

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994

1174

248

SB 183 (Exxon Criminal Settlement)

12,500.0	Seward Sea Life Center
7,000.0	Kachemak
500.0	Kachemak State Park Visitor Center
3,250.0	Cook Inlet shellfish hatchery
4,000.0	Anch. Utility/Ft. Rich hatchery water system
4,750.0	Recreational amenities
3,000.0	F&G acquisition of Kenai R. fish habitat areas
2,000.0	Main Bay Hatchery
3,000.0	UAF fishery tech. center
5,000.0	oil spill research contracts

GF

15,000.0	DOTPF road to Whittier
5,000.0	oil spill response ferry

SB 183 (Exxon Criminal Settlement)

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5,000.0	oil spill research contracts

GF

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5,000.0	oil spill response ferry

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/14/93

FURTHER: FINANCE

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

JUDICIARY Committee considered SENATE BILL NO. 183

"An Act making special appropriations for restoration projects relating to the Exxon Valdez oil spill and for oil spill response projects; and providing for an effective date."

and recommends:

replace with _____ CS _____

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

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

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

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

DO PASS:

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/2/93

FURTHER: JUDICIARY
FINANCE

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

RESOURCES Committee considered SB 183

"An Act making special appropriations for restoration projects relating to the Exxon Valdez oil spill and for oil spill response projects; and providing for an effective date."

and recommends:

replace with _____ CS _____ ()

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

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

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

DO PASS:

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

SB

185

SFIN

FILE



Alaska State Legislature

Senate

Office of the Secretary

OFFICIAL BUSINESS

P.O. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99801

FOR YOUR IMMEDIATE ATTENTION

DATE: ~~4-16-93~~ 2/28/94

TO SENATE COMMITTEE: FINANCE (Kathy Holmquist)

FROM: Office of the Senate Secretary

The Senate President has added/changed the referral(s) on the following bill(s):

Retrieved for J(L+C) referral prior to Finance
SB 185 LIMITATIONS PERIOD FOR TAX ASSESSMENTS

*SB 185 Died in J(L+C)
at end of 1994 Session.*

Please give the bill file(s) and the signed letter (this note) to the page delivering this message.

Thank you for your prompt attention.

SIGNATURE OF PERSON RECEIVING THIS NOTE

JR/s

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 8, 1993

The Honorable Robin Taylor
Alaska Senate
Room 30
State Capitol
Juneau, AK 99801

Re: SB 185 ("limitations period")

Dear Senator Taylor:

We have had an opportunity to review SB 185 and found a minor technical amendment is needed. The amendment is as follows:

Page 3, line 22:

Delete "(A)"

Page 3, line 23:

following "consideration of"


Insert "(A)"

Tina Kobayashi of our staff is available to explain the need for the amendment, if you have questions.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:



Bruce M. Botelho
Deputy Attorney General

BMB:tg

cc: Deborah Behr
Tina Kobayashi
Assistant Attorneys General

Kris Lethin, Legislative Liaison
Office of the Governor

1 remain uncollected;

2 (7) these uncollected taxes are in large part the result of disputes over value
3 at the point of production for oil and gas produced in the state; and

4 (8) substantial public revenue is at risk in the litigation to which reference is
5 made in (b)(2) of this section, and it is contrary to the public interest to allow these revenues
6 to go uncollected.

7 (b) The purpose of the amendment of AS 43.05.260(a), made by sec. 2 of this Act,
8 and of AS 43.05.270(a), made by sec. 3 of this Act, is

9 (1) to validate and affirm the longstanding administrative interpretation and
10 practices of the Department of Revenue in assessing and collecting taxes; and

11 (2) to resolve the inconsistent decisions of the state Superior Court reached in
12 Tesoro Petroleum Corporation, et al., v. State of Alaska, Department of Revenue, Superior
13 Court No. 3AN-89-7130 Civ., and State of Alaska, Department of Revenue v. Exxon
14 Corporation, et al., Superior Court No. 3AN-89-5215 Civ.;

15 * Sec. 2. AS 43.05.260(a) is amended to read:

16 (a) Except as provided in (c) of this section and AS 43.20.200(b), the amount
17 of a tax imposed by this title must be assessed within three years after the return was
18 filed, whether or not a return was filed on or after the date prescribed by law.
19 However, notwithstanding the limitation on assessments for a tax imposed by
20 former AS 43.21 or by AS 43.55, the department may increase or decrease the
21 amount of tax due by issuing or amending ↪

22 ~~(A)~~ an assessment at any time during the administrative
23 consideration of ^(A) a taxpayer grievance ... an assessment filed by the
24 taxpayer under AS 43.20.240; or

25 (B) a claim for credit or refund of a tax filed by the
26 taxpayer under AS 43.20.275 [IF THE TAX IS NOT ASSESSED BEFORE
27 THE EXPIRATION OF THE THREE-YEAR PERIOD, PROCEEDINGS MAY
28 NOT BE INSTITUTED IN COURT FOR THE COLLECTION OF THE TAX].

29 * Sec. 3. AS 43.05.270(a) is amended to read:

30 (a) When the assessment of a tax imposed by this title has been made within
31 the period of limitation under AS 43.05.260, the tax may be collected by levy or by

MEMORANDUM**State of Alaska
Department of Law**TO: Charles E. Cole
Attorney General

DATE

March 25, 1993

FILE NO.

TEL. NO.:

269-5287

SUBJECT:

Retroactive Repeal
of Tax Limitations

FROM:

Jenifer Kohout
Assistant Attorney General**CONFIDENTIAL--
ATTORNEY WORK PRODUCT****ISSUES**

May the State immediately repeal or amend time limitations in its tax code in order to eliminate existing time bars on the assessment or collection of production taxes?

CONCLUSION

It appears that the State legislature may retroactively repeal or amend statutes of limitation in the State tax code. If the legislature directs, the changes would apply to existing tax obligations barred from assessment or collection by the current limitations. To be effective immediately, the State Constitution requires approval by a two-thirds majority of each house.

The State can eliminate the time bar on production taxes by repeal or amendment. Assuming that the existence of some sort of time limitation is a desirable means of eliminating stale claims, an amendment which lengthens the time period for production taxes is recommended.

DISCUSSION

1. Can the State Retroactively Repeal or Amend Time Limitations in the State Tax Code?

A. State Law Restrictions

General Provisions in the Alaska Statutes direct that the "repeal or amendment of a law does not release or extinguish any . . . liability incurred or right accruing or accrued under the law, unless the repealing or amending act so provides expressly." AS 01.10.100(a). The provision is consistent with constitutional

cc Charles)

01085

Charles E. Cole

March 25, 1993

Page 3

CONFIDENTIAL--ATTORNEY WORK PRODUCT

C. Analysis

Extension of the time limitations in the state tax code would not violate the due process clause. First, a time bar is not a property right. See Campbell v. Holt, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885).

We are unable to see how a man can be said to have property in the bar of the statute as a defense to his promise to pay.

Id., 6 S.Ct. at 214. Subsequent courts have agreed. See Chase Securities, 65 S.Ct. at 1142; International Union of Elec., Radio & Mach. Workers, AFL-CIO, Local 790 v. Myers, Inc., 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (1976); Bidwell, 355 P.2d at 587; Starks v. S.E. Rykoff & co., 673 F.2d 1106 (9th Cir. 1982). According to the Supreme Court in Chase Securities,

[statutes of limitations] represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a 'fundamental' right or what used to be called a 'natural' right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.

Id. The Court went on to recognize the hypothesis set out in Campbell, "that statutes of limitation go to matters of remedy, not to destruction of fundamental rights." Id.

In Electrical Workers, the Supreme Court held that an Act, which expanded the limitations period for filing a wrongful discharge complaint, applied to a claim that had been time barred by the previous act. The court conceded that statutes of limitation "could be so manipulated that their retroactive effects would offend the Constitution." Id., 429 U.S. at 243. However, "lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time" was not a per se offense against the Fourteenth Amendment. Id. at 243-44.

Relying on Supreme Court cases such as Campbell v. Holt, the Alaska Supreme Court has recognized that a time bar is not a constitutionally protected property right. Bidwell, 355 P.2d at 587.

Charles E. Cole

March 25, 1993

Page 5

CONFIDENTIAL--ATTORNEY WORK PRODUCT

against change of policy before final adjudication." Id., 65 S.Ct. at 1143. Since oil producers would anticipate paying production taxes under the tax code, it is unlikely they would have behaved differently knowing the State would repeal or amend existing time limitations.

It appears that the State is free to repeal or amend statutes of limitations in the tax code. Repealing the statutory time limitations altogether would eliminate desirable aspects of those restrictions as well. However, a check on unwarranted delay by State agencies remains. A party aggrieved by inexcusable delay may "raise the equitable defense of laches to bar the claim." G.D. Searle & Co. v. Cohn, 455 U.S. 404, 411, 102 S.Ct. 113, 71 L.Ed.2d 250 (1982). Rather than completely eliminate time constraints on the State's tax collection efforts, the legislature might simply extend the limitation period.

To the extent the changes are specific to production taxes, oil producers might attempt to establish a violation of the equal protection clause. It is unlikely that this argument would succeed. Since a time bar is not a fundamental right, the State would have to establish only that the change is rationally related to a legitimate state objective. Id. at 408. Particular difficulties in the assessment and collection of production taxes and their importance for the State economy would probably provide a legitimate state objective; extension or elimination of the time limitation would be rationally related to that end.

2. Can the State Take Immediate Action?

The legal effect of any change to the tax code occurs "only after the law's effective date."⁵ ARCO Alaska, 824 P.2d at 711. According to Article II, Section 18 of the State Constitution, "[l]aws passed by the legislature become effective ninety days after enactment." The only exception to this rule occurs when the legislature provides for a different date with the "concurrence of two-thirds of the membership of each house." Alaska Const. art. II, § 18.

⁵ In ARCO Alaska, the Alaska Supreme Court explained that "[a] law's retroactive date and its effective date are distinctly different concepts." ARCO Alaska, 824 P.2d at 711. The former indicates the extent of pre-enactment conduct covered; while the later signals when the law will have legal effect. Id.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 185

Revision Date:		Dept. Affected:	Revenue
Title:	An Act clarifying limitation period for assessments and collection of certain taxes	BRU:	Revenue Operations
Sponsor:	Senator Taylor	Component:	Oil & Gas Audit
Requestor:	Senate Finance	COMPONENT SERIAL NO.	115

Expenditures/Revenues: (Thousands of Dollars)

	FY94	FY95	FY96	FY97	FY98	FY99
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING
CAPITAL						
REVENUE FUND SOURCE:

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$

ANALYSIS: (Attach a separate page if necessary)

** SB 185 relates to tax litigation and ongoing tax audit cases. While it is not possible to predict the outcome of these cases, the State believes that its claims will ultimately prevail. However, the courts have decided both ways on such cases and substantial state revenues are involved. Therefore, approval of this legislation will help protect the State's position in these cases and would reduce the risk of a loss of tax revenues.

Prepared by: <u>John Pilkinton</u>	Phone: <u>276-1363 ext. 225</u>
Division: <u>Oil & Gas Audit Division</u>	Date: <u>4/13/93</u>
Approved by Commissioner: <u>Darrel J. Rexwinkel</u>	Date: <u>4/13/93</u>
Agency: <u>Revenue</u>	

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SENATE COMMITTEE REPORT

DMK

DATE: 4/16/93

FURTHER FINANCE

DATE TURNED INTO OFFICE: 4/23/93

JUDICIARY Committee considered SENATE BILL NO. 185

"An Act relating to the limitations period for assessments for certain state taxes and for collection, after assessment, of taxes due the state; and providing for an effective date."

and my rights in the act none

and recommends:

- replace with _____ CS _____
- or adopt previous _____ CS _____
- 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
Revenue	4/13/93		✓

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Rich Halford NO REC
Raymond P. ... NO REC
Burton ... NO REC

Adrienne Taylor NO REC
 (Chair: Signature and Recommendation)



Alaska State Legislature

Senate

Office of the Secretary

OFFICIAL BUSINESS

P.O. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

FOR YOUR IMMEDIATE ATTENTION

DATE: 4-16-93

TO SENATE COMMITTEE: FINANCE (Kathy Holmquist)

FROM: Office of the Senate Secretary

The Senate President has added/changed the referral(s) on the following bill(s):

Retained for SJUD referral

SB 185 LIMITATIONS PERIOD FOR TAX ASSESSMENTS

*before
Finance.*

Please give the bill file(s) and the signed letter (this note) to the page delivering this message.

