

ALASKA LEGISLATURE

2086

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

**WESTERN ALASKA FISHERIES DISASTER - 1998
FISHERIES PERFORMANCE DATA SUMMARY**

Disaster Area?	Community/Area	run forecast or goal	run % of forecast	1998 catch	Comparable Catch Year	% of 20 yr avg.	% of 10 yr avg	Total 1998 x-vessel value	% of 10 yr avg value	Comparable value year
	Kotzebue Area: Chum			55,907	1968	25%		\$ 70,587	8%	1968
x	Yukon River: Chinook	88-108,000		43,500	1959	41%				
	Summer Chum	500-800,000	5%	28,800		4%				
x (portion)	Tanana River: Summer Chum			28,700	1968					
	Chinook				1952					
	Goodnews/Platinum: Chinook	3,500	109%	3,640			138%	\$ 193,600	47%	
	Sockeye	25,000	160%	27,125			70%			
	Chum	15,000	200%				80%			
	Coho		~90%	22,000			110%			
	Quinhagak: Chinook					115%				
	Sockeye					70%				
	Chum					82%				
x	Kuskokwim River		66%	200,000						
x	Stebbins/St. Michael: Chinook	80-108,000		44,000	1959			\$ 1,900,000	29%	
	Chum	500-800,000	5%	29,000						
x	Bristol Bay	30,000,000	71%	9,700,000	1977	73%				
x	Aleutians East - N. Side			1,180,306			39%	\$ 5,669,520	30%	
	Aleutians East - S. Side			10,885,827			91%	\$ 17,673,297	62%	
	Aleutians East North and South									
	Lower Cook Inlet: All Salmon		47%	1,463,005	1993	102%	105%			
	Upper Cook Inlet; All Salmon			1,995,009	1979	36%	40%	\$ 9,600,000	<20%	1975
	Upper Cook Inlet; sockeye		74%	1,197,000	1979	29%	25%			
	Tyonek - N. District; coho & sockeye			91,450	1978	38%	38%			
	Tyonek - N. District; Susitna R. sockeye			59,062	1978	46%	46%			

Western Alaska Salmon Disaster - Appropriation

FY2000 Request: 7,000,000

Reference No: 7129

Historical Category: Development
Location: Bristol Bay Borough
Election District: Bethel, Dillingham
Estimated Project Dates: 7/1/1999 - 6/30/2002

Project Type: Planning
Contact: Doug Mecum
Contact Phone: (907)465-4210

Brief Project Summary and Statement of Need:

The funds provided will allow the Department of Fish and Game to conduct various research projects in Western Alaska. Research is required due to declining salmon runs that have occurred in Western Alaska rivers in 1997 and 1998.

Funding Request:

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	Total
Fed Rcpts	\$7,000,000						\$7,000,000

Total Funds:	\$7,000,000	0	0	0	0	0	\$7,000,000
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<input type="checkbox"/> State Match Required	<input checked="" type="checkbox"/> One-Time Project	<input type="checkbox"/> Phased Project	<input type="checkbox"/> On-Going Project
<input type="checkbox"/> 0% = Minimum State Match % Required	<input type="checkbox"/> Amendment	<input type="checkbox"/> Mental Health Bill	

Operating & Maintenance Costs:

	Amount	Staff
Operating Impact in FY2000	0	0
One-Time Startup Costs	0	
Additional Estimated Annual O&M	0	0

Additional Information:

PH. NO. 9074656078 02-26-99 001198 P. 10

Western Alaska Salmon Disaster Cont.

Large and unanticipated declines of salmon runs occurred in Western Alaska rivers in 1997 and 1998. A long-term research program has been proposed to address the responsiveness of the State's harvest management and stock monitoring programs to changes in productivity. Aspects of responsiveness include: 1) being able to detect and manage fisheries on weak salmon runs that occur during periods of reduced productivity; 2) evaluating the appropriateness of current management policies and escapement goals during regimes of lower productivity; and 3) improving preseason forecasts of abundance for industry planning and establishing quotas for the South Alaska Peninsula June fisheries.

Because a fishery disaster was declared for Bristol Bay Area and the Kuskokwim and Yukon Rivers, the Western Alaska Salmon Fisheries Disaster Mitigation Research Plan (WASFDMP) should focus on the salmon stocks on which targeted fisheries occur. These stocks include Bristol Bay chinook and sockeye salmon, Kuskokwim River coho and chum salmon, and Yukon River chinook and fall chum salmon.

Ideally, a fishery monitoring program, responsive to varying regimes of productivity, includes the following elements:

1. Stock Assessment
2. Abundance Based Fishery Management
3. Preseason Forecast of Abundance

Research questions were formulated with the understanding: 1) the specific research projects are new; 2) the research must be completed within a 3-5 year term; and 3) the research results in a specific product, or knowledge that could be implemented after the term on Western Alaska Fisheries Disaster Research, without additional funding.

Bristol Bay Sockeye and Chinook Salmon Specific Projects:

- Evaluation of Bristol Bay sockeye salmon smolt enumeration techniques and development of a new sonar system for enumerating smolts.
- Juvenile sockeye salmon assessment and lake limnology.
- Evaluation of inriver test fishing projects.
- Evaluation and improvement of the Nushagak River sonar project.
- Lower Togiak River weir to enumerate salmon escapement.
- Genetic stock identification.
- Development of video technology for escapement enumeration at tower sites.
- Distribution and relative abundance of sockeye and chinook salmon in unmonitored river systems.

Kuskokwim River Chum and Coho Salmon Specific Projects:

- Develop chum and coho escapement enumeration on key tributaries.
- Conduct a large-scale radio telemetry study to determine escapement distribution among tributaries.
- Develop a main river sonar project for the Kuskokwim River.

Yukon River Chinook and Fall Chum Salmon Specific Projects:

- Improve the species apportionment sampling at the Pilot Station Sonar.
- Develop a chinook escapement at Pilot Station based on mark/recapture.
- Conduct a large-scale radio telemetry study to determine chinook escapement distribution among tributaries.
- Sample the Yukon River subsistence harvest for age, sex, and length.
- Establish weir counting projects on the Andreafsky and Nulato Rivers.

Research Questions Relating to Western Alaska Salmon Specific Projects:

Department of Fish & Game
Project Page 2

Western Alaska Salmon Disaster Cont.

-
- Genetic Stock Identification of the Russian sockeye and chinook salmon stocks.
 - Stock Identification of sockeye and Chinook salmon catches of the salmon drift net fishery in the Russian zone using genetics and/or scale patterns.
 - Develop a pre-season forecast of Western Alaska chum salmon runs.

Department of Fish & Game
Project Page 3

Page: 3



COVER SHEET

Anchorage Legislative Information Office
Office - (907) 269-0111 Fax - (907) 269-0229

Dist by
Senator
Parnell
by Request

To: Senate Luncheon

Atten: _____ Fax: _____ Phone: _____

From: _____ Phone: _____

Instructions: Information from Andree McLeod
for use @ teleconf @ 9:00

Sent: _____ Date: 3-8 Time: _____

Disposal of Original: Discard: _____ Hold for Pickup: _____

Number of Pages: _____ (counting cover sheet)

Transmitted by: Jdv

Distributed by - Senator Parnell by Request

TONY KNOWLES, GOVERNOR

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

P.O. BOX 110020
JUNEAU, ALASKA 99811-0020
PHONE: (907) 465-4660
FAX: (907) 465-3008

November 12, 1998

Sen. Randy Phillips
P.O. Box 142
Eagle River, AK 99577

Dear Sen. Phillips:

Please allow me to respond to your September 11, 1998 request of Dr. John Middaugh, the state epidemiologist, for an accounting of all money received by the state from the Centers for Disease Control and Prevention, and how and where it was spent. The Department of Health and Social Services has asked that OMB, because of our statewide perspective, supervise the collection of this data to make sure that you receive a complete answer. I asked the CDC to provide that information. Enclosed please find a report from the CDC detailing all grants to agencies within the state for the federal fiscal year 1998.

Two grants, numbers 13 and 21 on the list, grants 011991 and 015895 respectively, are noted only as being received by the State of Alaska. The Department of Health and Social Services administers both of these grants.

If I can be of further assistance, please feel free to call me at 465-4698.

Sincerely,



Dana Owen
Budget Analyst

cc: Annalee McConnell

Alaska State Legislature



State Capitol
Juneau AK
99801-1182

Official Business

MEMORANDUM

March 4, 1999

To: House and Senate Finance Subcommittee Chairs

From: Senator Sean Parnell, Co-Chair Senate Finance Committee
Rep. Eldon Mulder, Co-Chair House Finance Committee

Re: Establishing Missions for Divisions

To progress towards results-based budgeting, we are focusing the budget subcommittees' efforts on writing the overarching mission of each department and writing a mission for each division of the department. We are attaching a list with different divisions assigned to individual subcommittee chairs. Besides drafting the overarching mission for the department and each division, the subcommittees are responsible for evaluating the alignment of each division's mission with the department and making recommendations regarding divisions with missions that are not aligned with the department's mission.

We urge you not to let the programs within a division drive you to a mission statement for a particular division. Rather, evaluate whether any Constitutional or statutory authority exists for the division and write mission statements that track existing law. If a division was created purely by Executive Order or by regulation, evaluate the basis for the EO or regulation and determine whether its reason for being is justified under existing law and whether the division's mission is aligned with the overarching mission of the department.

