APPLIES TO MODERN BUSINESS PRACTICES.

S.B. 86 WILL ENACT THE NEW ARTICLE 4A INTO THE STATE'S UNIFORM COMMERCIAL CODE. THE U.C.C. IS A COMPREHENSIVE CODIFICATION OF COMMERCIAL LAW THROUGHOUT THE COUNTRY. UNTIL 1989, HOWEVER, THE U.C.C. DID NOT DEAL WITH FUNDS TRANSFERS BETWEEN COMMERCIAL ENTITIES. AS BUSINESS PRACTICE HAS COME TO RELY MORE HEAVILY ON THE SPEED, EFFICIENCY, RELIABILITY AND RELATIVELY LOW COST OF ELECTRONIC TECHNOLOGY, IT IS APPARENT THAT ALASKA'S COMMERCIAL LAWS BE BROUGHT UP TO DATE.

THE NEW ARTICLE 4A EMBODIED IN S.B. 86 DOES THIS. THE PROVISIONS IN S.B. 86 HAVE ALREADY BEEN ADOPTED BY 44 OTHER STATES, INCLUDING NEW YORK, ILLINOIS AND CALIFORNIA--THE MAJOR FINANCIAL CENTERS FOR AMERICA.

**THE SHEER VOLUME OF COMMERICAL FUNDING
TRANSACTIONS VIA MODERN TECHNOLOGY MAKES ENACTMENT
OF S.B. 86 NECESSARY. IN 1989, A RECORD THREE TRILLION
DOLLARS WERE TRANSFERRED ON A SINGLE DAY--MORE MONEY
THAN THE 1989 U.S. GROSS NATIONAL PRODUCT. THE
AVERAGE INDIVIDUAL FUNDS TRANSFER IN 1989 WAS FIVE
MILLION DOLLARS, AND THE AVERAGE DAILY TRANSFER WAS
ONE TRILLION DOLLARS.**

**UNLESS THE PARTIES TO A TRANSACTION USE THE SAME
BANK, A FUNDS TRANSFER, ON AVERAGE, INVOLVES AT LEAST
FOUR ENTITIES: THE ORIGINATOR OF THE PAYMENT; THE BANK
TO WHICH THE ORIGINATOR COMMUNICATES THE FIRST
PAYMENT ORDER; THE BANK OF THE ENTITY RECEIVING THE
ORDER; AND THE RECIPIENT OR BENEFICIARY.**

**BECAUSE THESE TRANSACTIONS ARE DONE
ELECTRONICALLY, AND NOT IN CASH, A NUMBER OF
QUESTIONS REGARDING RESPONSIBILITY AND LIABILITY
ARISE. QUESTIONS SUCH AS: WHAT HAPPENS IF THE FIRST**

**SPONSOR STATEMENT--SB 86 AND SB 112
PAGE 4**

**BANK MAKES A MISTAKE ON THE AMOUNT TO BE PAID? WHAT
IF THE SECOND BANK FAILS TO NOTIFY THE RECIPIENT?
WHAT HAPPENS IF THE ORIGINAL PAYMENT ORDER IS
FRAUDULENT AND NOT ACTUALLY ISSUED BY THE
ORIGINATOR? WHO BEARS THE RISK OF LOSS AT A GIVEN
TIME IN THE TRANSACTION PROCESS? AND WHAT
CONSTITUTES ACCEPTANCE AND REJECTION OF A PAYMENT
ORDER?**

**THESE AND OTHER QUESTIONS ARE ANSWERED IN THE
ARTICLE 4A ENACTED BY SENATE BILL 86 WHICH,
BASICALLY, ESTABLISHES THE RULES GOVERNING THE
PAYMENT OF LARGE SUMS OF MONEY.**