Thank you for your prompt attention.

SIGNATURE OF PERSON RECEIVING THIS NOTE

JR/s

SENATE FINANCE COMMITTEE REPORT

DATE: 4/7/93

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

The Finance Committee considered SB 185

"An Act relating to the limitations period for assessments for certain state taxes, and for collection, after assessment, of taxes due the state; and providing for an effective date."

and recommends:

- replace with _____ CS _____ (FINANCE)
or adopt previous _____ CS _____
 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

Appropriation No Fiscal Note

DO PASS.

OTHER RECOMMENDATIONS:

1. _____
Co-Chair: Signature/Recommendation

2. _____
Co-Chair: Signature/Recommendation

SB

189

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/20/90

FURTHER:

DATE TURNED INTO OFFICE: _____

The Finance Committee considered SENATE BILL NO. 189

"An Act relating to community health aide grad .s."

Died in SFC 1994

and recommends:

- replace with _____ CS _____ (FINANCE)
or adopt previous _____ CS _____
 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

Appropriation has Fiscal Note

DO PASS

OTHER RECOMMENDATIONS:

1. _____
Co-Chair: Signature/Recommendation

2. _____
Co-Chair: Signature/Recommendation

SENATE COMMITTEE REPORT

DATE: 4/20/93

FURTHER: FINANCE

DATE TURNED INTO OFFICE: _____

HES Committee considered SENATE BILL NO. 189

"An Act relating to community health aide grants."

and recommends:

- replace with _____ CS _____
- or adopt previous _____ CS _____
- 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

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

gmc

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/7/93

FURTHER: HES
FINANCE

Date of 5-Day Notice: 4/15/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-20-93

CRA Committee considered SB 189

"An Act relating to community health aide grants."

and recommends: and a majority of the committee recommends do pass

replace with _____ CS _____

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

PK

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DHESS	4/14/93	0	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

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

DO PASS:

OTHER RECOMMENDATIONS:

[Handwritten signatures]

Roll & Roll Do Pass

Chair: Signature and Recommendation

HISTORY IN THE SENATE

1993
#17
#20
#20

Read first time and referred to:
CRA. HES FIN
HES Waive to FIN

CRA RPT() CS 4 DP NR DNP AM
New Title Same Title Previous FN
FN X OFN To HES

HES RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN waive To FIN

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

Rules Calendar() CS AM Other
New Title Same Title Previous FN
FN OFN

Read second time

CS Adopted () New Title
Amended Advanced

Read third time

Letter of Intent adopted
Return to second for specific amendment

PASSED	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Reconsideration
Reconsideration not taken up

PASSED	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Reported correctly engrossed
Signed by President, to House

Secretary of the Senate

HISTORY IN THE HOUSE

19

Read first time and referred to:

RPT CS() New Title
DP DNP NR AM
FN OFN Previous FN

RPT CS() New Title
DP DNP NR AM
FN OFN Previous FN

RPT CS() New Title
DP DNP NR AM
FN OFN Previous FN

Read second time
CS() Adopted

Amended

Advanced

Read third time

Return to second for specific amendment

PASSED	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Intent adopted

Reconsideration
Reconsideration not taken up

PASSED ON RECON.	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Intent adopted

Reported correctly engrossed, signed by the Speaker
and returned to the Senate

Chief Clerk of the House

SENATE-HOUSE HISTORY Continued

19	<p>Received from the House Version: _____</p> <p>Concur in House amendment Y ___ N ___ E ___ A ___ _____ Efd same or Y ___ N ___ E ___ A ___</p> <p>Failed to concur in House amendment, ask House recede Y ___ N ___ E ___ A ___</p> <p>House failed to / receded from amendment Y ___ N ___ E ___ A ___</p> <p>CC appointed by Senate _____ Chair _____</p> <p>CC appointed by House _____ Chair _____</p> <p>(S) Granted Limited Powers of Free Conference</p> <p>(H) Granted Limited Powers of Free Conference</p>
-----------	--

19	<p>(S) Adopted CC Rpt _____ Y ___ N ___ E ___ A ___ _____ Efd same or Y ___ N ___ E ___ A ___</p> <p>(H) Adopted CC Rpt _____ Y ___ N ___ E ___ A ___ _____ Efd same or Y ___ N ___ E ___ A ___</p> <p>To enrolling Received from enrolling Sent to Governor</p> <p>_____ By Governor</p> <p>Chapter Number _____</p> <p>Filed with Lieutenant Governor</p>
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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 1
Bill Version: SB 189
(S) Publish Date: 4-20-93

Revision Date: _____ Dept. Affected: Health and Social Services
Title: Relating to Community Health Aide BRU: Health Grants
Grants Component: Community Health Grants
Sponsor: Senate HES
Requestor: Senate Community & Regional Affairs COMPONENT SERIAL NO. 299

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary)

AS 18.28.010 (d) caps the total funding level for the grant program. The impact of SB 189 allows the department to award grants to new agencies without increasing or decreasing the total amount of funds in the component.

Prepared by: Peter M. Nakamura, MD, MPH
Division: Division of Public Health

Phone: (907) 465-3090
Date: 4/13/93

Approved by Commissioner: Theodore A. Mala, MD, MPH
Agency: Department of Health & Social Services

Date: 4/14/93

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ANALYSIS (cont.):

ASSISTANCE TO COMMUNITY HEALTH AIDE PROGRAMS
FORMULA FUNDING AS 18.28.010

Grantees	Full Formula	Full Formula	FY94 Gov	FY94 Gov
	Funding Level	Funding Level	Budget	Budget
	W/O SB 189	With SB 189	W/O SB 189	With SB 189
Aleutian Pribilof Island Assn.	\$78,000	\$54,000	\$70,080	\$46,699
Bristol Bay Area Health Corp.	\$326,000	\$326,000	\$292,900	\$281,921
Copper River Native Assn.	\$78,000	\$78,000	\$70,080	\$67,453
Kodiak Area Native Assn.	\$86,000	\$86,000	\$77,200	\$74,372
North Pacific Rim	\$62,000	\$62,000	\$55,700	\$53,617
North Slope Borough	\$126,000	\$126,000	\$113,200	\$108,963
St. George	\$8,000	\$8,000	\$7,200	\$6,913
Yakutat	\$8,000	\$8,000	\$7,200	\$6,918
Eastern Aleutian Tribes	\$0	\$54,000	\$0	\$46,699
Total	\$772,000	\$802,000	\$693,560	\$693,560

Formula funding for the community health aide grants is determined by AS 18.28.010 based upon the number of health aides recognized by the department on July 1, 1984. To be eligible to receive state funding, an agency must also have been providing health aide services under contract to the Alaska Area Native Health Services on July 1, 1984. The statute allows the department to distribute available funds on a pro rata basis to eligible organizations. The available funding for this program has been reduced to 90% of full formula level as a result of state wide budget reductions. SB 189 will amend the statute to allow new contractors to become eligible for funding. The available funding will continue to be distributed pro rata to all eligible organizations. The impact of this bill will be a redistribution of funds resulting in a reduction to 87% of full formula for each agency in this component in FY94.

Those organizations funded through the designated Budget Request Units (Tanana Chiefs Conference, Yukon Kuskokwim Health Corporation, Norton Sound Health Corporation, Maniilaq Association, and Southeast Alaska Regional Health Corporation) will not be impacted by SB 189.

SB

190

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/28/94

FURTHER:

DATE TURNED INTO OFFICE: 4-6-94

The Finance Committee considered **SENATE BILL NO. 190**

"An Act relating to income withholding and other methods of enforcement for orders of support; and providing for an effective date."

and recommends:

- replace with CS SB 190 (FINANCE)
 or adopt previous CS _____
 attaches amendment(s)

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

- adopts Senate Finance Letter of Intent
 further referral to the _____

- do pass
 do not pass
 no recommendation
 individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
Revenue	4/6/94		1040
AK Court Sys	2/15/94		35.7

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Benjamin
John
Barbara N.R.

1. And Do Pass
 Co-Chair: Signature/Recommendation

2. _____
 Co-Chair: Signature/Recommendation

Letter of Intent

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 190 () Draft 8-LS1001/U

Apart from the statutory changes enacted in this bill, the legislature wishes to convey its intent that the Child Support Enforcement Division distinguish between obligors, employers and others who voluntarily meet their support, withholding or other obligations under this chapter and those who do not. To the extent allowed by this chapter and federal law, this distinction should be actively reflected in all agency communications as well as in the nature, extent and timing of enforcement actions, subject to reasonable precautions to avoid uncollectability of funds necessary for support.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 190 (FIN)

Revision Date: 04/11/94

Dept. Affected: Alaska Court System

Title: An Act relating to income withholding
and other methods of enforcement for orders of child support

BRU: Trial Courts

Sponsor: Senate Judiciary by request

Components: _____

Requestor: _____

COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System



Phone: 264-8228
Date: 04/11/94

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System



Date: 04/11/94

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4-19-94
Replaces 109.0 note
of 4/6/94

FISCAL NOTE

STATE OF ALASKA 1994 LEGISLATIVE SESSION

BILL NO. SB 190 (Fin)

Revision Date: April 11, 1994
 Title: Enforcement of Support Orders
 Sponsor: Senate Judiciary Committee
 Requestor: Senate Finance
 Dept. Affected: Revenue
 BRU: Child Support Enforcement Division
 Component: Child Support Enforcement Division
 COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	71.6	71.6	71.6	71.6	71.6
TRAVEL						
CONTRACTUAL	9.6	9.6	9.6	9.6	9.6	9.6
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	20.8	20.8	20.8	20.8	20.8	20.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	104.0	104.0	104.0	104.0	104.0	104.0

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

REVENUE FUND SOURCE:	60.0	60.0	60.0	60.0	60.0	60.0
----------------------	------	------	------	------	------	------

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.0	109.0	109.0	109.0	109.0	109.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent						
TOTAL	109.0	109.0	109.0	109.0	109.0	109.0

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)
 Section 101 of the Family Support Act of 1988 (P.L. 100-485) required that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED). This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state will charge fees for this service to recover partial costs of administering the requirement. (continued)

Prepared by: Mary Gay, Director *Mary Gay* Phone: 263-6270
 Division: Child Support Enforcement Division
 Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel* Date: 4/12/94
 Agency: Department of Revenue

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(continuation of Fiscal Note)

PROFESSIONAL SERVICES:

The Division will need 2 additional positions for the next year. It is not known at this time if additional positions will be needed beyond FY95 as it is difficult to judge what the impact will be. Positions required for FY 95:

One Accounting Clerk III to receipt payments.

One Clerk IV to set up and maintain case files.

CONTRACTUAL:

Additional cost of long distance telephone service, postage and space rent for the positions.

SUPPLIES:

Additional supplies for the additional positions to include paper, pens, folders, envelopes etc.

EQUIPMENT:

The following is a breakdown of equipment per new position:

Computer	\$5,760
Office Modular Furniture	\$3,435
Phone equip & service	\$1,191
Total	<u>\$10,457</u>

REVENUES:

This legislation is required for federal approval of Alaska's State Plan for Child Support Enforcement. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for Alaska's child support program and possible financial sanctions to Alaska's Aid to Families with Dependant Children program.

Federal financial participation is not provided for payment processing services. Therefore, it is planned that the Division, through regulation, will impose fees. The suggested fee will be \$10 per month per case. At this time it is estimated that the Division will receive approximately 500 NON-IV-D (payment processing only) cases per year.