Deadlines: Please have all missions (and refinements to existing missions and measures from SB 49) in draft form for subcommittee review by March 15, 1999. Then, have final missions adopted by the subcommittee by March 23, 1999. The missions and measures your subcommittee adopts will then be presented to the respective Finance Committees for consideration and adoption. Once this is accomplished, the missions and measures will be rolled into a substantive bill. Deadlines and allocations for closeouts on appropriations will be set at a later time.

Please feel free to call the Co-Chairs offices with any questions.

3/4/99

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
SUPPORT SERVICES DIVISION

TONY KNOWLES, GOVERNOR

400 WILLOUGHBY AVE. #500
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2406
FAX: (907) 465-3886

March 3, 1999

*Dist by Sen. Parnell
Sec. 2*

MAR 03 1999

The Honorable Sean Parnell
Co-Chairman Senate Finance Committee
Alaska State Capitol - Room 518
Juneau, AK 99801-1182

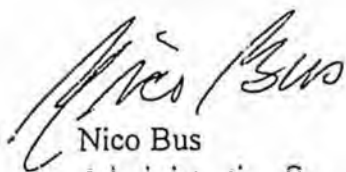
Dear Senator Parnell:

Attached is additional backup for the FY99 Supplemental requests for the following sections:

- Sec. 2, Disaster Relief Fund - Southeast Storm - \$2,730,000
- Sec. 2, Disaster Relief Fund - Endicott Mountain Disaster - \$278,100
- Sec. 14, Recorder's Office - \$92,000 Program Receipts

If you are interested in receiving more details please let me know.

Sincerely,



Nico Bus
Administrative Services Manager

Attachments

- cc:
- Senate Finance Committee members
 - Jean Davis, DNR
 - Connie Nescoda, Budget Analyst, OMB
 - Jim Hauck, Legislative Fiscal Analyst
 - Sharon Young, State Recorder
 - Dave Liebersbach, Director DES

1998 Southeastern Storm Disaster

AR 35603

Top Level PR 05334

Applicant	DSR#		CC	PR	Auth Amount
Aware Center			Admin	05335	
	A00244	Repair retaining wall @ entrance			1,950.00
	A00245	Fill holes, remove debris			20,000.00
	Subtotal				21,950.00
City of Haines			Admin	05336	
	A00256	Emergency repair @ Young rd, Bjornstad Dr, Muncaster Rd, Oslund Dr, Spruce Grove rd, 4th & 6th Avenues.			10,704.00
	A00262	Replace culverts on four road crossings in Highland Estate subdivision			13,420.00
	A00263	Repair 6th Avenue hole, replace culvert			7,700.00
	A00264	Repair Spruce grove rd, Sawmill Creek culvert			7,780.00
	Subtotal				39,604.00
Natural Resources			Admin	05337	
	A00240	Remove debris on Porcupine Rd, 1/2 mile past Porcupine Bridge			4,000.00
	A00241	Replace cribbing @ MP 9.3 Kelsall Rd 100.			20,000.00
	A00242	Repair Kelsall Rd 300 MP 1.6 & 3.8 off Haines Hwy MP 27			22,000.00
	A00243	Repair Kelsall Rd 100, 120, 200,300 @ Haines Hwy MP 27			42,737.00
	A00246	Repair Perseverance trail in first 1 1/2 miles		05338	134,500.00
	A00247	Reroute Sheep Creek trail away from creek		05339	55,000.00
	A00248	Repair Mt. Roberts trail, 4 switchbacks along lower trail		05340	5,000.00
	Subtotal				283,237.00
DOT/PF			Admin		
	A00251	Emergency reinstall culverts on Upper Ln, Moose Ln, Sunshine Ln off Piedad Rd.			4,500.00
	A00252	Replace culverts @ Upper lane, Moose lane, Sunshine lane off Piedad Rd.			15,800.00
	A00249	Emergency repairs on Haines Hwy @ MP 6, 6.5, 7, 17			1,136.00
	A00250	Repair Haines Hwy @ MP 6, 6.5, 7, 17			13,470.00
	A00253	Emergency repairs on Lutak rd @ MP 2.5, 3.5, 4, 4.5			4,163.00
	A00254	Permanent repairs on Lutak rd @ MP 2.5, 3.5, 4, 4.5			27,600.00

	A00257	Remove debris @ Aware Center, Old Glacier Hwy.			6,480.00
	A00258	Remove debris @ Twin Lakes, Old Glacier Hwy.			2,300.00
	A00259	Remove debris @ Mapco intersection, Old Glacier Hwy.			4,410.00
	A00260	Remove debris @ .7 & 1.8 m N. Douglas Hwy, Juneau			1,350.00
	A00261 A00266	Repair 1.4 mile Fritz Cove Rd, Juneau			60,000.00
	FHWY	State MATCH required			50,000.00
		DOT expenses requiring State funds -not eligible FHWY			191,209.00
	FHWY	Application Federal Emergency Response \$1,513,800 - 10/29/98	(originally DES included - \$1,300,000 estimate)		1,108,057.00
FISH & GAME					
	A00237	Replace damaged planks on weir deck.			2,851.00
	A00238	Remove debris from upstream side of weir			2,000.00
	A00239	Replace lost raft, nets & field equipment @ Tahini River Camp			2,100.00
	A00265	Holgates Fish Ladder			5,000.00
					11,951.00
AK MARINE HWYS.					
	A00255	Haines terminal repairs			9,237.00
		Permanent work - spring			20,763.00
TLINGIT-HAIDA HEADSTART					
		Building repair			2,792.00
CHILKAT INDIAN COMM.					
		Klawock - water tower, lift station			25,000.00
HAINES BOROUGH					
		Road Repair			30,000.00
		Landfill repair			75,000.00
DEPT. OF CORRECTIONS					
		Access Road			331,200.00
Public Assistance Total					2,200,000.00
Administration				N/A	155,000.00
IFG Total				N/A	375,000.00
Disaster Totals					2,730,000.00

Note: Damage Survey Reports are estimates

Applicant	DSR#		CC	PR	Auth Amount	Exp by DMVA	Exp by Applicant	Total Exp	Encumbered	Advanced	Balance	EN
DOT/PP		Wiseman/Dalton Area	Admin	05311	3,182.00				3,182.00		0.00	
COA99	A00232	Allakaket Runway Lighting	09554866-99	05312	7,000.00		0.00	0.00	7,000.00		0.00	RS 0980019
COA98	A00233	Coldfoot to Atigun Pass Rd. Emergency Repairs	09554866-98	05318	39,606.00		39,606.00	39,606.00	0.00		0.00	
COA99	A00234	Coldfoot to Atigun Pass Rd. Permanent Repairs	09554866-99	05319	62,489.00		0.00	0.00	62,489.00		0.00	
Subtotal					112,277.00	0.00	39,606.00	39,606.00	72,671.00	0.00	0.00	
DCRA / DOE		Huslla Bulk Fuel Tanks	Admin	05313	9,500.00				9,500.00		0.00	
	A00219	Power Plant Tank Farm	09554866-98	05314	75,000.00			0.00	75,000.00		0.00	RS 0991001 Ln 2
	A00220	City Tank Farm	09554866-98	05315	350,000.00		78,481.00	78,481.00	271,519.00		0.00	RS 0991001 Ln 1
Subtotal					434,500.00	0.00	78,481.00	78,481.00	356,019.00	0.00	0.00	
Evansville Tribal Council			Admin	05316	1,020.00				1,020.00		0.00	EN 0990001 Ln 2
EVC06091	A00221	Repair Tobuk Lano	09554866-98	05317	45,224.00		39,755.45	39,755.45	5,468.55	0.00	0.00	EN 0990001 Ln 1
Subtotal					46,244.00	0.00	39,755.45	39,755.45	6,488.55	0.00	0.00	
Community of Wiseman			No Admin	05320	0.00							
DOT/PP	A00235	Wiseman Creek berm repairs	09554866-98	05321	125,000.00	0.00	11,433.00	11,433.00	113,567.00		0.00	RS 099
Subtotal					125,000.00	0.00	11,433.00	11,433.00	113,567.00	0.00	0.00	
Public Assistance Total					718,021.00	0.00	169,275.45	169,275.45	648,745.55	0.00	0.00	

800,000.00

Administration			09554865	N/A	21,979.00	0.00	5,623.00	5,623.00		0.00		
			09554865	N/A								
			09554865	N/A								
Admin Total					21,979.00	0.00	5,623.00	5,623.00	0.00	0.00	16,356.00	

IFG Total				N/A	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
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Disaster Totals					740,000.00	0.00	174,898.45	174,898.45	548,745.55	0.00	16,356.00	
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FY99 Recorder's Office Supplemental Detail:

Additional cost as a result of significant unanticipated workload increases in refinancing and mining claims.

EXPENDITURES:

Anchorage	Program Service Aide(welfare-to-work)	9/14/98 ->	\$ 7,900	Mailback/copying
Palmer	Program Service Aide(Welfare-to-work)	9/1/98 ->	\$ 8,240	Mailback/copying
Palmer	Recorder non-perm		\$ 5,477	Actual Recording
Fairbanks	Program Service Aide(Welfare-to-work)	9/3/98 ->	\$ 7,670	Mailback/copying
Total Personal Services			\$29,287	

Generation of film for new mortgage companies \$ 35,000 (received by state GFPR)

Supplies, postage, copiers, and filming \$ 27.713
 Supplemental = \$ 92.000 GF Program Receipts

Additional cost for DP network charges in the DP Chargeback project and ~\$12,000 of overtime will have to be absorbed from vacancies.