**THE BILL PROVIDES A SIGNIFICANT IMPROVEMENT IN
ALASKA COMMERCIAL LAW. IT WILL HELP KEEP ALASKA'S
UNIFORM COMMERCIAL CODE UP TO DATE WHICH, IN TURN,
HELPS ASSURE A FAVORABLE COMMERCIAL CLIMATE IN
ALASKA--ONE THAT IS IN LINE WITH THE REST OF THE
NATION AND CAN, ACCORDINGLY, HELP ENCOURAGE
ECONOMIC DEVELOPMENT AND GROWTH IN ALASKA.**

**SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 5**

S.B. 86 HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW. IN ADDITION, FEDERAL FINANCIAL REGULATORS ARE ENCOURAGING INDIVIDUAL STATES TO ENACT THE PROVISIONS EMBODIED IN S.B. 86. TO BRING THEIR RESPECTIVE STATE LAWS INTO COMPLIANCE WITH FEDERAL LAW. UNLESS STATES ADOPT THESE PROVISIONS, THE FEDERAL GOVERNMENT WILL STEP IN AND PERFORM THE REGULATORY AND ENFORCEMENT DUTIES RELATING TO FUNDS TRANSFERS.

THE PROVISIONS IN S.B. 86 HAVE BEEN ENDORSED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

SENATE BILL 112

SENATE BILL 112, IN GENERAL, ALSO MAKES AMENDMENTS TO ALASKA'S UNIFORM COMMERCIAL CODE. IN MOST INSTANCES THESE CHANGES ARE DESIGNED TO BRING THE CODE UP TO DATE WITH THE REST OF THE COUNTRY.

THE FIRST CHANGE ADDS A NEW ARTICLE 2A TO THE EXISTING LAW. WHILE THE EXISTING LAW COVERS COMMERCIAL PROPERTY LEASES, THERE IS NO LANGUAGE RELATING TO PERSONAL PROPERTY LEASING.

PERSONAL PROPERTY BEING LEASED RANGES FROM CARS, HORSES, AND MOVING VANS TO CONSTRUCTION EQUIPMENT AND OIL RIGS.

ARTICLE 2A DEALS WITH WHAT ARE CALLED 'TRUE' LEASES AND 'FINANCE' LEASES. THE ARTICLE PROVIDES THE STATUTORY ANSWERS TO A BROAD RANGE OF LEGAL ISSUES, COVERING SUCH MATTERS AS OFFER AND ACCEPTANCE, WARRANTIES, MISTAKE, FAILURE TO PERFORM, RISK OF LOSS AND REMEDIES.

THE CURRENT ABSENCE OF THESE RULES PROMOTES LITIGATION.

ARTICLE 3 OF S.B. 112, FOR THE MOST PART, REORGANIZES THE EXISTING MATERIAL IN THE STATE CODE TO MAKE IT MORE CLEAR AND TO ACCOUNT FOR MODERN

TECHNOLOGIES. THESE REVISIONS FIX MANY OF THE PROBLEMS THAT HAVE ARISEN OVER THE PAST 40 YEARS WITH THE UNIFORM COMMERCIAL CODE AND WITH NEGOTIABLE INSTRUMENTS. SOME OF THE CHANGES INCLUDED IN ARTICLE 3 AND ARTICLE 1 OF S.B. 112 ARE NECESSARY TO BRING THESE ARTICLES INTO COMPLIANCE WITH THE NEW LANGUAGE IN ARTICLE 4A AS IT APPEARS IN S.B. 86.

ONE IMPORTANT CHANGE IN ARTICLE 3 IS THAT THE REVISION RECOGNIZES THAT THERE ARE TWO TYPES OF INSTRUMENTS--NOTES AND DRAFTS--WHICH USUALLY PERFORM DIFFERENT FUNCTIONS AND, THEREFORE, MERIT DIFFERENT TREATMENT.

BENEFITS FROM ENACTING ARTICLE 3 OF S.B. 112 INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: CERTAINTY OF THE LAW, SPEED AND RELIABILITY, LOWER COSTS, REDUCED LITIGATION, AND STRICTER STANDARDS FOR FIDUCIARIES.