The fees CSED will charge for payment collection/disbursement and record keeping for the NON-IV-D cases will be shared 50/50. CSED will al

This legislation is required for federal approval of Alaska's State Plan for Child Support Enforcement.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS SB 190 (Jud)

Revision Date: April 4, 1994 Dept. Affected: Revenue
 Title: Enforcement of Support Orders BRU: Child Support Enforcement Division
 Component: Child Support Enforcement Division
 Sponsor: Senate Judiciary Committee
 Requestor: Senate Finance Committee COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	71.6	71.6	71.6	71.6	71.6
TRAVEL						
CONTRACTUAL	14.6	14.6	14.6	14.6	14.6	14.6
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	20.8	20.8	20.8	20.8	20.8	20.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	109.0	109.0	109.0	109.0	109.0	109.0

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

REVENUE FUND SOURCE:	60.0	60.0	60.0	60.0	60.0	60.0
-----------------------------	------	------	------	------	------	------

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.0	109.0	109.0	109.0	109.0	109.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent						
TOTAL	109.0	109.0	109.0	109.0	109.0	109.0

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)
 Section 101 of the Family Support Act of 1988 (P.L. 100-485) required that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED). This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state will charge fees for this service to recover partial costs of administering the requirement. (continued)

Prepared by: Mary Gay, Director Phone: 263-6270
 Division: Child Support Enforcement Division Date: _____
 Approved by Commissioner: Darrel J. Rexwinkel Date: 4/6/94
 Agency: Department of Revenue

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(continuation of Fiscal Note)

PROFESSIONAL SERVICES:

The Division will need 2 additional positions for the next year. It is not known at this time if additional positions will be needed beyond FY95 as it is difficult to judge what the impact will be. Positions required for FY 95:

One Accounting Clerk III to receipt payments.

One Clerk IV to set up and maintain case files.

CONTRACTUAL:

Additional cost of long distance telephone service, postage and space rent for the positions.

SUPPLIES:

Additional supplies for the additional positions to include paper, pens, folders, envelopes etc.

EQUIPMENT:

The following is a breakdown of equipment per new position:

Computer & Software	\$5,760
Workstation Furniture	\$3,506
Phone equip & service	<u>\$1,191</u>
Total	<u>\$10,457</u>

REVENUES:

This legislation is required for federal approval of Alaska's State Plan for Child Support Enforcement. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for Alaska's child support program and possible financial sanctions to Alaska's Aid to Families with Dependant Children program

Federal financial participation is not provided for payment processing services. Therefore, it is planned that the Division, through regulation, will impose fees. The suggested fee will be \$10 per month per case. At this time, it is estimated that the Division will receive approximately 500 NON-IV-D (payment processing only) cases per year.

The fees CSED will charge for payment collection/disbursement and record keeping for the NON-IV-D cases will be shared 50/50. CSED will also send both parties a notice, upon receipt of their order from the court, that payments will be processed by CSED and that there is a fee for the service. CSED would also advise that the service is to provide payment processing only. The fee will be added to the child support for the obligor and deducted from the payment to the obligee. The court could include the fee information during the process of establishing the child support order.

April 12, 1994

Billy -

Attached is a copy of the DOR fiscal note for \$109.0 that we applied to our CSSB 190 (Finance) when the bill was reported out of committee 4/6/94. Also attached is a new fiscal note from the department for a slightly lesser amount, \$104.0, due to contractual line item reductions. The bill is on the Senate Floor, held on reconsideration to 4/13. What do you want to do?

Kathy
2618

4-6-94

8-LS1001NU.3 ✓
Lauterbach
4/4/94

*Adopted
Unan*

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 190() Draft 8-LS1001NU

Page 3, line 24:

Delete "\$1"
Insert "\$5" ✓

Page 6, after line 9:

Insert new bill sections to read:

** Sec. 12. AS 25.27.100 is amended to read:

Sec. 25.27.100. ALL PERSONS MAY USE AGENCY; FEES FOR SERVICES. The agency shall provide aid to any person due child support under the laws of this state upon application. Subject to (b) of this section, the [THE] agency may, by regulation, impose a fee for services provided under this chapter.

* Sec. 13. AS 25.27.100 is amended by adding a new subsection to read:

(b) To the extent allowed under federal law, for each payment made by the agency to a custodian from money sent to the agency under an income withholding order issued under this chapter, the agency shall impose a fee of \$5 on the custodian. To the extent allowed under federal law, the agency shall subtract this fee from the money it receives under the income withholding order before disbursing the balance of the money to the custodian."

Page 10, line 7:

Delete "\$1"
Insert "\$5"

Renumber the following bill sections accordingly.

SENATE FINANCE
COMMITTEE (3)
Amendment Number: _____
Bill Number: SB 190
Sponsor: KELLY Date: 4/5/94
Logged In By: [Signature]

4-6-94

8-LS1001NU.2
Lauterbach
4/4/94

ADOPTED
as amended
worn.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 190() Draft 8-LS1001NU

Page 4, line 25, after "shall":

Insert ", within ~~five~~ working days,"
15

Page 4, line 26:

After "served":

Insert "by the agency"

After "required;":

Insert "if the agency receives money from an obligor under an income withholding order after the underlying support order has been satisfied and the agency was enforcing the support order at the time it became satisfied, the agency shall immediately return the overpayment to the obligor; if the agency fails to return an overpayment as required under this paragraph, the state is liable to the obligor for the amount of the overpayment, plus interest at the rate imposed under AS 43.05.225, and a person to whom the agency erroneously disbursed the overpayment is liable to the state for the amount disbursed, plus interest at the rate imposed under AS 43.05.225;"

SENATE FINANCE
COMMITTEE

Amendment Number: 4

Bill Number: SB 190

Sponsor: KELLY Date: 7/5/94

Logged in By: (Signature)

Renumber the following bill sections accordingly.

Page 9, after line 19:

Insert a new bill section to read:

** Sec. 23. AS 25.27.250(b) is amended to read:

(b) All real or personal property belonging to the obligor is subject to an order to withhold and deliver, including, but not limited to, earnings that are due, owing, or belonging to the debtor. In calculating the amount to be withheld and delivered under an order issued under this section, the agency shall give credit to the obligor for the cost to the obligor of medical and dental insurance for the children and educational payments for the children to the extent that the insurance coverage and educational payments are required in the applicable child support order and are actually paid for by the obligor. *and consistent with*

Renumber the following bill sections accordingly.

~~and consistent with~~

P. 02
MOVED Jakes
ADOPTED
unam.

AMENDMENT
CSSB 190 (JUD)
8-LS1001K

ADD the following to Sec. 11 of AS 25.27.062(m) as subsection (3).

3) owed by an Obligor who is receiving social security or other disability compensation that includes regular payments to the Obligor's child or children except to the extent that the payments to the children do not equal the child support due each month.

SENATE FINANCE
COMMITTEE
Amendment Number: 6
Bill Number: SB 190
Sponsor: _____ Date: 4/5/94
Logged In By: [Signature]

Requested by G.S.E.D.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 710400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

April 4, 1994

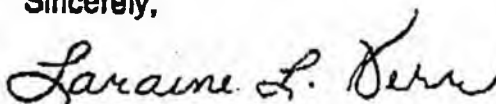
The Honorable Drue Pearce, Co-Chair
Senate Finance Committee
Alaska State Legislature
State Capitol, Room 508
Juneau, Alaska 99801-1182

Dear Senator Pearce:

Attached is a suggested amendment to CSSB 190 (Jud), enforcement of support orders. This amendment was prepared to clarify the effects of social security and disability payments on support orders. In support cases when an obligor receives a disability payment and the child is also compensated, the obligor's disability payment is not attached for amounts in excess of the ongoing obligation.

Thank you for the opportunity to provide comments concerning this essential legislation. If you have further concerns or questions, please contact us.

Sincerely,



Laraine L. Derr
Deputy Commissioner

94-069

cc: Senator Taylor

F A X T R A N S M I T T A L M E M O
TO: Stephanie
DEPT: _____ FAX #: 3872
FROM: Laraine Derr PHONE: _____
CO: _____ FAX #: _____
Post-It brand fax transmittal memo 7871

NO. OF PAGES
2

8-LS1001U
Lauterbach
3/28/94

*amended
on 8/11/94
ADOPTED
as amended.*

CS FOR SENATE BILL NO. 190()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to income withholding and other methods of enforcement for
2 orders of support; and providing for an effective date."

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

4 * Section 1. AS 25.27.062(a) is amended to read:

5 (a) A judgment, court order, or order of the agency under this chapter
6 providing for support must contain an income withholding order. Except as provided
7 in (m) of this section, the income withholding order must provide for immediate
8 income withholding if the support order is

9 (1) being enforced by the agency and was issued or modified on or
10 after the effective date of this Act: or

11 (2) not being enforced by the agency and was issued on or after the
12 effective date of this Act [AN INCOME WITHHOLDING ORDER UNDER THIS
13 SECTION MAY NOT BE ENFORCED UNLESS THE OBLIGOR HAD NOTICE OF
14 THE ORDER WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER

1 WAS SERVED ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE
2 OF A SUMMONS UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

3 * Sec. 2. AS 25.27.062(b) is amended to read:

4 (b) An income withholding order must direct the obligor, the obligor's
5 employer, future employer, and any person, political subdivision, or department of the
6 state to withhold money due or to be due the obligor and pay the money to the agency,
7 in an amount determined under (i) of this section. A court that issues a support
8 order on or after the effective date of this Act shall send a copy of the order to
9 the agency.

10 * Sec. 3. AS 25.27.062(c) is repealed and reenacted to read:

11 (c) Income withholding under a support order that does not require immediate
12 withholding may be initiated under AS 25.27.150 if the support order is being enforced
13 by the agency, or under (d) of this section if the support order is not being enforced
14 by the agency, if

15 (1) the obligor requests withholding;

16 (2) the payments that the obligor has failed to make within 30 days of
17 the monthly due date specified in the support order are equal to or greater than the
18 support payable for one month; or

19 (3) the obligee requests withholding and

20 (A) the agency approves the request because all or part of the
21 monthly payment of the obligor has been more than 10 days overdue more than
22 one time in the preceding 12 months or there is reason to believe that the
23 obligor might withdraw assets to avoid payment of support; in this paragraph,
24 "10 days overdue" means occurring 10 days after the monthly due date
25 specified in a support order; or

26 (B) the court approves the request for good cause.

27 * Sec. 4. AS 25.27.062(d) is repealed and reenacted to read:

28 (d) Income withholding under a support order that does not require immediate
29 income withholding and that is not being enforced by the agency may be initiated by
30 filing a motion with the court and complying with applicable court rules. The court
31 shall order the beginning of income withholding under this subsection if the court finds

1 that any of the grounds in (c)(1), (c)(2), or (c)(3)(B) of this section is satisfied. It is
2 not a defense to a motion based on (c)(2) of this section that less than one full month's
3 payment is past due by 30 days if at least one full month's payment was past due by
4 30 days on the date the motion was filed. Notice to the obligor of income withholding
5 ordered under this subsection must be given in a manner that complies with court
6 rules. In this subsection, "past due by 30 days" means unpaid 30 days after the
7 monthly due date specified in the support order.

8 * Sec. 5. AS 25.27.062(e) is amended to read:

9 (e) The [OBLIGEE OR PERSON OR PUBLIC] agency or the person who
10 obtains an [THAT REQUESTED THE] income withholding order under this chapter
11 shall immediately send a copy of the income withholding order, a copy of the relevant
12 provisions of AS 25.27.260 and this section, and an explanation of the effect of the
13 statutes [BY CERTIFIED MAIL] to persons who may owe money to an obligor.
14 These items may be sent by first class mail or certified mail, return receipt
15 requested, or they may be served personally by a process server. An income
16 withholding order made under this chapter [SECTION] is binding upon a person,
17 employer, political subdivision, or department of the state immediately upon receipt
18 of a copy of the income withholding order. An employer shall begin withholding the
19 specified amount from the employee's wages (1) 14 working days after the mailing
20 date on the order [NOTICE] of withholding or 14 working days after the date on
21 which the order was personally served, whichever is applicable, or (2) on the first
22 day of the next pay period, if earlier. The amount withheld shall be sent to the agency
23 within 10 working days after the date the employee is paid. An employer may,
24 for each payment made under an order, deduct \$1 from other wages or salary
25 owed to the obligor.

26 * Sec. 6. AS 25.27.062(f) is amended to read:

27 (f) An employer may not discharge, discipline, or refuse to employ an obligor
28 on the basis of an income withholding order issued under this chapter [SECTION].
29 If an employer discharges, disciplines, or refuse to employ an obligor because of an
30 income withholding obligation, the court, after notice and hearing, may order
31 reinstatement or restitution to the obligor, or both. A person who violates this

1 subsection or a regulation adopted to implement it, is liable for a civil penalty of not
2 more than \$1,000.