This supplemental will be paid for by the ~\$535,000 excess revenues generated in this Fiscal Year:

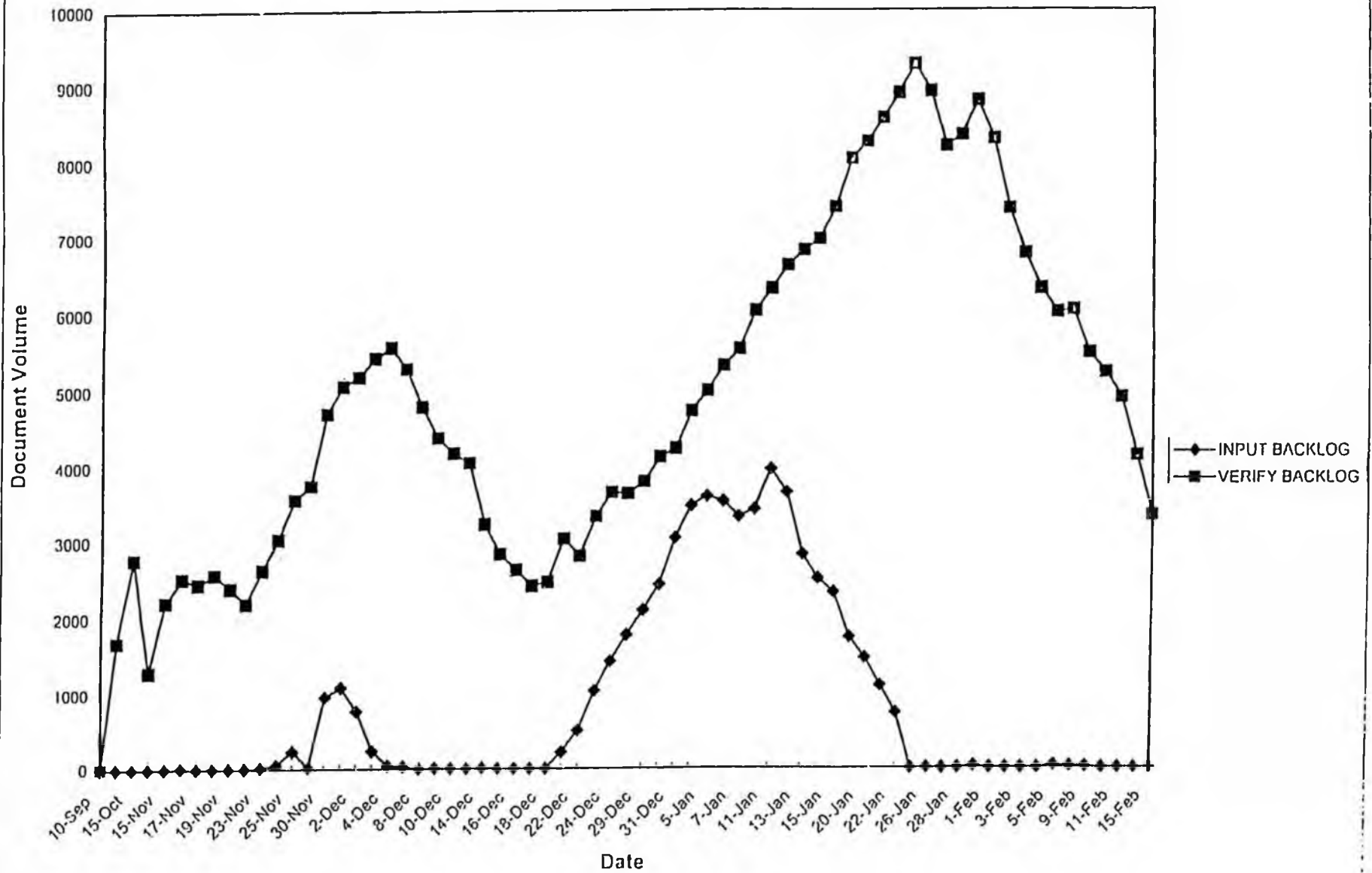
FY98 revenues generated	\$4,465,000
FY99 revenues estimated	\$5,000,000 (total exp. budget =\$2,314.3)
Unanticipated receipts	\$ 535,000

Notes

In FY99 the number of documents to be recorded increased 16% over FY98
 In FY99 the number of records recorded increased 17% over FY98
 In FY99 the number of pages filmed increased 19% over FY98

- Statutory requirement for recording is within 24 hours – Palmer, Anchorage, and Fairbanks could no longer meet these requirements and were thousands of documents behind in input creating bottlenecks in refinancing and mortgage closures.
- Statutory requirement for mailback is 30 days – at the time we hired extra staff we were as much as five months behind.
- Current status is that we are still behind in Anchorage(2/12/99) and Palmer(1/19/99) in verifying our data input but with the new recording system we have caught up on our input backlogs (see attached graphs for Anchorage and Palmer).

BACKLOG SUMMARY - ANCHORAGE



New indexing system effective 4-Jan

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

February 26, 1999

The Honorable Sean Parnell
Co-chair, Senate Finance Committee
State Capital
Juneau, Alaska 99811

Re: Judgments and Claims –
Senate Bill No. 83, Sec. 4

Dear Senator Parnell:

At the Senate Finance Committee meeting on February 23, 1999, Senator Donley requested that I provide the committee an answer to question 5 on the Department of Law's judgments and claims form for each of the items for which an appropriation is sought in the FY99 supplemental budget bill (Senate Bill No. 83). The backup for Sec. 4 of the bill includes this form for each judgment/claim. However, some of the forms did not include an answer to question number 5, and some of the answers to that question were quite brief. This letter provides the information requested by the committee. I have also included a "Background" discussion for each case to give you the context for the recommendations.

Question 5 reads as follows: **Any recommendations concerning cases of this type in the future?**

1. *State CSED v. Barnette*

Background: This case involved the entry of a default judgment against a child support obligor. It was determined that the default was wrongly entered because the obligor was in the military serving on a military base at the time, and federal law prohibits entry of a default judgment against a person in the active military until an attorney is appointed.

Recommendations for future cases: The state needs to be careful when seeking a default judgment to be sure all requirements of the law have been met.

CORRECTION

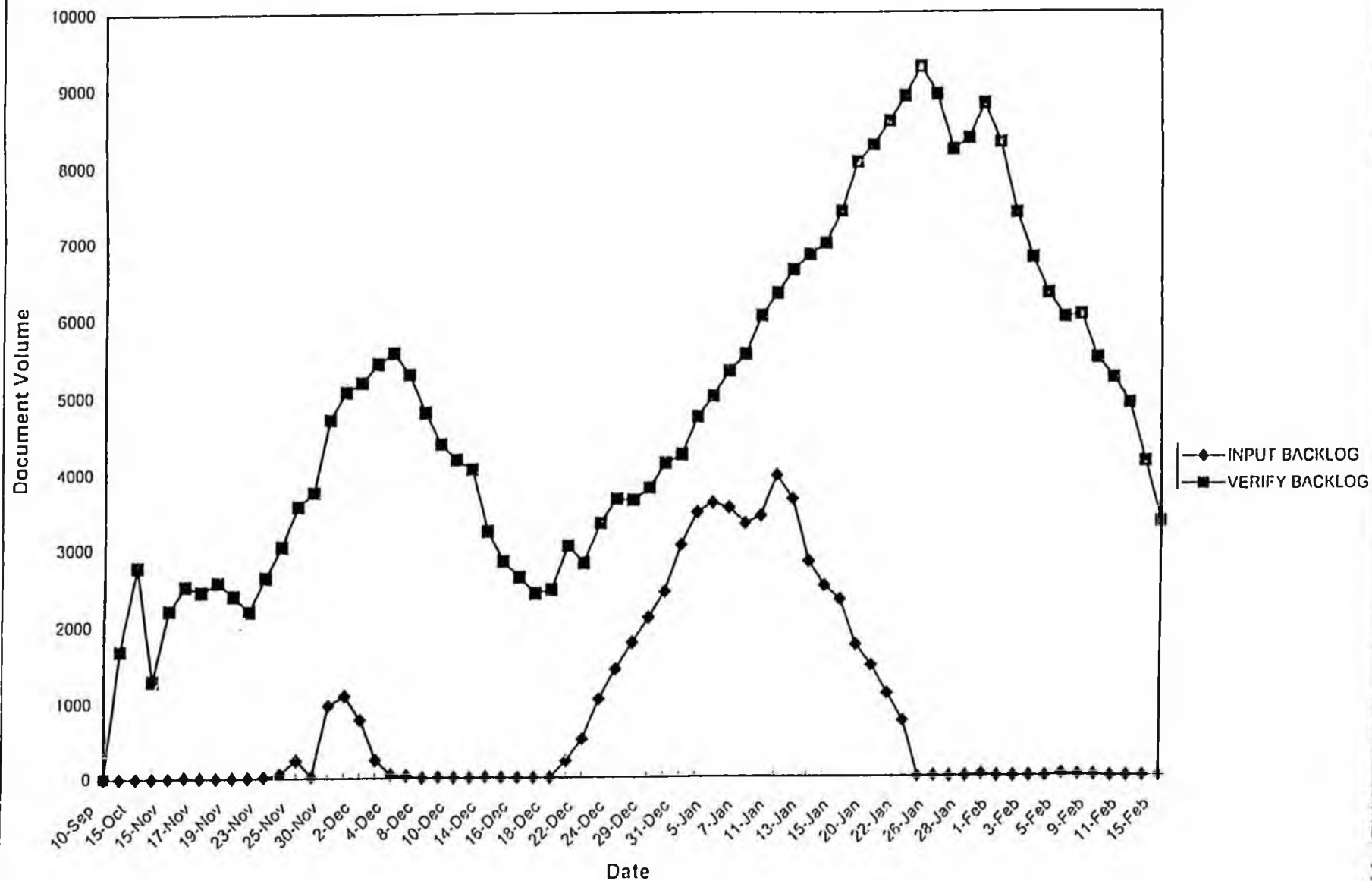
THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