**SPONSOR STATEMENT-SB 86 & SB 112
PAGE 8**

FINALLY, SENATE BILL 112 SEEKS TO REPEAL ARTICLE 6 OF THE PRESENT UNIFORM COMMERCIAL CODE. ARTICLE 6 DEALS WITH BULK SALES. A BULK SALE IS ONE IN WHICH A BUSINESS SELLS ALL OR A LARGE PART OF ITS INVENTORY TO A SINGLE BUYER OUTSIDE THE ORDINARY COURSE OF BUSINESS.

THE EXISTING LAW WAS DESIGNED TO PROTECT CREDITORS OF SUCH BUSINESSES FROM THE PROPRIETOR WHO ABSCONDS WITH THE PROCEEDS OF SUCH A SALE. THESE LAWS WERE ENACTED IN A CLIMATE OF SMALLER BUSINESSES.

BUT THE CREDIT ENVIRONMENT HAS CHANGED DRASTICALLY OVER THE YEARS, SO THAT THE RISK OF THE ABSCONDING PROPRIETOR IS NO LONGER VERY GREAT. IT IS NOW EASIER FOR BUSINESSES TO ESTABLISH THE CREDITWORTHINESS OF A PROPRIETOR OR MERCHANTISER, AND EASIER TO PURSUE THOSE FEW WHO DO "TAKE THE MONEY AND RUN".

**SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 9**

IN ADDITION, UNDER ARTICLE 9 OF THE EXISTING CODE, PROTECTIONS FOR CREDITORS ARE MORE SIGNIFICANT THAN IN THE PAST.

BECAUSE OF THESE FACTORS, THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, AND A GROUP OF 16 ALASKA BUSINESS LAW ATTORNEYS, HAVE RECOMMENDED THAT ARTICLE 6 BE REPEALED. AS OF 1991, 14 STATES HAD APPROACHED THIS ISSUE AND TEN OF THEM OPTED FOR THE REPEAL APPROACH ENACTED IN SENATE BILL 112.

THIS BILL RECEIVED A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW'S DIVISION OF LEGAL SERVICES. ACCORDING TO THE DEPARTMENT'S ANALYSIS ACCOMPANYING THIS FISCAL NOTE, THE BASIC CHANGES PROPOSED IN S.B. 112 ARE--AND I QUOTE:

". . .NEEDED TO HELP BRING ALASKA BUSINESSES AND CONSUMERS INVOLVED IN COMMERCIAL TRANSACTIONS UP TO DATE WITH BUSINESSES AND CONSUMERS IN THE REST OF THE COUNTRY." (END QUOTE).

**SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 10**

**BECAUSE OF THIS, AND THE OTHER REASONS I HAVE
OUTLINED IN MY STATEMENT, IT IS MY HOPE THAT THIS
COMMITTEE WILL LOOK FAVORABLY ON BOTH SENATE BILL 86
AND SENATE BILL 112, GIVING IT A "DO PASS"
RECOMMENDATION.**

(end statement)

A Few Facts About The Uniform Commercial Code, Article 2A – Leases

Purpose: To provide states with a legal framework for any transaction, regardless of form, that creates a lease.

Origin: Completed by the Uniform Law Commissioners in 1987 and amended in 1990.

Endorsed by: American Bar Association
American Law Institute

State Adoptions of 1987 Act:

Florida
Oregon

South Dakota
Utah

Adoptions with 1990 Amendments:

Alabama
Arizona
California
Colorado
Delaware
District of Columbia
Hawaii
Illinois
Indiana
Kansas
Kentucky
Maine
Michigan
Minnesota

Missouri
Montana
Nebraska
Nevada
New Mexico
North Dakota
Ohio
Oklahoma
Pennsylvania
Rhode Island
Virginia
Wisconsin
Wyoming

1993 Introductions:

Maryland
Massachusetts
New Hampshire

New Jersey
West Virginia

For any further information regarding Article 2A of the Uniform Commercial Code, please contact John McCabe or Katie Robinson at 312-915-0195.