3 * Sec. 7. AS 25.27.062(g) is amended to read:

4 (g) An income withholding order under this chapter [SECTION] has priority
5 over all other attachments, executions, garnishments, or other legal process brought
6 under state law against the same property unless otherwise ordered by the court. An
7 income withholding order is not limited to the wages of an obligor but may include
8 all money owed to the obligor not otherwise exempt by law. Exemptions under
9 AS 09.38 do not apply to income withholdings under this chapter [SECTION].

10 * Sec. 8. AS 25.27.062(h) is amended to read:

11 (h) The court may order payment of all court costs that resulted from an
12 income withholding proceeding under this chapter [SECTION].

13 * Sec. 9. AS 25.27.062(k) is repealed and reenacted to read:

14 (k) An employer who is withholding income of an employee under an order
15 that provides that the withheld income shall be paid to the agency shall notify the
16 agency promptly when the employee gives or receives notice of termination of
17 employment and provide to the agency the employee's last known home address and
18 the name and address of the employee's new employer, if known.

19 * Sec. 10. AS 25.27.062(l) is repealed and reenacted to read:

20 (l) Unless modified or terminated by the agency or the court, an order to
21 withhold income under this chapter remains in effect until the support order is
22 satisfied. The agency or court may not terminate or modify an income withholding
23 order solely on the ground that the obligor has paid all arrearages. Upon satisfaction
24 of a support order, if the order is

25 (1) being enforced by the agency, the agency shall notify all persons
26 served with the income withholding order that withholding is no longer required;

27 (2) not being enforced by the agency, the obligor shall file a motion
28 in court requesting termination of the withholding order and serve the motion on the
29 obligee; the court shall enter an order terminating the withholding order if the court
30 determines that the support order has been satisfied; the obligor may deliver a copy
31 of the termination order to persons who were served with the income withholding

1 order; when a termination order is entered, the obligee shall, upon request of the
2 obligor, notify the obligor of all persons who have been served with the income
3 withholding order by the obligee.

4 * Sec. 11. AS 25.27.062 is amended by adding a new subsection to read:

5 (m) An income withholding order described in (a)(1) - (2) of this section is
6 not subject to immediate withholding if the support order is

7 (1) being enforced by the agency and the obligor agrees to keep the
8 agency informed of the obligor's current employer and the availability of employment-
9 related health insurance coverage for the children covered by the support order until
10 the support order is satisfied and

11 (A) the agency has entered into its record a written agreement
12 between the obligor and the obligee that provides for an alternative
13 arrangement and income withholding has not been terminated previously and
14 subsequently initiated; the agency must also be a party to an agreement under
15 this paragraph if support has been assigned to the state; or

16 (B) the obligor or obligee demonstrates and the agency, in
17 compliance with applicable federal law, finds good cause not to require
18 immediate income withholding because it would not be in the best interests of
19 the child and, in a case involving the modification of a support order, the
20 obligor has made voluntary support payments under a court or agency order
21 and has not been in arrears in an amount equal to the support payable for one
22 month; in this paragraph, "in arrears" means failing to make a support payment
23 within 30 days of the monthly due date specified in the order; or

24 (2) not being enforced by the agency and the obligor agrees to keep the
25 obligee informed of the obligor's current employer and the availability of employment-
26 related health insurance coverage for the children covered by the support order until
27 the support order is satisfied and

28 (A) the court finds that (i) a written agreement exists between
29 the obligor and the obligee that provides for an alternative arrangement and (ii)
30 income withholding has not been terminated previously and subsequently
31 initiated; the agency must also be a party to an agreement under this paragraph

1 if support has been assigned to the state; or

2 (B) the obligor or obligee demonstrates, and the court, in
3 compliance with applicable federal law, finds good cause not to require
4 immediate income withholding because it would not be in the best interests of
5 the child and, in a case involving the modification of a support order, the
6 obligor has made voluntary support payments under a court or agency order
7 and has not been in arrears in an amount equal to the support payable for one
8 month; in this paragraph, "in arrears" means failing to make a support payment
9 within 30 days of the monthly due date specified in the order.

10 * Sec. 12. AS 25.27.140(b) is amended to read:

11 (b) If a support order has been entered, the agency may enforce the support
12 order utilizing the procedures prescribed in AS 25.27.062, 25.27.150, [AS 25.27.150]
13 and 25.27.230 - 25.27.270.

14 * Sec. 13. AS 25.27.150 is repealed and reenacted to read:

15 Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED
16 NOTICE AND HEARING. (a) In order to initiate income withholding for a support
17 order being enforced by the agency for which immediate income withholding is not
18 required under AS 25.27.062(a), the agency shall serve a notice of its intent to initiate
19 income withholding on the obligor. Notice under this subsection shall be served upon
20 the obligor by certified mail to the obligor's last known address, and service is
21 complete when the notice is properly addressed, certified, and mailed.

22 (b) The notice must state the amount of the overdue support that is owed, if
23 any, and the amount of income that will be withheld.

24 (c) The notice shall inform the obligor that the income withholding order will
25 take effect 15 days after the date on which the notice is served unless the obligor
26 requests a hearing within 15 days after the notice is served. If the obligor requests a
27 hearing, an income withholding order may not take effect until the conclusion of the
28 hearing.

29 (d) If the obligor requests a hearing, it shall be conducted under the
30 department's regulations for informal conferences and shall be held within 15 days of
31 the date of the request. The hearing may only be held to determine if there is a

1 mistake of fact that makes the income withholding order improper because the amount
2 of current or overdue support is incorrect, the identity of the obligor is inaccurate, or,
3 for initiated withholding based on AS 25.27.062(c)(3)(A), the alleged facts regarding
4 overdue payments or potential withdrawal of assets are incorrect. The order is not
5 subject to any other legal defenses. It is not a defense to an income withholding order
6 issued under AS 25.27.062(c)(2) that less than one full month's payment is past due
7 if at least one full month's payment was past due on the date notice was served under
8 this section.

9 (e) The appeals officer shall inform the obligor, either at the hearing or within
10 15 days after the hearing, whether or not the withholding will occur and of the date
11 on which it is to commence.

12 (f) If the appeals officer determines that withholding will occur, the obligor
13 may request a formal hearing, as provided in the department's regulations. The
14 income withholding order shall be issued and withholding shall begin under the
15 procedures in AS 25.27.062, whether or not the obligor requests a formal hearing,
16 unless the obligor posts security or a bond in the amount that would have been
17 withheld pending the outcome of a formal hearing.

18 * Sec. 14. AS 25.27.160(b) is amended to read:

19 (b) The notice and finding of financial responsibility served under (a) of this
20 section must state

21 (1) the sum or periodic payments for which the alleged obligor is found
22 to be responsible, calculated by taking into consideration the need of the alleged
23 obligee, the alleged obligor's liability to the state under AS 25.27.120 [AS 25.27.130]
24 if any, and the duty of support under the law;

25 (2) the name of the alleged obligee and the obligee's custodian;

26 (3) that the alleged obligor may appear and show cause in a hearing
27 held by the agency why the finding is incorrect, should not be finally ordered, and
28 should be modified or rescinded, because

29 (A) no duty of support is owed; or

30 (B) the amount of support found to be owed is incorrect;

31 (4) that if the person served with the notice and finding of financial

1 responsibility does not request a hearing within 30 days, the property and income of
 2 the person will be subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270
 3 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the
 4 finding without further notice or hearing.

5 * Sec. 15. AS 25.27.170(b) is amended to read:

6 (b) If a request ~~for a formal hearing~~ ^(2nd point) under (a) of this section is made, the
 7 execution under AS 25.27.062 and 25.27.230 - 25.27.270 ~~may not~~ [AS 25.27.230 -
 8 25.27.270 SHALL] be stayed unless the obligor posts security or a bond in the
 9 amount of child support that would have been due under the finding of financial
 10 responsibility pending the decision on the hearing [, OR THE DECISION OF A
 11 COURT, IF APPEALED]. If no request for a hearing is made, the finding of
 12 responsibility is final at the expiration of the 30-day period.

13 * Sec. 16. AS 25.27.170(d) is amended to read:

14 (d) The hearing officer shall determine the amount of periodic payments
 15 necessary to satisfy the past, present, and future liability of the alleged obligor under
 16 AS 25.27.120 [AS 25.27.130], if any, and under any duty of support imposable under
 17 the law. The amount of periodic payments determined under this subsection is not
 18 limited by the amount of any public assistance payment made to or for the benefit of
 19 the child.

20 * Sec. 17. AS 25.27.170(f) is amended to read:

21 (f) If the alleged obligor requesting the hearing fails to appear at the hearing,
 22 the hearing officer shall enter a decision declaring the property and income of the
 23 alleged obligor subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270
 24 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the
 25 notice and finding of financial responsibility.

26 * Sec. 18. AS 25.27.180(b) is amended to read:

27 (b) Liability to the state under AS 25.27.120 [AS 25.27.130] is limited to the
 28 amount for which the obligor is found to be responsible under (a) of this section.

29 * Sec. 19. AS 25.27.230(a) is amended to read:

30 (a) At the expiration of 30 days from either (1) the date of distribution of an
 31 income withholding order under AS 25.27.062 [SERVICE OF NOTICE UNDER

1 AS 25.27.150], or (2) the date of service of a notice and finding of financial
2 responsibility under AS 25.27.160, the agency may assert a lien upon the real or
3 personal property of the obligor, in the amount of the obligor's liability.

4 * Sec. 20. AS 25.27.230(c) is amended to read:

5 (c) The lien shall attach to all real and personal property of the obligor and be
6 effective on the date of recording of the lien with the recorder of the recording district
7 in which the property attached is located. A lien against earnings shall attach and be
8 effective upon filing with the recorder of the recording district in which the employer
9 does business or maintains an office or agent for the purpose of doing business. A
10 lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau
11 against a limited entry permit issued under AS 16.43 is considered to have been
12 filed against the permit in all recording districts in which the permit holder uses
13 the permit.

14 * Sec. 21. AS 25.27.250(a) is amended to read:

15 (a) At the expiration of either (1) 15 [30] days from the date of service of an
16 income withholding order under AS 25.27.062 or notice under AS 25.27.150, or (2)
17 30 days from the date of service of a notice and finding of financial responsibility
18 under AS 25.27.160, the agency may issue to any person, political subdivision, or
19 department of the state an order to withhold and deliver property.

20 * Sec. 22. AS 25.27.250(f) is amended to read:

21 (f) If a person, political subdivision, or department of the state upon whom
22 service of an order to withhold and deliver has been made possesses property due,
23 owing, or belonging to the obligor, that person, subdivision, or department shall
24 withhold the property immediately upon receipt of the order and shall deliver the
25 property to the agency [UPON DEMAND] after the expiration of the 14-day period
26 from the date of service of the order or expiration of the period specified in
27 AS 25.27.062(e), whichever is earlier. The agency shall hold property delivered
28 under this subsection in trust for application against the liability of the obligor under
29 AS 25.27.062, 25.27.120, or 25.27.160 [AS 25.27.130] or for return, without interest,
30 depending on final determination of liability or nonliability under this chapter. The
31 agency may accept a good and sufficient bond to secure payment of past, present,

1 and future support conditioned upon final determination of liability in lieu of
2 requiring delivery [DELIVERING] of property under this subsection.

3 * Sec. 23. AS 25.27.250 is amended by adding a new subsection to read:

4 (j) A person, political subdivision, or department that fails to comply with an
5 order to withhold and deliver served under this subsection is subject to penalties under
6 AS 25.27.260. A person, political subdivision, or department may, for each payment
7 made under an order to withhold and deliver, deduct \$1 from other wages or salary
8 owed to the obligor.