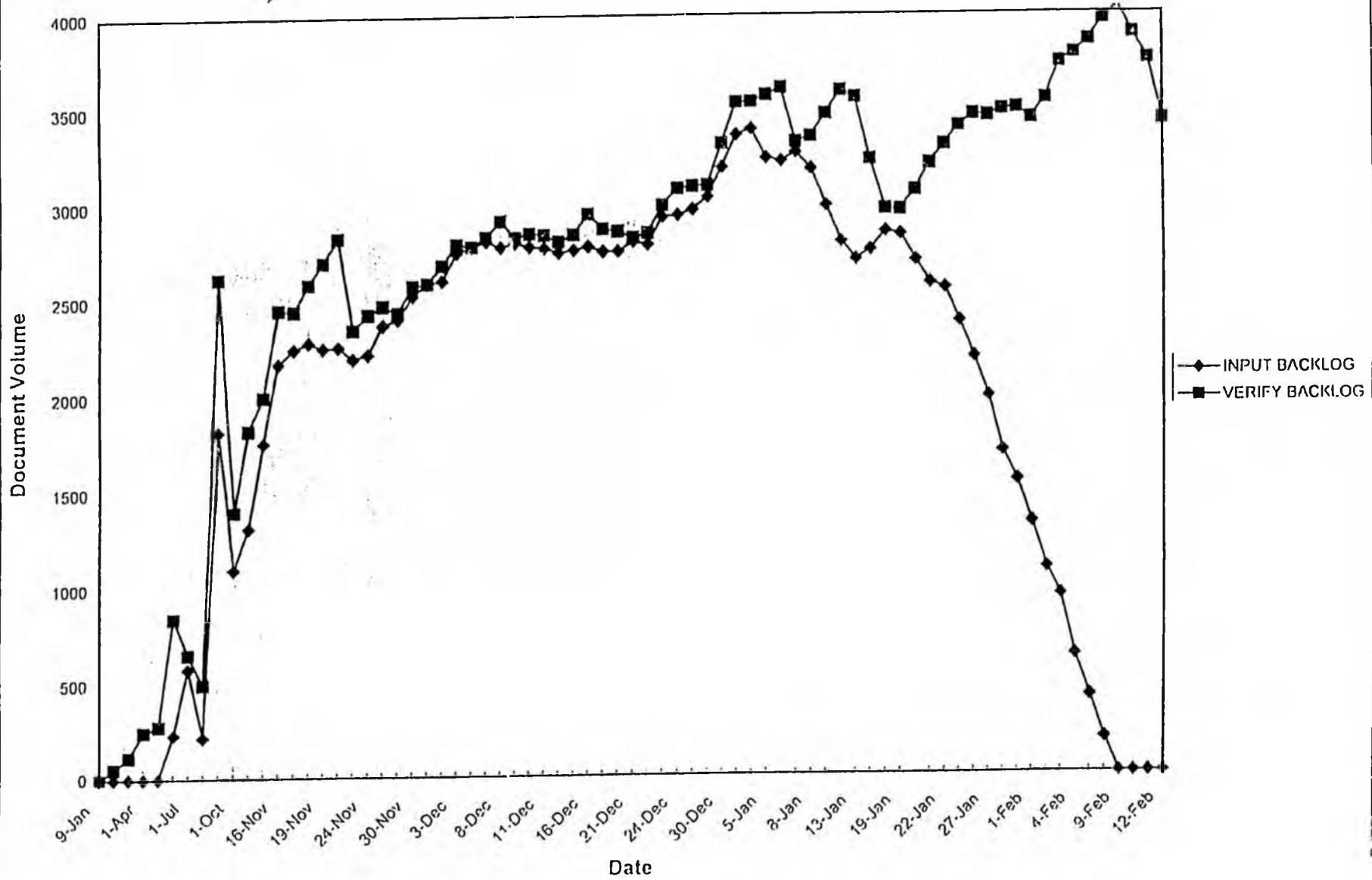
Central Microfilm Services
Department of Education & Early Development
State of Alaska

BACKLOG SUMMARY - ANCHORAGE



New indexing system effective 4-Jan

BACKLOG SUMMARY - PALMER



New indexing system effective 4-Jan

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

February 26, 1999

The Honorable Sean Parnell
Co-chair, Senate Finance Committee
State Capital
Juneau, Alaska 99811

Re: Judgments and Claims –
Senate Bill No. 83, Sec. 4

Dear Senator Parnell:

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Recommendations for future cases: The state needs to be careful when seeking a default judgment to be sure all requirements of the law have been met.

2. *State CSED v. Savage*

Background: In this case CSED sought to collect arrears and modify a child support order in Alaska under the Uniform Interstate Family Support Act even though neither the obligor, the mother, or the child lived in Alaska. The superior court ruled that Alaska could collect the arrears but could not modify the ongoing child support obligation.

Recommendations for future cases: This type of case will not recur. CSED has changed its policy concerning modification of child support orders, and now seeks modification in the state where the obligor lives.

3. *Dissolution of Marriage -- Hendren*

Background: In this case, the father had custody under the parties' dissolution. Later the father sent the child to live with the mother. The mother then applied for and received public assistance. CSED sought reimbursement from the father for public assistance received by mother. The superior court entered judgment against the father, and the Alaska Supreme Court reversed, holding that the state must modify the support order in order to obtain reimbursement.

Recommendations for future cases: We have advised CSED that when they identify cases where a non-custodial parent receives public assistance for a child, they should immediately refer the case to Law. We will then move for modification of the support order. By doing so, we can minimize the impact of the court's decision on the ability of the state to obtain reimbursement for public assistance.

4. *Kachemak Bay Conservation Society v. State*

Background: This was a challenge to oil and gas lease sale 85A. While this case was pending, the Alaska Supreme Court decided the lease sale 78 case, in which the court ruled that DNR must analyze the cumulative effects of a project in making its best interest findings and consistency determination. The lease sale 85A was then remanded to DNR for that analysis. The superior court found that the Kachemak Bay Conservation Society, a public interest litigant, was the prevailing party because the cumulative effects issues was the central issue in the case.

Recommendations for future cases: In the lease sale 78 case, the Alaska Supreme Court found that notwithstanding a coastal district's consistency determination, DNR must do an independent consistency determination. DNR is now following this ruling in making its best interest findings and consistency determinations.

5. *Wrightson v. State*

Background: This was a paternity case in which the court found paternity by estoppel. The father appealed on the grounds that he wanted a paternity test. The Alaska Supreme Court held that the trial court erred in taking the father's statement "I admit that I am called the father" as an admission and remanded the case for the trial court to decide whether to order a paternity test or hold a hearing on the estoppel issue.

Recommendations for future cases: Test results have now confirmed the father's paternity of the two children. In the future, we may want to urge paternity testing even after a court judgment of paternity has been entered when the father is seeking such relief.

6. *Boyd v. State DOTPF*

Background: This was a wrongful termination case brought by a senior level employee. Mr. Boyd separated from state service in 1993. The problem with the case was the process used for the evaluation and discharge of Mr. Boyd. The issue of greatest concern was the claim of breach of the covenant of good faith and fair dealing, a term that is inferred in every employment relationship.

Recommendations for future cases: More training in supervision and state evaluation policies might help avoid similar lawsuits in the future. Additional training would help ensure that managers do not make inadvertent mistakes in these areas.

7. *Khan v. State DMVA*

Background: This was a case brought in federal court alleging discrimination on the basis of race, national origin, and religion. Dr. Khan was laid off from DMVA in 1995. He also had a case pending before the Alaska State Commission for Human Rights, which concluded that there was substantial evidence to support the discrimination claims. In addition, Dr. Khan had grieved his layoff, and the arbitrator concluded that DMVA has failed to demonstrate that it had legitimate financial reasons for laying him off. This case had poor facts for the state.

Recommendations for future cases: More training in supervisory techniques might be helpful in avoiding these kinds of cases in the future. Layoff decisions should be carefully made and well documented, as should decisions not to rehire. If the allegations of discrimination were true, additional training in discrimination law would be warranted.

8. *Weiss & Alaska Center for the Environment v. State (Superior Court)*

Background: This was the case involving the defense of the proposed settlements of the Mental Health Trust Lands litigation. This judgment and no. 9 below are for attorney's fees and costs awarded by the court to the intervenor plaintiffs in this matter. The Alaska Supreme Court held that the intervenors were public interest litigants and that they were the prevailing party. Thus, they were entitled to full reasonable attorney's fees.

Recommendations for future cases: Mental health trust lands and the cash deposits in the trust settlement should be managed consistent with trust principles and the settlement legislation to avoid future claims of breach of trust.