(2/1/93)

STATES THAT HAVE ADOPTED
U.C.C. CHANGES

A Few Facts About Revised Article 3 of the UCC

(With Conforming and Miscellaneous Amendments to Articles 1 and 4)

Purpose: To update provisions of the UCC dealing with payment by checks and other paper instruments to provide essential rules for the new technologies and practices in payment systems.

Origin: Completed by the Uniform Law Commissioners in 1990.

Endorsed by: American Bar Association
American Law Institute

**State
Adoptions:**

Arkansas	Missouri
California	Montana
Connecticut	Nebraska
Florida	New Mexico
Hawaii	North Dakota
Illinois	Oklahoma
Kansas	Pennsylvania
Louisiana	Virginia
Minnesota	Wyoming
Mississippi	

1993

Introductions: Arizona New Hampshire
Massachusetts West Virginia

For any further information regarding Revised Article 3 of the Uniform Commercial Code (with conforming and miscellaneous amendments to Articles 1 and 4), please contact John McCabe or Katie Robinson at 312-915-0195.

(2/1/93)

A Few Facts About
REVISED ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE

PURPOSE: To provide states with the option of repealing or revising current Article 6 of the UCC.

ORIGIN: Completed by the Uniform Law Commissioners in 1989.

ENDORSED BY: American Bar Association
American Law Institute

STATE ADOPTIONS
OF REVISED UCC6:

Arizona
California
Hawaii
Oklahoma
Utah

STATE REPEALS
OF UCC6:

Arkansas
Colorado
Illinois
Kansas
Kentucky
Louisiana
Maine
Minnesota

Montana
Nebraska
Nevada
New Mexico
Oregon
Pennsylvania
West Virginia
Wyoming

INTRODUCTIONS
TO REPEAL UCC6:

New Hampshire
New Jersey
North Dakota

INTRODUCTIONS
TO REVISE UCC6:

For any further information regarding the revised Article 6 of the Uniform Commercial Code, please contact John McCabe or Katie Robinson at 312-915-0195.

SENATE COMMITTEE REPORT

DATE: 3/5/93

FURTHER: FINANCE

DATE TURNED INTO OFFICE: 3-22-93

JUDICIARY Committee considered SENATE BILL NO. 112

"An Act relating to the Uniform Commercial Code; amending Alaska Rules of Civil Procedure 8 and 82, and Alaska Rule of Evidence 402; and providing for an effective date."

and recommends it
be replaced with

and recommends:

replace with _____ CS SB 112 (JUD)

or adopt previous _____ CS _____

attaches amendment(s) *report it back w/*

adopts _____ Letter of Intent *NO REC*

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

3 PLANS

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
DNR	3/15/93	✓	REC CS
			QDCS

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DCED	3/2/93	✓	
LAW	2/18/93	✓	

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Gen. Tech NO REC.
~~_____~~
Rich Halford NO REC
Suzanne R. Little NO REC

Adrian L. Taylor
Chair: Signature and Recommendation

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

JK

DATE: 2/11/93

FURTHER: JUDICIARY
FINANCE

Date of 5-Day Notice: 2-25-93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/5/93

L&C Committee considered SB 112

"An Act relating to the Uniform Commercial Code; amending Alaska Rules of Civil Procedure 8 and 82, and Alaska Rule of Evidence 402; and providing for an effective date."

and recommends:

replace with _____ CS SB 112 (L&C)

attaches amendment(s)

SMOJHOI 88 XCBQ
back as follows

and report it
back as follows

same title
 new title
 technical
title change
(HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

*207NS
SB & CS*

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DCED	3/2/93	✓	
LAW	2/18/93	✓	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:
 ② INTRO. FINANCE - NO Rec
 ② Public Access No Rec
 ② ... NR

Tom Kelly - Do Pass
Chair: Signature and Recommendation