9 * Sec. 24. AS 25.27.255(a) is amended to read:

10 (a) The agency shall pay to the obligee all money recovered by the agency
11 from the obligor under an income withholding order except for court costs and money
12 assigned to the agency under AS 25.27.120 - 25.27.130. However, if there is more
13 than one income withholding order under this chapter against an obligor, the
14 agency shall allocate amounts available for withholding in a manner that gives
15 priority to current support up to the limits imposed under 15 U.S.C. 1673(b)
16 (sec. 303(b), Consumer Credit Protection Act). Notwithstanding the priority given
17 to current support, the agency shall establish procedures for allocation of support
18 among obligees so that in no case will the allocation result in a withholding order
19 for one obligee not being implemented.

20 * Sec. 25. AS 25.27.260 is amended to read:

21 Sec. 25.27.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH
22 AN ORDER OR LIEN. If a [ANY] person, political subdivision, or department of the
23 state (1) fails to make an answer to an order to withhold and deliver within the time
24 prescribed in AS 25.27.250; (2) fails or refuses to deliver property in accordance with
25 an order issued under AS 25.27.250; (3) pays over, releases, sells, transfers, or conveys
26 real property subject to a lien recorded under AS 25.27.230 to or for the benefit of the
27 obligor or any other person; (4) fails or refuses to surrender upon demand property
28 attached; or (5) fails or refuses to honor an assignment of wages or an income
29 withholding order under AS 25.27.062 that was served [PRESENTED] by the agency
30 through personal service by a process server or through certified mail, return
31 receipt requested, the person, political subdivision, or department of the state is liable

Amended #7

1 to the agency in an amount equal to 100 percent of the amount constituting the basis
2 of the lien, order to withhold and deliver, attachment, or withholding of wages or
3 income, together with costs, interest, and reasonable attorney fees.

4 * Sec. 26. AS 25.27.260 is amended by adding a new subsection to read:

5 (b) A person, political subdivision, or department of the state that fails or
6 refuses to honor a properly served income withholding order under AS 25.27.062 that
7 is not being enforced by the agency is liable to the obligee in an amount equal to 100
8 percent of the amount ordered to be withheld together with costs, interest, and
9 reasonable attorney fees.

10 * Sec. 27. AS 33.30.131(b) is amended to read:

11 (b) Unless alternative arrangements are expressly approved by the
12 commissioner, when a prisoner is employed outside a correctional facility as part of
13 a prerelease or short-duration furlough program, or as part of serving time in a
14 correctional restitution center under AS 33.30.151 - 33.30.181, the earnings of the
15 prisoner shall be delivered to the commissioner. If an employer transmits the earnings
16 to the commissioner, the employer has no liability to the prisoner for the earnings. The
17 commissioner shall disburse the earnings of the prisoner, in an order determined
18 appropriate, under procedures adopted by the commissioner to

19 (1) pay for the room, board, and personal expenses of the prisoner in
20 an amount or at a rate determined by the commissioner;

21 (2) pay any restitution or fine ordered by the sentencing court;

22 (3) reimburse the state for an award made for violent crimes
23 compensation under AS 18.67 arising out of the criminal conduct of the prisoner;

24 (4) pay a civil judgment arising out of the criminal conduct of the
25 prisoner; and

26 (5) support the dependents of the prisoner, and to provide child support
27 payments as required by AS 25.27 [AS 25.27.062].

28 * Sec. 28. AS 25.27.255(b), 25.27.255(c), and secs. 2 and 5, ch. 75, SLA 1991, are
29 repealed.

30 * Sec. 29. TRANSITIONAL PROVISION. (a) Notwithstanding other provisions of this
31 Act, in the case of a support order issued by a court on or after January 1, 1994, and before

1 the effective date of this Act, the court shall, upon filing of a motion by an obligee who is the
2 subject of the support order, issue an immediate income withholding order for support,
3 regardless of whether support payments are in arrears, unless

4 (1) a written agreement exists between the obligor and the obligee that
5 provides for an alternative arrangement;

6 (2) the obligor demonstrates, and the court finds, that there is good cause not
7 to require immediate income withholding; or

8 (3) the support order is being enforced by the child support enforcement
9 agency.

10 (b) An immediate income withholding order issued under this section is governed by
11 AS 25.27, as amended by this Act, and shall be treated as an immediate income withholding
12 order issued under AS 25.27.062(a).

13 * Sec. 30. This Act takes effect on the 10th day after the date it becomes law under
14 AS 01.10.070(a).

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MEMORANDUM

April 5, 1994

SUBJECT: Fees for Obligees and Obligors (CSSB 190(); draft 8-LS-1001\U)

TO: Senator Drue Pearce

FROM: Terri Lauterbach 
Legislative Counsel

You asked last week for information about fees that may be charged by CSED and employers in child support cases. Enclosed are copies of federal regulations relating to these two areas.

My reading of the federal regulations is that the state must charge an application fee for services when a non-AFDC person requests CSED's assistance in establishing or enforcing a child support order. (Please see page 247 of the enclosed pages of federal regulations.) The state may either assess the fee against the obligee or pay the fee itself. (I'm not sure what it means for the state to pay the fee itself, but that's what the regulations say.) In either case, the state may seek recovery of the fee from the obligor. To my knowledge, despite this federal requirement to charge an application fee, CSED is not charging a fee. I do not know if this means that we are using the option of having the state pay the fee or if we are out of compliance with federal law on this matter.

The regulations are silent as to whether additional fees may be charged, such as a fee for each payment sent to the obligee by CSED, and I have been unable thus far to confer with CSED about this matter either.

As to fees that may be collected by an employer from the obligor, there does not appear to be a limit under federal regulations. Please see page 281 of the enclosed pages.

I hope you find this information helpful. I will attempt to get clarifications from CSED before tomorrow's hearing. Please let me know if I can be of further assistance.

TML:pl
94-281 plm

Enclosure

Fee for ob' gee:

See second page

§ 302.33

45 CFR Ch. III (10-1-92 Edition)

days of the initial point of receipt in the responding State, in accordance with § 303.7(c)(7)(iv).

(2) Amounts collected by the IV-D agency on behalf of recipients of aid under the State's title IV-A or IV-E plan for whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective shall be distributed as follows:

(1) when the IV-D agency sends payments to the family under § 302.51(b)(1) of this part, payments to the family must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first \$50 of support collected in a month, or, if less than \$50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV-A agency sends payments to the family under § 302.51(b)(1) of this part, the IV-D agency must forward any amount due the family under § 302.51(b)(1) to the IV-A agency within 15 calendar days of the date of initial receipt in the State of the first \$50 of support collected in a month, or, if less than \$50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

(ii) Except as specified under paragraph (f)(2)(iv) of this section, collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b)(3) and (5) of this part must be sent to the family within 15 calendar days of the date of initial receipt in the State of a collection for the first month of ineligibility.

(iii) Except as specified in paragraph (f)(2)(iv) of this section, collections in IV-E foster care cases under §§ 302.52(b)(2) and (4) of this part must be distributed within 15 calendar days of the date of initial receipt in the State.

(iv) Collections as a result of Federal or State income tax refund offset paid to the family under § 302.51(b)(5) of this part, or distributed in title IV-E foster care cases under § 302.52(b)(4) of this part, must be sent to the AFDC family or IV-E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV-D agency,

unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV-D agency must send any payment to the AFDC family or IV-E agency within 15 calendar days of the date the appeal is resolved.

(3) Amounts collected on behalf of individuals receiving services under § 302.33 of this part shall be distributed as follows:

(i) Amounts collected which represent payment on the current support obligation shall be sent to the family within 15 calendar days of the date of initial receipt in the State.

(ii) Except as specified in paragraph (f)(3)(iii) of this section, if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) of this section, the State may at its discretion either send such amounts to the family to satisfy past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy assistance paid to the family which has not been reimbursed.

(iii) Collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset must be sent to the family within 30 calendar days of the date of receipt in the IV-D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the IV-D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

(40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 49 FR 22289, May 29, 1984; 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989; 56 FR 8003, Feb. 26, 1991)

§ 302.33 Services to individuals not receiving AFDC or title IV-E foster care assistance.

(a) *Availability of Services.* (1) The State plan must provide that the services established under the plan shall

be made available to any individual who:

(i) Files an application for the services with the IV-D agency. In an interstate case, only the initiating State may require an application under this section; or

(ii) Is a non-AFDC Medicaid recipient; or

(iii) Has been receiving IV-D services and is no longer eligible for assistance under the AFDC, IV-E foster care, and Medicaid program.

(2) The State may not require an application, other request for services or an application fee from any individual who is eligible to receive services under paragraphs (a)(1)(ii) and (iii) of this section. If an individual receiving services under paragraph (a)(1)(iii) of this section refuses services in response to a notice under paragraph (a)(4) of this section, and subsequently requests services, that individual must file an application and pay an application fee.

(3) The State may not charge fees or recover costs from any individual who is eligible to receive services under paragraph (a)(1)(ii) of this section.

(4) Whenever a family is no longer eligible for assistance under the State's AFDC, IV-E foster care, and Medicaid programs, the IV-D agency must notify the family, within five working days of the notification of ineligibility, that IV-D services will be continued unless the IV-D agency is notified to the contrary by the family. The notice must inform the family of the consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies.

(5) The State must provide all appropriate IV-D services, in addition to IV-D services related to securing medical support, to all individuals who are eligible to receive services under paragraph (a)(1)(ii) of this section unless the individual notifies the State that only IV-D services related to securing medical support are wanted.

(b) *Definitions.* For purposes of this section:

Applicant's income means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed \$25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(2) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for each individual who applies for services under this section. Under this paragraph:

(i) The State shall collect the application fee from the individual applying for IV-D services or pay the application fee out of State funds.

(ii) The State may recover the application fee from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay an application fee are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(iv) Any application fee charged must be uniformly applied on a statewide basis and must be:

(A) A flat dollar amount not to exceed \$25 (or such higher or lower amount as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs); or

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph (c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(3) In an interstate case, the application fee is charged by the State where

the individual applies for services under this section.

(d) *Recovery of costs.* (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services under this section; or

(ii) From the individual who is receiving IV-D services under paragraph (a)(1) (i) or (iii) of this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services under paragraphs (a)(1) (i) and (iii) of this section.

(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a written methodology to determine standardized costs which are as close to actual costs as is possible. This methodology must be made available to any individual upon request.

(3) The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

(4) If a State elects to recover costs under paragraph (d)(1)(ii) of this section, the IV-D agency may attempt to seek reimbursement from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and pay all amounts reimbursed to the individual who is receiving IV-D services.

(5) If a State elects to recover costs under this section, the IV-D agency must notify, consistent with the option selected, either the individual who is receiving IV-D services under paragraphs (a)(1) (i) or (iii) of this section, or the individual who owes a sup-

port obligation that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the individual receiving IV-D services of the States that recover costs.

(6) The IV-D agency must notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

(e) *Assignment.* (1) The IV-D agency may take an assignment of support rights not already assigned to the State from an individual receiving services under this section. However, an assignment by an individual under this section does not constitute an assignment as defined in § 301.1 of this chapter and may not be a condition of eligibility for services under this section.

(2) Before the recipient of IV-D services under this section makes an assignment of support rights, the IV-D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section.

(Approved by the Office of Management and Budget under control numbers 0960-0253, 0960-0085, 0960-0402, and 0970-0107)

[49 FR 36772, Sept. 19, 1984, as amended at 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 56 FR 8003, Feb. 26, 1991]

§ 302.34 Cooperative arrangements.

(a) The State plan shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials. Such arrangements may be entered into with a single official covering more than one court, official, or agency, if the single official has the legal authority to enter into arrangements on behalf of the courts, officials, or agencies. Such arrangements shall contain provisions for providing courts and law enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained under § 235.70 of this title to the court or law enforcement official, to the extent that such information is relevant to the duties to be performed

(ii) That the provision for withholding applies to any current or subsequent employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (e) of this section.

(2) (i) The requirement for advance notice to the absent parent under paragraph (d)(1) of this section and for State procedures when the absent parent contests the withholding in response to the advance notice under paragraph (e) of this section do not apply in the case of any State which had a withholding system in effect on August 16, 1984 if the system provided on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (d)(2)(i) of this section applies must meet all other requirements of this section and must send notice to the employer under paragraph (f) of this section within 15 calendar days of the appropriate date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

(e) *State procedures when the absent parent contests initiated withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 calendar days of sending advance notice to the absent parent under paragraph (d) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and, if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (f) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (f) of this section.