9. *Weiss & Alaska Center for the Environment v. State (Supreme Court)*

See no. 8 above.

10. *Newton v. State Dept. of Labor*

Background: This was a federal whistleblower complaint filed against the Department of Labor in the U.S. Department of Labor. Mr. Newton was employed as an electrical inspector assigned to the Joint Pipeline Office. He was laid off in 1996. Mr. Newton alleged that he was terminated in retaliation for raising electrical safety concerns with the TAPS.

Recommendations for future cases: The Department of Law has provided training for supervisors with the Department of Labor on protected activity under the federal whistleblower statutes to try to prevent this type of case happening again. A problem with this case was Alyeska's history of treatment of whistleblowers, the very people that were working side-by-side with Mr. Newton.

11. *Vidal v. Vidal*

Background: This case involved CSED's effort to recover public assistance reimbursement from a non-custodial parent. The parties' support order allowed the non-custodial parent to make house payments in lieu of child support. When the custodial parent applied for and began receiving public assistance, the state filed a motion to modify the parties' child support order. The motion was denied because the court did not want to disrupt the support order that was working for the parties.

Recommendations for future cases: In lieu child support arrangements present difficulties for CSED in seeking reimbursement for public assistance. We did not appeal the decision in this case due to procedural problems with the record below. In addition, we have two cases now pending before the Alaska Supreme Court, which raise similar issues. Finally, we will be watching for a case that raises this issue

again, and will take steps to ensure the record is fully developed to provide a good foundation for appeal if such is necessary.

12. *Waltz v. Waltz*

Background: This case involved CSED's effort to modify a child support order so that the state could be reimbursed for some of the public assistance it paid on behalf of the child while the child was with the mother for the summer months. The court denied the motion, reasoning that it would be unfair to require the father to pay support to the mother for the two months she was exercising summer visitation.

Recommendations for future cases: When there is a shared custody situation in which the state provides public assistance for the support of a child, the state should review the case carefully to determine whether the parents are already bearing their share of the financial support through the existing custody and support arrangement before motion to modify support or seek public assistance reimbursement is filed.

13. *Planned Parenthood of Alaska v. State*

Background: This case involves the challenge to the constitutionality of the parental consent to minor's abortion statute.

Recommendations for future cases: The constitutional challenge to this controversial statute was to be expected. One could consider evaluating the issue of attorneys fees in public interest cases, for example, to limit such fees to the amounts allowed in Civil Rule 82 or some other standard.

14. *Planned Parenthood of Alaska v. State*

Background: This case involves the challenge to the constitutionality of the statute limiting "partial birth" abortions.

Recommendations for future cases: see response to no. 13 above.

15. *Cleary v. Smith*

Background: This is an award for attorney's fees and costs for a subclass in this action from September 1, 1997 through August 31, 1998.

Recommendations for future cases: Absent extraordinary circumstances, avoid entering into settlement agreements that bind the state for more than a reasonably short period of time. Such agreements could either expire or require reevaluation so the parties could argue that changed circumstances warrant changing the terms and conditions. Also, avoid settlement agreements that are broad in scope unless the class can clearly be defined for the limited period of the agreement.

16. *Cleary v. Smith*

Background: This is another award for attorney's fees and costs ordered by the court for counsel for a subclass.

Recommendations for future cases: see response in no. 15 above.

17. *Doe v. Burton*

Background: This was a constitutional challenge brought in federal court to Alaska's Sex Offender Registration Act. The Ninth Circuit decided that Doe's complaint could proceed under a pseudonym, although the case law in other circuits supported the state's position on this issue. Attorney's fees were awarded under federal law in this 42 U.S.C. section 1983 action.

Recommendations for future cases: The issue of filing under a pseudonym will not be litigated again as we now have a Ninth Circuit ruling.

18. *Bess v. Ulmer*

Background: This case involved the "same sex marriage" constitutional amendment. The issue was whether the amendment to the Alaska Constitution was a revision that could only be adopted by constitutional convention.

Recommendations for future cases: In the future, the state should be cautious about expedited consideration of election matters because it may interfere with a more considered approach to the court's decision-making. The major problem here was caused by the simultaneous briefing schedules set by the court. The process prevented the parties from directly joining issue on certain contentions. We urged the court not to expedite proceedings in this case, but to no avail.

19. *Gabrielli v. Gabrielli*

Background: In this case, the court held that a recorded child support lien is a judgment lien and takes priority over an quitclaim deed that was unrecorded at the time the lien was recorded. However, the court ruled against CSED under the facts of this case because to do otherwise would have required the custodial mother to pay the father's child support debt (reimbursement for public assistance received by the mother) at a time when she still had minor children to support.

Recommendations for future cases: This case established an important legal ruling in the First Judicial District concerning child support liens. The facts of these cases should be carefully evaluated to determine if a court would find that application of the judgment lien rules would promote the goals of the child support statutes.

20. *Arrington v. State CSED*

Background: This case involved CSED's efforts to modify the child support obligation of a self-employed commercial fisherman. Since Mr. Arrington was self-employed, it was very difficult for CSED to determine his adjusted income. There was an administrative decision that was appealed to the court; the court remanded that decision back to the agency. Finally, the state, working with Mr. Arrington, obtained a support order that set a fair child support obligation.

Recommendations for future cases: Using the administrative process to establish child support obligations for self-employed fishermen presents a difficult challenge for CSED. The agency has already taken steps to change their method of processing and establishing child support obligations in these types of cases which should diminish the chance of litigation in the future.

21. *Totland v. State CSED*

Background: The facts of this case were very similar to those in no. 20 above.

Recommendations for future cases: see response to no. 20 above.

22. *Minder v. State, Alaska Oil and Gas Conservation Commission*

Background: Mr. Minder sued the AOGCC after his position was eliminated due to budget cuts. He alleged retaliation for whistleblowing and other causes of action.

Recommendations for future cases: The most significant risk of exposure posed by this case was the whistleblower claim. Under the whistleblower law, it can be difficult to prove that an adverse personnel action is not the result of an employee's criticism of an employer, even when other legitimate reasons can be articulated. As a result, agencies should be careful in their responses to acts that might later be viewed as a criticism or a whistleblowing event. Unfortunately, even a measured response cannot entirely eliminate the risk that an employee will later allege retaliation if the employee receives an adverse personnel action such as a poor evaluation, dismissal, or, as here, a layoff.

23. *Brockman v. State DOC*

Background: In this case the plaintiff alleged that she was terminated from the Department of Corrections in violation of the whistleblower law. The facts leading to the lawsuit began in 1992 and 1993. She filed suit in 1995. DOC's position was that the employee was terminated because of performance issues. There were factual problems with the case in that certain critical personnel records had been purged from the file in the department's effort to enable the employee to "wipe the slate clean."

The state unsuccessfully tried to have the whistleblower claims dismissed by making arguments about the scope of protection under the statute.

Recommendations for future cases: Personnel officers should be very leery of clearing up a problem employee's records in an attempt to give the employee a fresh start. In this case, the state's ability to show that the actions taken were fully warranted would have been severely undercut by the fact that Ms. Brockman's formal records did not reflect any problems in her performance. The personnel officer who took these steps is no longer employed by the state.

24. *Aleutians East Borough v. Rosier*

Background: In this case the commissioner of ADFG issued an Executive Order under the authority of AS 16.05.060 in derogation of a Board of Fisheries regulation. The plaintiff's filed suit challenging the commissioner's authority to take this action. The Alaska Supreme Court held that the commissioner does not have the authority to use the EO authority to act contrary to a Board regulation absent new information that was not available when the regulation was adopted.

Recommendations for future cases: This type of case will not happen again because the court decision clarified the law on this issue of importance to the Board of Fisheries and ADFG.

25. *Gaylene's Word Services v. Alaska Court System*

Background: This was a contract claim against the court system under Administrative Rule 47 concerning a contract for transcription services.

Recommendations for future cases: The court system is already examining its transcription service issues with the difficulties illustrated by this claim in mind, in an effort to avoid this situation developing again.

26. *Williams v. Public Employees Retirement System (Superior Court)*

Background: This case involved an appeal of a denial of occupational disability benefits; the PERS Board denied the appeal by a tie vote. The issue of the effect of the tie vote was appealed to court. The superior court ordered that the 7th member of the Board review the tapes of the proceedings and cast the deciding vote. The Alaska Supreme Court affirmed, holding that the PERS Board should have a regulation in place addressing the effect of a tie vote.

Recommendations for future cases: The PERS Board has now adopted a regulation addressing tie vote procedures, so this type of case will not happen again.

27. *Stalaker v. Williams (Supreme Court)*

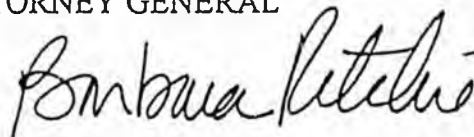
See response to number 26 above.

That completes all of the currently pending judgments/claims. Please contact me know if you have any further questions.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Barbara J. Ritchie
Deputy Attorney General

cc: Senate Finance Committee
House Finance Committee
Kathryn Daughettee, Administrative Services Director, DOLaw
Joan Brown, Budget Analyst, OMB
Legislative Finance

TO: Senate Finance Committee

**FROM: Senator Jerry Ward
Vice-Chair
Senate Finance sub-committee on Corrections**

I am submitting the following questions and comments for discussion in the supplemental budget presentation of the Department of Corrections. Thank you for your consideration.