(f) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (f)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State (or to such other individual or entity as the State may direct) within 10 working days of the date the absent parent is paid, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

(vi) That, if the employer fails to withhold wages in accordance with the provisions of the notice, the employer

Fee for obligor



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ARTHUR H. SNOWDEN II
Administrative Director

Alaska Court System

March 14, 1994

The Honorable Steve Frank, Co-chair
The Honorable Drue Pearce, Co-chair
Senate Finance Committee
Capitol Building
Juneau, Alaska 99811

Dear Senator Frank and Senator Pearce:

Attached you will find a fiscal note for CSSB 190 (JUD), relating to income withholding and other methods of enforcement for orders of support.

SB 190 was drafted by the Child Support Enforcement Division (CSED) with the intention of bringing Alaska into compliance with a federal mandate on child support enforcement. Much of the legislation relates to CSED's activities, and the court system takes no position on those sections. However, a significant portion of SB 190 directs court activities in this area. These sections were drafted and introduced by CSED without any consultation with the court system. It is our view that these sections are confusing, difficult to administer, and provide individual judges with the discretion to interpret the law in a widely divergent manner, including ways that may not be compliant with federal law.

The court system will be submitting amendments during the committee process which have the effect of correcting the bill's problems and reducing the note.

Very truly yours,

Arthur H. Snowden, II
Administrative Director

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MEMORANDUM

March 29, 1994

SUBJECT: CSSB 190()/version "U" (An Act relating to income withholding and other methods of enforcement for orders of support)

TO: Senator Drue Pearce
Co-Chair, Senate Finance Committee

FROM: Terri Lauterbach *TL*
Legislative Counsel

You have asked for a comparison of CSSB 190()/version "U" with CSSB 190(JUD).

In general, the aim of both bills is the same: to bring the state into compliance with federal laws relating to income withholding for child support. The federal laws applicable to child support orders that are enforced by CSED took effect in 1990. The federal laws applicable to child support orders that are enforced by private parties took effect in January of this year.

The bill that came out of the Senate Judiciary Committee was based on the understanding that when the federal laws governing income withholding by CSED became applicable to the court system this year, that the federal regulations implementing those laws would also become applicable to the court system. After the bill came out of the Senate Judiciary Committee, I learned that those regulations are not applicable to the court system; they are only applicable to CSED. Based on that new information, the bill needed to be rewritten to distinguish more clearly between procedures applicable to CSED and procedures applicable to the court system.

CSED, the Department of Revenue, and the court system have cooperated in rewriting the bill. I believe that it now more clearly reflects the requirements of federal law and acknowledges the ways in which the court system is differently affected by the federal laws.

Section 1. This section is comparable to sec. 1 and 3 of the Judiciary CS. CSED and the court system have agreed that the new language in sec. 1 of the Judiciary version was redundant with other portions of the bill, so it has been deleted. The

new language that now appears in sec. 1 of the blank CS appeared in sec. 3 of the Judiciary CS. However, rather than using the specific dates found in the Judiciary version, the blank CS uses the phrase "on or after the effective date of this Act." This phrase is more accurate because it recognizes that this bill is prospective in nature. The bill does not retroactively change anyone's child support order.

Sec. 2. This section is comparable to sec. 2 of the Judiciary CS. However, CSED and the court system have now agreed that all income withholding payments should pass through CSED so that it can be the federally required agency for keeping track of income withholding. Therefore, the reference to "other persons or entities" that was in sec. 2 of the Judiciary CS has been removed. In sec. 2 of the blank CS, a new sentence has been added to require that courts send copies of new child support orders to CSED. This will help implement CSED's responsibility to be the agency that keeps track of child support enforcement.

Sec. 3. As discussed above, the material in sec. 3 of the Judiciary CS has been moved to sec. 1 of the blank CS. The material in this sec. 3 (of the blank CS) comes from sec. 4 of the Judiciary CS, with a couple of changes. One change is the addition of a definition of "10 days overdue" in order to clarify the phrase. The other change is in the last line of the section. The court is given broader discretion to find "good cause" rather than being tied to the same details that govern CSED's findings of "good cause."

Sec. 4. The new material in sec. 4 of the Judiciary CS has been moved to sec. 3 of the blank CS, as just discussed. CSED and the court system have agreed that the rest of sec. 4 of the Judiciary CS was redundant with the provisions of sec. 13 with respect to CSED's procedures and inaccurate with respect to the procedures applicable to the court system. Therefore, in the blank CS, AS 25.27.062(d) is repealed and reenacted in sec. 4 to apply only to the court system. This section describes how income withholding can be initiated under a support order when immediate withholding was not required.

Sec. 5. This section is like sec. 5 of the Judiciary CS except that the reference to "other entities" has been removed to reflect the decision in sec. 2 that CSED would be the central collection point for income withholding. Other entities will not be involved. On lines 14 - 15 of sec. 5 in the blank CS, CSED is given the option of using first class mail or a process server rather than being confined to using certified mail. It is my understanding that CSED already uses first class mail as a cost saving measure. Later in the bill, it is made clear that penalties for an employer who ignores an income withholding order only apply if the order was served by certified mail or by a process server. But, in the vast majority of situations, employers do implement orders they receive by first class mail, so the blank CS gives this less-costly option to CSED.

Two other changes are in sec. 5 of the blank CS: on lines 19 - 20, the phrase "14 working days" has been used instead of just "14 days" because "working days" is the federal requirement. The second change is the deletion of the sentence in the Judiciary CS that referred to penalties under AS 25.27.260. That sentence was redundant. AS 25.27.260 will apply by its own terms and does not need to be mentioned here.

Secs. 6 - 8. Sections 6 - 8 of the blank CS are new additions. Each section is amended in the same way: instead of referring to income withholding orders issued under this "section," each section now refers to income withholding orders issued under this "chapter." This broader language is intended to clarify that the provisions of these three sections apply to all income withholding, even if it's done through an order to withhold and deliver, which is issued under AS 25.27.250.

Sec. 9. This section provides that an employer must notify CSED when a child support obligor terminates employment. The Judiciary CS (in sec. 6) had provided that the notice could be sent to the court, CSED, or the obligee. This seemed to be a confusing set of alternatives for the employer. Also, because of sec. 2, which makes all payments pass through CSED, it seems as if CSED should also get these employer notices.

Sec. 10. This section sets out procedures for terminating a withholding order. It is based in part on sec. 7 of the Judiciary CS. However, the Judiciary CS did not adequately recognize the fact that a different procedure should be applicable to the court system. The blank CS sets out two procedures in paragraphs (1) and (2), depending on whether the support order is being enforced by CSED.

Sec. 11. This section describes the exceptions allowed under federal law for when immediate income withholding does not have to be ordered. It is like sec. 8 of the Judiciary CS, but rewritten for clarity as to the different procedures applicable to CSED and the court system. There are also the following changes: the health insurance provision in lines 8 - 10 is clarified to refer to coverage of the children for whom support is being paid; there is no requirement in federal law that CSED or the court always approve the alternative arrangement discussed in AS 25.27.062(m)(1)(A) and (2)(A) so the reference in the Judiciary CS to "approval" of these agreements has been deleted.

Sec. 12. Same as sec. 9 of the Judiciary CS.

Sec. 13. This section is like sec. 10 of the Judiciary CS except for the following changes: in subsection (a), it is clarified that this section applies only to situations where income withholding was not required to be immediate; in subsection (d), there is an additional legal defense allowed to the obligor with respect to allegations made under AS 25.27.062(c)(3)(A).

Sec. 14. This section is the same as sec. 11 of the Judiciary CS, except that, on page 7, line 23, the blank CS corrects a reference that has become inaccurate in the last few years because of changes made by the legislature in AS 25.27.130. The correct reference is now AS 25.27.120.

Sec. 15. This section is the same as sec. 12 of the Judiciary CS, except that, on page 8, line 6, the phrase "for a formal hearing" has been added. This addition clarifies that a bond will not be required of an obligor who only requests an informal conference.

Sec. 16. This section is new in the blank CS. It corrects the same reference discussed under sec. 14.

Sec. 17. Same as sec. 13 of the Judiciary CS.

Sec. 18. This section is new in the blank CS. It corrects the same reference discussed under sec. 14.

Sec. 19. This section is like sec. 14 of the Judiciary CS, except that the specific reference to subsection (e) of AS 25.27.062 is deleted. In the blank CS, the reference is to AS 25.27.062.

Sec. 20. Same as sec. 15 of the Judiciary CS.

Sec. 21. Same as sec. 16 of the Judiciary CS.

Sec. 22. Same as sec. 17 of the Judiciary CS, except that the reference to AS 25.27.-130 is corrected, as discussed under sec. 14.

Sec. 23. Same as sec. 18 of the Judiciary CS.

Sec. 24. Same as sec. 19 of the Judiciary CS.

Sec. 25. The section is new in the blank CS. It is added in order to clarify the penalties applicable in AS 25.27. On line 28, the word "or" is added to clarify that penalties are applicable to each paragraph individually. The new language on lines 30 - 31 specifies that penalties will be applicable only if the person received notice by certified mail or through a process server. First class mail is insufficient.

Sec. 26. This section is new in the blank CS. It makes an employer who ignores an income withholding order liable to the obligee for the money that should have been withheld in situations where CSED is not enforcing the order. This is comparable to the way AS 25.27.260(a) makes the employer liable to CSED when CSED is enforcing the order.

Senator Drue Pearce
March 29, 1994
Page 5

Sec. 27. This section is new in the blank CS. It clarifies that a prisoner's wages are subject to all of AS 25.27, not just AS 25.27.062.

Sec. 28. This section repeals the same provisions repealed in sec. 20 of the Judiciary CS. In addition, it also repeals the sections of ch. 75, SLA 1991, that would have made the monthly employer reporting program expire in January 1995. By repealing these sections of ch. 75, SLA 1991, the monthly employer reporting program will stay in effect.

Sec. 29. This section is new in the blank CS. It deals with the support orders issued by the court system between January 1 of this year and the date on which this bill would take effect. The deadline for the state's changes in its income withholding laws was January 1, 1994, for orders not being enforced by CSED. Every order issued by the courts between January 1 and the time this bill takes effect that does not include immediate income withholding is out of compliance with federal law. Section 29 allows an obligee to request that the court add immediate income withholding to these orders and, therefore, bring them into compliance with the federal law.

Sec. 30. Instead of the immediate effective date of the Judiciary CS, the blank CS delays the effective date until 10 days after the bill becomes law. The court system requested this delay so that it could put the effective date on its forms and get them mailed out to courts before the law must be implemented.

I hope you find this memorandum helpful in explaining the differences between the two bills. Please let me know if I can be of further assistance.

TML:pl
94-258.plm

Enclosure

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
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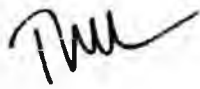
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 6, 1994

SUBJECT: CSSB 190(Finance)\\"X" version (Child Support Enforcement)

TO: Senator Steve Frank

FROM: Terri Lauterbach
Legislative Counsel 

Enclosed is CSSB 190(Finance), as passed out by the Senate Finance Committee today, with the following exception: the handwritten addition ("and consistent with") on page 2 of the 8-LS1001\U.1 has not been added. When I asked committee staff why the same phrase was not added to the new subsection (n) on page 1 of the amendment, it was explained to me that the committee's concern was that an obligor who, for instance, was only required by the order to pay 50% of the health insurance costs not be credited with 100% of the payment. In my opinion, the phrase "to the extent that" in the amendment already covers this concern. An obligor will be given a credit "to the extent that" the payments are required in the support order, not any higher and not any lower.

I hope this explains the change adequately. Please let me know if I can be of additional assistance.

TML:pl:gc
94-288.plm

Enclosure

George

CS FOR SENATE BILL NO. 190(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to income withholding and other methods of enforcement for
2 orders of support; and providing for an effective date."