Point 11---I understand that Cook Inlet Pre-Trial averages 25 federal prisoners per day, but has a contract for 50 beds, whether or not they are used...at the rate of \$100/pday for 25 prisoners = \$2,500 X 365 days = \$912,000 of "free" money...DOC is receiving services they are not delivering on....put this excess toward the supplemental request.

Point 12---If DOC were to apply point #11, there wouldn't be a need for request in #12.

Point 13---If there was money budgeted for tents, why is there a supplemental, if tents weren't budgeted, why not? How many specific bodies were there for these two months (May-June) at each location. For the \$300,000 request--at the best case scenario of 50(?) beds X 60 days @\$100/pday.

Point 14---If in May, it costs \$45/pday X 874 beds = \$39,330 X 365 days = \$14,355,450 (\$14m+) and then after contract negotiations, the cost was increased by \$8/pday or \$16,871,030---the difference is \$2,515,580 or roughly \$2.5m...DOC is asking for \$4.2mthat is roughly a \$1.7m shortfall, where is it going?

Point 15---Why is CLEARY involved in prisoner transport? DOC is playing shell game...there is a court-imposed prisoner capDOC moves prisoners around so they stay under the court order and then wants the legislature to pay for it...for example: if Palmer is down 2 prisoners and Nome is over 2 prisoners, then those 2 inmates get sent to Palmer, until Palmer becomes overcrowded, then those are sent to Lemon Creek until it becomes overcrowded, etc. DOC is asking legislature to pay for this "shell game". It's a "rob Peter to pay Paul" scenario in an attempt to drive up costs....

Point 16--They (DOC) have not completed CRC projects in this area...

03/08/99
09:15:07

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:90308 SCHEDULED FOR:03/08/99 09:00 TO 11:00
PUBLIC HEARING SENATE FINANCE

LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE

SB 83	ANDREE	MCLEOD	TESTIFY
SB 83	GEORGE	HIERUNTMUS	TESTIFY
SB 83	KADEEN	JACKSON	TESTIFY
SB 83	MICHELLE	CASSANO	TESTIFY
SB 83	BARBARA	BENNETT	TESTIFY
SB 83	MELBA	COOKE	TESTIFY
SB 83	JOAN	FISHER	TESTIFY

LOCATION: FAIRBANKS

SB 83	MR.	DAVID	LEONE	RESOURCE CNTR	TESTIFY
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*** GRANTS MANAGEMENT INFORMATION SYSTEM ***
 *** 1998 SPENDING FOR STATE OF ALASKA ***

10/29/98

GRANT NO	AMOUNT AWARDED	GRANTEE-NAME
1 002025	1,177,575	ALASKA DEPT OF HLTH AND SOCIAL SERVICES HIV PREVENTION PROJECT
2 002144	340,100	ALASKA DEPARTMENT OF HEALTH & SOCIAL SVC STATE-BASED DIABETES CONTROL PROGRAM
3 004372	392,972	ALASKA DEPT OF HLTH & SOC SVCS. SEXUALLY TRANSMITTED DISEASE ACCELERATED PREVENTION CAMPAIGN
4 004468	1,098,750	ALASKA DEPARTMENT OF HEALTH IMMUNIZATION PROGRAM
5 006257	115,000	ALASKA DEPT OF HEALTH & SOCIAL SERVICES HIV/AIDS SURVEILLANCE AND SEROPREVALENCE
6 007089	75,802	ALASKA DEPT OF HEALTH & SOC.SER. FATALITY ASSESSMENT AND CONTROL EVALUATION (FACE)
7 007863	412,121	ALASKA DEPT OF HEALTH AND SOCIAL SVCS. TUBERCULOSIS CONTROL PROGRAM AND AIDS
8 009005	240,345	ALASKA DEPARTMENT OF EDUCATION SCHOOL HLTH PROGRAMS TO PREVENT SERIOUS HLTH PROBLEMS & IMPROVE EDUCA
9 009235	388,012	ALASKA DEPT OF HEALTH & SOCIAL SVCS CORE CAPACITY BUILDING FOR TOBACCO PREVENTION AND CONTROL PROGRAMS
10 010659	87,015	ALASKA DEPT OF HEALTH & SOCIAL SERVICES BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM
11 010706	415,013	ALASKA DEPART OF HEALTH & SOCIAL SVCS NATIONAL PROGRAM OF CANCER REGISTRIES
12 010970	1,751,104	ALASKA DEPT OF HEALTH & SOS SERVICES NATIONAL BREAST & CERVICAL CANCER EARLY DETECTION PROGRAM
13 011991	50,000	STATE OF ALASKA STATE-BASED BIRTH DEFECTS SURVEILLANCE DEMONSTRATION PROJECTS
14 013325	71,250	ALASKA DEPT. OF HEALTH & SOCIAL SERVICES MATERNAL AND CHILD EPIDEMIOLOGY PROGRAMS (MCHEP)
15 013483	98,423	STATE OF ALASKA DEPT OF HEALTH & SOC PREGNANCY RISK ASSESSMENT MONITORING SYSTEM
16 014025	25,000	ALASKA DEPARTMENT OF HEALTH CHILDHOOD LEAD POISONING PREVENTION & SURVEILLANCE OF BLOOD LEAD
17 014040	143,096	STATE OF ALASKA DOH & HUMAN SERVICES TRAUMATIC BRAIN INJURY SURVEILLANCE PROGRAM
18 014116	402,608	SE ALASKA REGIONAL HLTH CONSORTIUM 1997 NATIONAL BREAST & CERVICAL CANCER EARLY DETECTION PROGRAM
19 014470	30,008	ALASKA DEPT. OF HEALTH & SOCIAL SVCS STATE HLTH PROMOTION & CHRONIC DISEASE PREV DATABASES/CLEARINGHOUSES
20 014571	100,000	ALASKA DEPT OF HEALTH AND SOCIAL SERVICE POPULATION-BASED SURVEILLANCE OF FETAL ALCOHOL SYNDROME
21 015895	330,000	STATE OF ALASKA BUILDING ENVIRONMENTAL HEALTH RESPONSE CAPACITY IN ARTIC COMMUNITIES
22 015938	145,160	ALASKA DEPARTMENT OF HEALTH & SOCIAL SER PROGRAMS FOR THE PREVENTION OF FIRE RELATED INJURIES
23 099057	162,421	ALASKA DEPT OF HEALTH & SOCIAL SERVICES PROGRAM TO BUILD CAPACITY TO CONDUCT SITE-SPECIFIC ACTIVITIES

 2,051,775

*** BLOCK GRANT AWARDED FOR FY98 ***

GRANT NO	AMOUNT AWARDED	GRANTEE NAME	PROGRAM NAME
AK1998	618,890	ALASKA DEPT OF HEALTH & SOC SERVICES	PREVENTIVE HEALTH SERVICES

3/4/99

Section 1

From Sen Parnell

Magnuson Stevens Disaster Grants Status Report

* Not approved by NOAA

(C) = Municipalities

Community	Application Received	Latest Progress Report	Agreement Sent	Agreement Signed	Date Signed	Project Description	Funds Dispersed	Jobs Recorded
Akiachak	Yes		Yes	Yes	11/18/98	Akiachak White-Fish Marketing Venture	\$0.00	0
Akiak	Yes	10/30/98	Yes	Yes	8/24/98	Native Community Building Addition	\$39,356.77	9
Aleknagik (C)	Yes	10/1/98	Yes	Yes	8/18/98	North Shore Community Hall Improvement; South Shore Foxville Roadway Extension; N&S Shore Road Improvement; Landfill Improvement.	\$18,010.60	11
Aniak (C)	Yes	12/1/98	Yes	Yes	10/1/98	Fire hall completion; Aniak Traditional Council Office	\$24,953.04	4
Almautluak	Yes		Yes	Yes	1/4/99	Public Safety Building & Community Center Renovation	\$0.00	0
Bethel (C)	Yes		Yes	Yes	10/9/98	Braund Building Renovation/Relocation	\$0.00	0
Chignik Bay (C)	Yes		Yes	No		Community Building; Laundromat/Showers/Ramp; Boat Launching Ramp; Community Use Building;	\$0.00	0
Chignik Lagoon	Yes	12/1/98	Yes	Yes	8/18/98	Gravel Pit Access Road	\$0.00	0
Chignik Lake *	No		No	Yes		Black Lake/Black River Smolt Migration Study. Sent to NOAA 1/25/99	\$0.00	0

P. 01
FAX NO. 907 258 1261
ANC LEGIS INFO OFC
MAR-04-99 THU 06:20 PM

MAR-04-99 THU 06:21 PM ANC LEGIS INFO OFC FAX NO. 907 258 1261 P. 02

Community	Application Received	Latest Progress Report	Agreement Sent	Agreement Signed	Date Signed	Project Description	Funds Dispersed	Jobs Recorded
Chuathbaluk (C)	Yes	11/17/98	Yes	Yes	8/12/98	Dismantle School Building PROJECT COMPLETED!	\$7,638.23	12
Clark's Point	Yes	12/1/98	Yes	Yes	9/29/98	Community Improvement Project	\$14,327.00	15
Dillingham (C)	Yes	11/1/98	Yes	Yes	8/13/98	Small Boat Harbor Upgrade; Cold Storage Upgrade; Building and Grounds Upgrade	\$252,841.77	25
Eek	Yes		Yes	No		Eek Riverfront Projects	\$0.00	0
Egegik (C)	Yes	11/17/98	Yes	Yes	8/3/98	Public Dock Improvements; Public Dock Uplands & Beach Roads; Old Graveyard Erosion Repairs; BOS Facility Insulation & Solid Waste Completion; Foundation for Clinic Housing; Safety hazards Clean-up Project; PROJECT COMPLETED!	\$135,620.00	25
Ekwok	Yes	12/1/98	Yes	Yes	7/20/98	Community Improvements: Community Well; Fire equipment storage relocation, repair & remodel; Community and Dump Clean up; Road Improvement	\$15,572.61	15
Igiugig	Yes	11/19/98	Yes	Yes	10/7/98	Village Council Airport Facility PROJECT COMPLETED!	\$20,550.00	10
Iliamna	Yes	1/4/99	Yes	Yes	9/16/98	Community Center Completion; Landfill Clean-up & Fence Repair; Village Office & Building Repair;	\$22,804.50	17
Ivanof Bay	No		No	No			\$0.00	0
Kasigluk	Yes	1/1/99	Yes	Yes	12/23/98	Renovation Projects: Public Safety Building; Recreation Center; Tribal Hall/Office;	\$21,028.30	15

Community	Application Received	Latest Progress Report	Agreement Sent	Agreement Signed	Date Signed	Project Description	Funds Dispersed	Jobs Recorded
King Salmon	Yes		No	No		Clinic Addition	\$0.00	0
Kokhanok	No		No	No			\$0.00	0
Koliganek	Yes	12/1/98	Yes	Yes	8/14/98	Community Road Upgrade; Bridge Repair; Boat Landing/haul-out Upgrade;	\$78,473.83	9
Kongiganak	No		No	No			\$0.00	0
Kwethluk	Yes		Yes	Yes	8/24/98	Community Center Foundation Construction (Phase I)	\$0.00	0
Kwigillingok	Yes		Yes	Yes	10/7/98	Solid Waste Site Improv; Marine Fisheries Research; Water Supply Improv; Village Marina Dock; Repair of Transit Bridges; Sidewalk Repair;	\$12,552.00	0
Levelock	Yes	12/1/98	Yes	Yes	7/30/98	Dock renovation and Stabilization	\$52,304.82	9
Lower Kalskag	Yes		Yes	Yes	10/26/98	Youth Center	\$0.00	0
Manokotak (C)	No		No	No		Road Project	\$0.00	0
Naknek	Yes	12/21/98	Yes	Yes	8/27/98	Multi-Use Community Center Construction	\$32,287.72	0
Napaklak (C)	Yes	10/23/98	Yes	Yes	8/10/98	Dumpsite Improvements; Dock Haul Out/Boat Harbors; Fire station repair; Boardwalks	\$20,474.44	17
Napaskiak*	Yes	10/23/98	Yes	Yes	9/13/98	Community Facility Improvements: Laundromat upgrade & Community Center design; Community Facilities Improvement is proposed "OTHER";	\$11,997.00	0

Community	Application Received	Latest Progress Report	Agreement Sent	Agreement Signed	Date Signed	Project Description	Funds Dispersed	Jobs Recorded
New Stuyahok (C)	No		No	No			\$0.00	0
Newhalen (C)	Yes	12/1/99	Yes	Yes	8/20/98	Newhalen Improvement Projects: Cleanup; Play deck construction; Graveyard Landscaping; Street Name; Landfill fencing; Aquivik Park; Mountainview Sub Road Extension	\$12,257.23	12
Nondalton *	Yes		No	No		Community Facility Clean-up Repair and Renovation; Nondalton Community Park; Sent to NOAA 1/25/99	\$0.00	0
Nunapitchuk (C)	Yes	12/22/98	Yes	Yes	8/20/98	Community Boardwalk, Dumpsite & Dock; Water/Sewer; Clinic Facility; City Office & Public Safety Bldg.; Motor Grader Bldg. Construction; Trash Bins	\$8,329.52	0
Oscarville	Yes		No	No			\$0.00	0
Pedro Bay	Yes	12/1/98	Yes	Yes	7/30/98	Pedro Bay Landfill Road-Phase I	\$0.00	0
Perryville	Yes		Yes	No		Village Office Building	\$0.00	0
Pilot Point (C)	Yes	11/1/98	Yes	Yes	7/24/98	Road Resurfacing; Building Demolition/Salvage; City Shop Parking Apron; S. Beach Powerline Extension	\$80,777.89	24
Port Alsworth	No		No	No			\$0.00	0
Port Heiden (C)	Yes	1/21/99	Yes	Yes	12/14/88	Re-design and Construction of Health Clinic and Healthy Family/Cultural Center;	\$27,787.50	0
Sleetmule	No		No	No			\$0.00	0

P. 05
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Community	Application Received	Latest Progress Report	Agreement Sent	Agreement Signed	Date Signed	Project Description	Funds Dispersed	Jobs Recorded
South Naknek	Yes		Yes	Yes	2/16/98	Community Clean-up; Youth Center Renovation; Road Upgrade.	\$0.00	0
Togiak (C)	Yes		Yes	Yes	8/17/98	Activity & Cultural Center Construction; Boat Ramp and Trailer; Senior Center Renovation; Recreation Facility; Trail Upgrades;	\$0.00	0
Tuluksak	Yes	12/1/98	Yes	Yes	12/22/98	Community Hall Renovation; Landfill Improvements;	\$0.00	0
Tuntululiak	Yes		Yes	No		Fuel and Gas Storage Repair and Replacement	\$0.00	0
Twin Hills	Yes		Yes	Yes	8/5/98	Pumphouse Building Repairs	\$15,974.21	0
Ugashik	Yes		Yes	Yes	12/2/98	Community Barge Landing Site Construction	\$0.00	0
Upper Kalskag	Yes		Yes	No		Landfill Upgrade; Recreation facility improvements	\$0.00	0
49 Disaster Communities	41		38	34			\$925,918.98	229
	Applications Received		Agreements Sent	Agreements Signed			Funds Dispersed	Jobs Created
	8 Applications not yet received							

Administration

Rep. Davis

Div of Admin Svcs
Div of Finance
Div of General Services
Div of Motor Vehicles
Alaska Public Defender Agency
Office of Public Advocacy
Ak Public Offices Commission
Div of Risk Management

Sen. Wilken

Div of Ak Longevity Programs
Div of Information Tech Group
Public Communication Svcs
Division of Personnel
Div of Retirement & Benefits
Ak Oil & Gas conservation Comm
Div of Senior Services

Commerce & Economic Development

Rep. Therriault

Division of Trade & Development
Division of Occup Licensing
Div of Tourism
Office of the Commissioner

Sen. Green

Division of Admin Svcs/Comm
Division of Banking, Securities
and Corporations
Div of Insurance
Div of Investments

Community & Regional Affairs

Rep. Austerman

Office of the Commissioner
Municipal & Regional Assist. Div
Div of Admin Services

Sen. Kelly

Div of Community & Rural Devel
Division of Energy

Corrections

Rep. Mulder

Ak Parole Board
Ak Correctional Industries
Div of Community Corrections

Sen. Parnell

Office of the Commissioner
Div of Institutions
Div of Admin Services

Courts

Rep. Foster

Judicial Council

Sen. Wilken

Ak Court System

Education

Rep. Mulder

Office of the Commissioner
Libraries, Archives Museums
Educ Support Services

Sen. Wiken

Postsecondary Educ
Div of Teaching & LearningSupport
Div of Voc Rehab

Environmental Conservation

Rep. Williams
Admin Services
Facility Const. & Operation
Statewide Public Service
Office of the Commissioner

Sen. Leman
Spill Prevention & Response
Environmental Health
Air & Water Quality

Fish and Game

Rep. Bunde
Div of Administration
Div of Subsistence
Div of Wildlife Conservation
Div of Sport Fish

Sen. Torgerson
Office of Commissioner
Div of Commercial Fish
Habitat & Restoration Div
Comm Fish Entry Comm

Health & Social Services

Rep. Therriault
Office of Commissioner
Div of Family & Youth Svcs
Div of Medical Assistance
Div Mental Health & Dev/Disab

Sen. Kelly
Div of Admin Services
Div of Alcoholism & Drug abuse
Div of Public Assistance
Div of Public Health

Labor

Rep. Austerman
Labor Standards & Safety
Workers Compensation Div

Sen. Green
Office of Commissioner
Div of Admin Services
Div of Employment Security

Law

Rep. Kohring
Civil Division
Office of Attorney General
Office of Spec. Prosecutor & Appeals

Sen. Donley
Admin Services Division
Criminal Division

Military & Veterans Affairs

Rep. Foster
Ak Air National Guard
Div of Emergency Services
Office of Comm/Adj General
Office of Veterans Affairs
Ak Nat'l Guard Joint Staff

Sen. Phillips
Ak Army National Guard
Nat'l Guard Youth Corps
challenge program
Admin Svcs Director

Natural Resources

<u>Rep. Kohring</u>	<u>Sen. Phillips</u>
Office of Commissioner	Div of Agriculture
Geological & Geophysical Surveys	Div of Land
Div of Land	Mining & Water Management
Div of Oil & Gas	Parks & Outdoor Recreation
Div of Forestry	Support Services Div

Public Safety

<u>Rep. Davis</u>	<u>Sen. Donley</u>
Office of the Commissioner	Div of Admin Servcies
Div of Fire Prevention	Ak State Troopers
Div of Fish & Wildlife Protection	Police Standards
Council Domestic Violence and Sexual Assault	Crime Labs
Violent Crimes Comp Board	Hwy Safety & Planning
Public Safety Academy	

Revenue

<u>Rep. Bunde</u>	<u>Sen. Leman</u>
Commissioner	Oil & Gas Audit
Admin Services	Permanent Fund Dividend Div
Income/Excise Audit	Permanent Fund Corp
Ak Housing Finance	Treasury
Ak Mental Health Trust Auth	Ak Municipal Bond Bank Auth
Alcoholic Beverage Control Brd	State Pension Board
Child Support Enforcement Div.	