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

4 * Section 1. AS 25.27.062(a) is amended to read:

5 (a) A judgment, court order, or order of the agency under this chapter
6 providing for support must contain an income withholding order. Except as provided
7 in (m) of this section, the income withholding order must provide for immediate
8 income withholding if the support order is

9 (1) being enforced by the agency and was issued or modified on or
10 after the effective date of this Act; or

11 (2) not being enforced by the agency and was issued on or after the
12 effective date of this Act [AN INCOME WITHHOLDING ORDER UNDER THIS
13 SECTION MAY NOT BE ENFORCED UNLESS THE OBLIGOR HAD NOTICE OF
14 THE ORDER WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER

1 WAS SERVED ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE
2 OF A SUMMONS UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

3 * Sec. 2. AS 25.27.062(b) is amended to read:

4 (b) An income withholding order must direct the obligor, the obligor's
5 employer, future employer, and any person, political subdivision, or department of the
6 state to withhold money due or to be due the obligor and pay the money to the agency,
7 in an amount determined under (i) of this section. A court that issues a support
8 order on or after the effective date of this Act shall send a copy of the order to
9 the agency.

10 * Sec. 3. AS 25.27.062(c) is repealed and reenacted to read:

11 (c) Income withholding under a support order that does not require immediate
12 withholding may be initiated under AS 25.27.150 if the support order is being enforced
13 by the agency, or under (d) of this section if the support order is not being enforced
14 by the agency, if

15 (1) the obligor requests withholding;

16 (2) the payments that the obligor has failed to make within 30 days of
17 the monthly due date specified in the support order are equal to or greater than the
18 support payable for one month; or

19 (3) the obligee requests withholding and

20 (A) the agency approves the request because all or part of the
21 monthly payment of the obligor has been more than 10 days overdue more than
22 one time in the preceding 12 months or there is reason to believe that the
23 obligor might withdraw assets to avoid payment of support; in this paragraph,
24 "10 days overdue" means occurring 10 days after the monthly due date
25 specified in a support order; or

26 (B) the court approves the request for good cause.

27 * Sec. 4. AS 25.27.062(d) is repealed and reenacted to read:

28 (d) Income withholding under a support order that does not require immediate
29 income withholding and that is not being enforced by the agency may be initiated by
30 filing a motion with the court and complying with applicable court rules. The court
31 shall order the beginning of income withholding under this subsection if the court finds

1 that any of the grounds in (c)(1), (c)(2), or (c)(3)(B) of this section is satisfied. It is
2 not a defense to a motion based on (c)(2) of this section that less than one full month's
3 payment is past due by 30 days if at least one full month's payment was past due by
4 30 days on the date the motion was filed. Notice to the obligor of income withholding
5 ordered under this subsection must be given in a manner that complies with court
6 rules. In this subsection, "past due by 30 days" means unpaid 30 days after the
7 monthly due date specified in the support order.

8 * Sec. 5. AS 25.27.062(e) is amended to read:

9 (e) The [OBLIGEE OR PERSON OR PUBLIC] agency or the person who
10 obtains an [THAT REQUESTED THE] income withholding order under this chapter
11 shall immediately send a copy of the income withholding order, a copy of the relevant
12 provisions of AS 25.27.260 and this section, and an explanation of the effect of the
13 statutes [BY CERTIFIED MAIL] to persons who may owe money to an obligor.
14 These items may be sent by first class mail or certified mail. return receipt
15 requested, or they may be served personally by a process server. An income
16 withholding order made under this chapter [SECTION] is binding upon a person,
17 employer, political subdivision, or department of the state immediately upon receipt
18 of a copy of the income withholding order. An employer shall begin withholding the
19 specified amount from the employee's wages (1) 14 working days after the mailing
20 date on the order [NOTICE] of withholding or 14 working days after the date on
21 which the order was personally served, whichever is applicable, or (2) on the first
22 day of the next pay period, if earlier. The amount withheld shall be sent to the agency
23 within 10 working days after the date the employee is paid. An employer may,
24 for each payment made under an order, deduct \$5 from other wages or salary
25 owed to the obligor.

26 * Sec. 6. AS 25.27.062(f) is amended to read:

27 (f) An employer may not discharge, discipline, or refuse to employ an obligor
28 on the basis of an income withholding order issued under this chapter [SECTION].
29 If an employer discharges, disciplines, or refuses to employ an obligor because of an
30 income withholding obligation, the court, after notice and hearing, may order
31 reinstatement or restitution to the obligor, or both. A person who violates this

1 subsection or a regulation adopted to implement it, is liable for a civil penalty of not
2 more than \$1,000.

3 * Sec. 7. AS 25.27.062(g) is amended to read:

4 (g) An income withholding order under this chapter [SECTION] has priority
5 over all other attachments, executions, garnishments, or other legal process brought
6 under state law against the same property unless otherwise ordered by the court. An
7 income withholding order is not limited to the wages of an obligor but may include
8 all money owed to the obligor not otherwise exempt by law. Exemptions under
9 AS 09.38 do not apply to income withholdings under this chapter [SECTION].

10 * Sec. 8. AS 25.27.062(h) is amended to read:

11 (h) The court may order payment of all court costs that resulted from an
12 income withholding proceeding under this chapter [SECTION].

13 * Sec. 9. AS 25.27.062(k) is repealed and reenacted to read:

14 (k) An employer who is withholding income of an employee under an order
15 that provides that the withheld income shall be paid to the agency shall notify the
16 agency promptly when the employee gives or receives notice of termination of
17 employment and provide to the agency the employee's last known home address and
18 the name and address of the employee's new employer, if known.

19 * Sec. 10. AS 25.27.062(l) is repealed and reenacted to read:

20 (l) Unless modified or terminated by the agency or the court, an order to
21 withhold income under this chapter remains in effect until the support order is
22 satisfied. The agency or court may not terminate or modify an income withholding
23 order solely on the ground that the obligor has paid all arrearages. Upon satisfaction
24 of a support order, if the order is

25 (1) being enforced by the agency, the agency shall, ~~within 15 working~~
26 days, notify all persons served ~~by the agency~~ with the income withholding order that
27 withholding is no longer required; if ~~by the agency~~ gives money from an obligor under
28 an income withholding order after the underlying support order has been satisfied and
29 the agency was enforcing the support order at the time it became satisfied, the agency
30 shall immediately return the overpayment to the obligor; if the agency fails to return
31 an overpayment as required under this paragraph, the state is liable to the obligor for

1 the amount of the overpayment, plus interest at the rate imposed under AS 43.05.225,
2 and a person to whom the agency erroneously disbursed the overpayment is liable to
3 the state for the amount disbursed, plus interest at the rate imposed under
4 AS 43.05.225;

5 (2) not being enforced by the agency, the obligor shall file a motion
6 in court requesting termination of the withholding order and serve the motion on the
7 obligee; the court shall enter an order terminating the withholding order if the court
8 determines that the support order has been satisfied; the obligor may deliver a copy
9 of the termination order to persons who were served with the income withholding
10 order; when a termination order is entered, the obligee shall, upon request of the
11 obligor, notify the obligor of all persons who have been served with the income
12 withholding order by the obligee.

13 * Sec. 11. AS 25.27.062 is amended by adding ~~new subsection~~ to read:

14 (m) An income withholding order described in (a)(1) - (2) of this section is
15 not subject to immediate withholding if the support order is

16 (1) being enforced by the agency and the obligor agrees to keep the
17 agency informed of the obligor's current employer and the availability of employment-
18 related health insurance coverage for the children covered by the support order until
19 the support order is satisfied and

20 (A) the agency has entered into its record a written agreement
21 between the obligor and the obligee that provides for an alternative
22 arrangement and income withholding has not been terminated previously and
23 subsequently initiated; the agency must also be a party to an agreement under
24 this paragraph if support has been assigned to the state; or

25 (B) the obligor or obligee demonstrates and the agency, in
26 compliance with applicable federal law, finds good cause not to require
27 immediate income withholding because it would not be in the best interests of
28 the child and, in a case involving the modification of a support order, the
29 obligor has made voluntary support payments under a court or agency order
30 and has not been in arrears in an amount equal to the support payable for one
31 month; in this paragraph, "in arrears" means failing to make a support payment

1 within 30 days of the monthly due date specified in the order;

2 (2) not being enforced by the agency and the obligor agrees to keep the
3 obligee informed of the obligor's current employer and the availability of employment-
4 related health insurance coverage for the children covered by the support order until
5 the support order is satisfied and

6 (A) the court finds that (i) a written agreement exists between
7 the obligor and the obligee that provides for an alternative arrangement and (ii)
8 income withholding has not been terminated previously and subsequently
9 initiated; the agency must also be a party to an agreement under this paragraph
10 if support has been assigned to the state; or

11 (B) the obligor or obligee demonstrates, and the court, in
12 compliance with applicable federal law, finds good cause not to require
13 immediate income withholding because it would not be in the best interests of
14 the child and, in a case involving the modification of a support order, the
15 obligor has made voluntary support payments under a court or agency order
16 and has not been in arrears in an amount equal to the support payable for one
17 month; in this paragraph, "in arrears" means failing to make a support payment
18 within 30 days of the monthly due date specified in the order; or

19 (3) an order that involves an obligor who is receiving social security
20 or other disability compensation that includes regular payments to the children who are
21 the subjects of the support order, except to the extent that the payments to the children
22 do not equal the child support due each month.

23 (n) In calculating the amount of child support to be withheld under an income
24 withholding order, the agency shall give credit to the obligor for the cost to the obligor
25 of medical and dental insurance for the children and educational payments for the
26 children to the extent that the insurance coverage and educational payments are
27 required in the applicable child support order and are actually paid for by the obligor.

28 * Sec. 12. AS 25.27.100 is amended to read:

29 Sec. 25.27.100. ALL PERSONS MAY USE AGENCY; FEES FOR
30 SERVICES. The agency shall provide aid to any person due child support under the
31 laws of this state upon application. Subject to (b) of this section, the [THE] agency

1 may, by regulation, impose a fee for services provided under this chapter.)

2 * Sec. 13. AS 25.27.100 is amended by adding a new subsection to read:

3 (b) To the extent allowed under federal law, for each payment made by the
4 agency to a custodian from money sent to the agency under an income withholding
5 order issued under this chapter, the agency shall impose a fee of \$5 on the custodian.
6 To the extent allowed under federal law, the agency shall subtract this fee from the
7 money it receives under the income withholding order before disbursing the balance
8 of the money to the custodian.

9 * Sec. 14. AS 25.27.140(b) is amended to read:

10 (b) If a support order has been entered, the agency may enforce the support
11 order utilizing the procedures prescribed in AS 25.27.062, 25.27.150. [AS 25.27.150]
12 and 25.27.230 - 25.27.270.

13 * Sec. 15. AS 25.27.150 is repealed and reenacted to read:

14 Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED
15 NOTICE AND HEARING. (a) In order to initiate income withholding for a support
16 order being enforced by the agency for which immediate income withholding is not
17 required under AS 25.27.062(a), the agency shall serve a notice of its intent to initiate
18 income withholding on the obligor. Notice under this subsection shall be served upon
19 the obligor by certified mail to the obligor's last known address, and service is
20 complete when the notice is properly addressed, certified, and mailed.

21 (b) The notice must state the amount of the overdue support that is owed, if
22 any, and the amount of income that will be withheld.

23 (c) The notice shall inform the obligor that the income withholding order will
24 take effect 15 days after the date on which the notice is served unless the obligor
25 requests a hearing within 15 days after the notice is served. If the obligor requests a
26 hearing, an income withholding order may not take effect until the conclusion of the
27 hearing.

28 (d) If the obligor requests a hearing, it shall be conducted under the
29 department's regulations for informal conferences and shall be held within 15 days of
30 the date of the request. The hearing may only be held to determine if there is a
31 mistake of fact that makes the income withholding order improper because the amount

1 of current or overdue support is incorrect, the identity of the obligor is inaccurate, or,
2 for initiated withholding based on AS 25.27.062(c)(3)(A), the alleged facts regarding
3 overdue payments or potential withdrawal of assets are incorrect. The order is not
4 subject to any other legal defenses. It is not a defense to an income withholding order
5 issued under AS 25.27.062(c)(2) that less than one full month's payment is past due
6 if at least one full month's payment was past due on the date notice was served under
7 this section.

8 (e) The appeals officer shall inform the obligor, either at the hearing or within
9 15 days after the hearing, whether or not the withholding will occur and of the date
10 on which it is to commence.

11 (f) If the appeals officer determines that withholding will occur, the obligor
12 may request a formal hearing, as provided in the department's regulations. The
13 income withholding order shall be issued and withholding shall begin under the
14 procedures in AS 25.27.062, whether or not the obligor requests a formal hearing,
15 unless the obligor posts security or a bond in the amount that would have been
16 withheld pending the outcome of a formal hearing.

17 * Sec. 16. AS 25.27.160(b) is amended to read:

18 (b) The notice and finding of financial responsibility served under (a) of this
19 section must state

20 (1) the sum or periodic payments for which the alleged obligor is found
21 to be responsible, calculated by taking into consideration the need of the alleged
22 obligee, the alleged obligor's liability to the state under AS 25.27.120 [AS 25.27.130]
23 if any, and the duty of support under the law;

24 (2) the name of the alleged obligee and the obligee's custodian;

25 (3) that the alleged obligor may appear and show cause in a hearing
26 held by the agency why the finding is incorrect, should not be finally ordered, and
27 should be modified or rescinded, because

28 (A) no duty of support is owed; or

29 (B) the amount of support found to be owed is incorrect;

30 (4) that if the person served with the notice and finding of financial
31 responsibility does not request a hearing within 30 days, the property and income of

1 the person will be subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270
2 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the
3 finding without further notice or hearing.

4 * Sec. 17. AS 25.27.170(b) is amended to read:

5 (b) If a request for a formal hearing under (a) of this section is made, the
6 execution under AS 25.27.062 and 25.27.230 - 25.27.270 may not [AS 25.27.230 -
7 25.27.270 SHALL] be stayed unless the obligor posts security or a bond in the
8 amount of child support that would have been due under the finding of financial
9 responsibility pending the decision on the hearing [, OR THE DECISION OF A
10 COURT, IF APPEALED]. If no request for a hearing is made, the finding of
11 responsibility is final at the expiration of the 30-day period.

12 * Sec. 18. AS 25.27.170(d) is amended to read:

13 (d) The hearing officer shall determine the amount of periodic payments
14 necessary to satisfy the past, present, and future liability of the alleged obligor under
15 AS 25.27.120 [AS 25.27.130], if any, and under any duty of support imposable under
16 the law. The amount of periodic payments determined under this subsection is not
17 limited by the amount of any public assistance payment made to or for the benefit of
18 the child.

19 * Sec. 19. AS 25.27.170(f) is amended to read:

20 (f) If the alleged obligor requesting the hearing fails to appear at the hearing,
21 the hearing officer shall enter a decision declaring the property and income of the
22 alleged obligor subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270
23 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the
24 notice and finding of financial responsibility.

25 * Sec. 20. AS 25.27.180(b) is amended to read:

26 (b) Liability to the state under AS 25.27.120 [AS 25.27.130] is limited to the
27 amount for which the obligor is found to be responsible under (a) of this section.

28 * Sec. 21. AS 25.27.230(a) is amended to read:

29 (a) At the expiration of 30 days from either (1) the date of disribution of an
30 income withholding order under AS 25.27.062 [SERVICE OF NOTICE UNDER
31 AS 25.27.150], or (2) the date of service of a notice and finding of financial

1 responsibility under AS 25.27.160, the agency may assert a lien upon the real or
2 personal property of the obligor. in the amount of the obligor's liability.

3 * Sec. 22. AS 25.27.230(c) is amended to read:

4 (c) The lien shall attach to all real and personal property of the obligor and be
5 effective on the date of recording of the lien with the recorder of the recording district
6 in which the property attached is located. A lien against earnings shall attach and be
7 effective upon filing with the recorder of the recording district in which the employer
8 does business or maintains an office or agent for the purpose of doing business. A
9 lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau
10 against a limited entry permit issued under AS 16.43 is considered to have been
11 filed against the permit in all recording districts in which the permit holder uses
12 the permit.

13 * Sec. 23. AS 25.27.250(a) is amended to read:

14 (a) At the expiration of either (1) 15 [30] days from the date of service of an
15 income withholding order under AS 25.27.062 or notice under AS 25.27.150, or (2)
16 30 days from the date of service of a notice and finding of financial responsibility
17 under AS 25.27.160, the agency may issue to any person, political subdivision, or
18 department of the state an order to withhold and deliver property.

19 * Sec. 24. AS 25.27.250(b) is amended to read:

20 (b) All real or personal property belonging to the obligor is subject to an order
21 to withhold and deliver, including, but not limited to, earnings that are due, owing, or
22 belonging to the debtor. In calculating the amount to be withheld and delivered
23 under an order issued under this section, the agency shall give credit to the
24 obligor for the cost to the obligor of medical and dental insurance for the children
25 and educational payments for the children to the extent that the insurance
26 coverage and educational payments are required in the applicable child support
27 order and are actually paid for by the obligor.

28 * Sec. 25. AS 25.27.250(f) is amended to read:

29 (f) If a person, political subdivision, or department of the state upon whom
30 service of an order to withhold and deliver has been made possesses property due,
31 owing, or belonging to the obligor, that person, subdivision, or department shall

1 withhold the property immediately upon receipt of the order and shall deliver the
2 property to the agency [UPON DEMAND] after the expiration of the 14-day period
3 from the date of service of the order or expiration of the period specified in
4 AS 25.27.062(e), whichever is earlier. The agency shall hold property delivered
5 under this subsection in trust for application against the liability of the obligor under
6 AS 25.27.062, 25.27.120, or 25.27.160 [AS 25.27.130] or for return, without interest,
7 depending on final determination of liability or nonliability under this chapter. The
8 agency may accept a good and sufficient bond to secure payment of past, present,
9 and future support conditioned upon final determination of liability in lieu of
10 requiring delivery [DELIVERING] of property under this subsection.

11 * Sec. 26. AS 25.27.250 is amended by adding a new subsection to read:

12 (j) A person, political subdivision, or department that fails to comply with an
13 order to withhold and deliver served under this subsection is subject to penalties under
14 AS 25.27.260. A person, political subdivision, or department may, for each payment
15 made under an order to withhold and deliver, deduct ~~\$~~ from other wages or salary
16 owed to the obligor.

17 * Sec. 27. AS 25.27.255(a) is amended to read:

18 (a) The agency shall pay to the obligee all money recovered by the agency
19 from the obligor under an income withholding order except for court costs and money
20 assigned to the agency under AS 25.27.120 - 25.27.130. However, if there is more
21 than one income withholding order under this chapter against an obligor, the
22 agency shall allocate amounts available for withholding in a manner that gives
23 priority to current support up to the limits imposed under 15 U.S.C. 1673(b)
24 (sec. 303(h), Consumer Credit Protection Act). Notwithstanding the priority given
25 to current support, the agency shall establish procedures for allocation of support
26 among obligees so that in no case will the allocation result in a withholding order
27 for one obligee not being implemented.

28 * Sec. 28. AS 25.27.260 is amended to read:

29 Sec. 25.27.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH
30 AN ORDER OR LIEN. If a [ANY] person, political subdivision, or department of the
31 state (1) fails to make an answer to an order to withhold and deliver within the time

1 prescribed in AS 25.27.250; (2) fails or refuses to deliver property in accordance with
2 an order issued under AS 25.27.250; (3) pays over, releases, sells, transfers, or conveys
3 real property subject to a lien recorded under AS 25.27.230 to or for the benefit of the
4 obligor or any other person; (4) fails or refuses to surrender upon demand property
5 attached; or (5) fails or refuses to honor an assignment of wages or an income
6 withholding order under AS 25.27.062 that was served [PRESENTED] by the agency
7 through personal service by a process server or through certified mail, return
8 receipt requested, the person, political subdivision, or department of the state is liable
9 to the agency in an amount equal to 100 percent of the amount constituting the basis
10 of the lien, order to withhold and deliver, attachment, or withholding of wages or
11 income, together with costs, interest, and reasonable attorney fees.

12 * Sec. 29. AS 25.27.260 is amended by adding a new subsection to read:

13 (b) A person, political subdivision, or department of the state that ~~intentionally~~
14 fails or refuses to honor a properly served income withholding order under
15 AS 25.27.062 that is not being enforced by the agency is liable to the obligee in an
16 amount equal to 100 percent of the amount ordered to be withheld together with costs,
17 interest, and reasonable attorney fees.

18 * Sec. 30. AS 33.30.131(b) is amended to read:

19 (b) Unless alternative arrangements are expressly approved by the
20 commissioner, when a prisoner is employed outside a correctional facility as part of
21 a prerelease or short-duration furlough program, or as part of serving time in a
22 correctional restitution center under AS 33.30.151 - 33.30.181, the earnings of the
23 prisoner shall be delivered to the commissioner. If an employer transmits the earnings
24 to the commissioner, the employer has no liability to the prisoner for the earnings. The
25 commissioner shall disburse the earnings of the prisoner, in an order determined
26 appropriate, under procedures adopted by the commissioner to

27 (1) pay for the room, board, and personal expenses of the prisoner in
28 an amount or at a rate determined by the commissioner;

29 (2) pay any restitution or fine ordered by the sentencing court;

30 (3) reimburse the state for an award made for violent crimes
31 compensation under AS 18.67 arising out of the criminal conduct of the prisoner;

1 (4) pay a civil judgment arising out of the criminal conduct of the
2 prisoner; and

3 (5) support the dependents of the prisoner, and to provide child support
4 payments as required by AS 25.27 [AS 25.27.062].

5 * Sec. 31. AS 25.27.255(b), 25.27.255(c), and secs. 2 and 5, ch. 75, SLA 1991, are
6 repealed.

7 * Sec. 32. TRANSITIONAL PROVISION. (a) Notwithstanding other provisions of this
8 Act, in the case of a support order issued by a court on or after January 1, 1994, and before
9 the effective date of this Act, the court shall, upon filing of a motion by an obligee who is the
10 subject of the support order, issue an immediate income withholding order for support,
11 regardless of whether support payments are in arrears, unless

12 (1) a written agreement exists between the obligor and the obligee that
13 provides for an alternative arrangement;

14 (2) the obligor demonstrates, and the court finds, that there is good cause not
15 to require immediate income withholding; or

16 (3) the support order is being enforced by the child support enforcement
17 agency.

18 (b) An immediate income withholding order issued under this section is governed by
19 AS 25.27, as amended by this Act, and shall be treated as an immediate income withholding
20 order issued under AS 25.27.062(a).

21 * Sec. 33. This Act takes effect on the 10th day after the date it becomes law under
22 AS 01.10.070(a).

SB 190

3-15-94

Article MOVED

ADOPTED

AMENDMENT
CSSB19 0 (JUD)
8-LS1001\K

Amend Page 3 Section 5, line 26

Delete: in the [order withholding]...
Insert: in the withholding order...

take out

Amend Page 6 Section 12, Line 20 to read

(b) If a request for a formal hearing under (a) ... ✓

The first change is made to make the term proper.

The second change is suggested to ensure that the obligor has been through the informal process, has had the Child Support Enforcement Division already review the case and is appealing that decision.

SENATE FINANCE
COMMITTEE

Amendment Number: ①

Bill Number: SB 190

Sponsor: _____ Date: 3/17/94

Logged In By: (Signature)

REQUESTED BY REVENUE

Kertula MOVED
ADOPTED
(Sharp opposed)

Amendment

OFFERED IN SENATE
TO: CSSB 190(JUD)

BY SENATOR PEARCE

Page 8, line 24:

Following "25.27.255(c)"

Insert "and secs. 2 and 5, ch. 75, SLA 1991,"

*LANGUAGE
BEING REPEALED
BY AM #2*

•Sec. 2. AS 25.27.075 is repealed and reenacted to read:

Sec. 25.27.075. EMPLOYMENT INFORMATION.

(a) An Employer of an obligor or a labor union of which an obligor is member shall provide to the agency information requested regarding the obligor's employment, wages or salary, and location.

(b) An employer of an obligor or a labor union of which an obligor is a member that knowingly violates this section is liable for a civil penalty of not more than \$1,000.

Sec. 5. Section 2 of this Act takes effect January 1, 1995.

SENATE FINANCE
COMMITTEE

Amendment Number: 42

Bill Number: SB 190

Sponsor: Pearce Date: 3/14/94

Logged In By: [Signature]