Transportation & Public Facilities

<u>Rep. Williams</u>	<u>Sen. Torgerson</u>
To be announced	To be announced

University

<u>Rep. Austerman</u>	<u>Sen. Leman</u>
University of Alaska	University of Alaska

Senate Bill 83 - Supplemental Appropriations
(CS for SB 83) WORK DRAFT

CSSB 83 Draft	Governor's Bill	Department	Component	Supplemental Purpose	Governor's Proposed		Governor's Amended		Senate CS		Notes
					GF	Non-GF	GF	Non-GF	GF	Non-GF	
Section 1	Section 1	Comm & Reg Affairs		DISASTER/ECONOMIC: Extend lapse date for 1997 Bristol Bay/Kuskokwim River disaster relief to 6/30/01							Extended lapse date is needed to allow sufficient time for communities to complete current projects, and allow for the award and completion of new grants. Fed grant ends 2/28/01.
Section 2	Section 2	Military & Vet Affairs		DISASTER: Southeast Rain/Wind Disaster	2,730.0		2,730.0		1,477.0	1,059	GF & Federal Receipts. Transferred DOT activity to Federal Funding and and eliminated SE trail work.
Section 2		Military & Vet Affairs		DISASTER: Endicott Mountain Flood	278.1		278.1		278.1		
Section 2		Military & Vet Affairs		DISASTER/ECONOMIC: Western Alaska Fisheries	9,600.0	2,400.0	9,600.0	2,400.0	7,923.0	2,400.0	Reduced disaster by amount of community match expected to be provided by the communities for the FY 98 disaster discussed in Section 1.
Section 3	Section 3	Natural Resources		DISASTER: Fire Suppression	7,000.0		7,000.0		7,000.0		FY 1999 year to date (Actuals)
Section 4	Section 4	Law		Judgments	2,094.9	15.3	1,868.0	15.3	1,868.0	15.3	GF and PERS Fund
TOTAL DISASTERS & JUDGEMENTS					21,703.0	2,415.3	21,476.1	2,415.3	18,546.1	3,474.3	
Section 5a	Section 5a	Corrections	Cook Inlet	Cook Inlet staffing to increase maximum bed capacity	350.0		170.0		-	-	Prisoners are being sent to Arizona, therefore hold instate facilities staff constant
Section 5a	Section 5b	Corrections	Inmate health Care	Inmate Health Care	500.0		500.0		500.0		Increased cost for medical care services resulting primarily from increases in medical supplies and laboratory expenditures
Section 5b	Section 5c	Corrections	Institution Director's	Tents for May and June	300.0		100.0		100.0		Operational costs for housing prisoners in tents at Juneau, Ketchikan, Fairbanks and Palmer in the months of May and June of 1999.
Section 5c	Section 5d	Corrections	Out-of-State contracts	Out-of-state beds contract price adjustment per agreement in May to budget beds at \$45 while RFP was on the street.	4,288.1		3,130.0		3,050.0		CLEARLY-Decision made in May to budget at \$45/day since contract was out for RFP. Final contract \$53.00p/day. This funding will pay for 874 beds.
Section 5d	Section 5e	Corrections	Transportation & Class	Prisoner Transport	365.0		365.0		365.0		CLEARLY - Increased number and costs of prisoners being transported both instate and to out-of-state facilities
Section 5e-h	Section 5f	Corrections	Existing Community Residential Centers	Section 31, ch. 137, SLA 1998, page 25, Lines 12-13, is amended to read	(525.0)		(625.0)		(625.0)		CRC funding reductions due to timing changes
Section 22	Section 5i	Corrections	Parole Supervision Pilot program	Delete lines 29&30 Section 31 chapter 137 page 25					(115.0)		Contract not signed. Currently done by POs.
CLEARLY					5,278.1	-	3,640.0	-	3,275.0	-	
Section 6a	Section 6a	Administration	Finance	Travel savings analysis		35.0		35.0		35.0	Statutory Designated Program Receipts
	Section 6b	Administration	General Services	Federal surplus property fund		100.0		100.0		-	Environmental Assessment of fuel which spilled at the BIA administrative site in Bethel. The fuel had been transferred to the State's surplus property
Section 6b	Section 6c	Administration	Leasing	Underfunding	678.4		678.4		678.4	-	Includes settlement costs of 40.0 GF. Down from earlier estimate of 1,096.6.
Section 6c	Section 6d	Administration	Office of Public Advocacy	Underfunding	563.0		563.0		563.0		Based on caseload projections
	Section 6e	Administration	Public Defender	Underfunding	297.0		297.0		-		FY 99 increases to this program should have stabilized the workload.
Section 6f	Section 6h	Administration	Pioneers Home	Pioneers Home boiler replacement in Fairbanks	500.0	537.0	500.0	537.0		1,037.0	Total project cost is 1,307.0
Section 6d	Section 6i	Administration	Pioneers Home	Certified nurse aides for Pioneers Homes with critical staff shortages	500.0		500.0		1,000.0		Excess housing Receipts for 5 Certified Nurse Aides for homes with critical staff shortages and trans. GF rcpts to Prgm rcpts
Section 6e	Section 6g	Administration	Alaska Longevity Grants	Amend Line 11 Section 31 chapter 137 page 16					(500.0)		Program receipts of same amount were requested and are transferred to operations above and result in a reduction of the FY 99 GF reqst
Section 7	Section 7	Comm & Reg Affairs		Power Cost Equalization program from PCE fund		1,700.0		1,400.0		1,400.0	Supplemental maintains the funding level at 85% of program need through the end of FY99.
Section 8	Section 8	Corrections	Correctional Industries	Pay vendors for supplies & materials		750.0		750.0		750.0	Additional correctional industry production receipts from increased sales.
	Section 9	Debt Service		FY 99 debt payments switch to AHFC	(1,143.9)		(1,143.9)		-		

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(CS for SB 83) WORK DRAFT

CSSB 83 Draft	Governor's Bill	Department	Component	Supplemental Purpose	Governor's Proposed		Governor's Amended		Senate CS		Notes
					GF	Non-GF	GF	Non-GF	GF	Non-GF	
Section 9a	Section 10a	Education	AVTEC	Marine Simulator receipts		2,500.0		2,500.0		2,500.0	Federal receipts not previously anticipated for Marine Simulator program at AVTEC-funds needed now so program can be ready for Fall 99
Section 9b	Section 10b	Education	Foundation	Foundation formula reduction - Alyeska Central School summer school	(1,500.0)		(4,000.0)		(4,000.0)		Due to lower completion rate in Alyeska Central School summer session and reduced ADM in Foundation Formula
Section 9c	Section 10c	Education	Voc Rehabilitation	Change funding source from Statutory Designated PR to the Vocational Rehabilitation Small Business							Net zero, non-GF funding switch. This adjustment is in the FY 2000 budget request.
Section 10e	Section 11e	Health & Social Services	Chronic and Acute Medical Assistance	(Formerly General Relief Medical -GRM) Underfunded for anticipated caseload	1,200.0		1,145.0		1,145.0		(Partially offset by reductions elsewhere within the department) Increase offset by trans of fed.\$ to DCRA child care and reducing GF
Section 10n	Section 7b	Comm & Reg Affairs	Day Care Assistance Programs	Trans DHSS Fed \$ to DCRA, and reduce GF to DCRA. Trans DCRA GF reduction back to DHSS					(1,801.9)	1,801.9	Reduce GF by Fed funds to be passed thru from DHSS
	Section 11o	Health & Social Services		Prior year medical claims	21.0		Withdrawn		-		Withdrawn
Section 10m	Section 11m	Health & Social Services	Subsidized Adoptions	Caseload growth	656.9	164.3	656.9	164.3	656.9	164.3	(Partially offset by reductions elsewhere within the department) Increase offset by trans of fed.\$ to DCRA child care and reducing GF
Sections: 10a through 10d; 10f through 10l	Sec. 11a-1&o	Health & Social Services		Various deletions to offset formula and cost increases	(1,051.5)		(1,051.5)		(664.5)		Reductions to various programs from cost savings measures to partially offset needed supplemental funding (above) Other shortfalls in other programs were covered within existing appropriations, e.g. ATAP covered Adult Public Assistance and Longevity Bonus Hold-Harmless. Governor's DD reductions not included.
Section 12	Section 13	Law	Oil & Gas Litigation	Oil & Gas Litigation reduction	(100.0)		(100.0)		(182.0)		Reduction to help offset cost of supplementals
Section 11b		Natural Resources		Insert performance bond language							Net zero appropriation to use proceeds from bonds guaranteeing the reclamation of state land
Section 13	Section 14	Natural Resources	Recorder's Office	Increased workload	92.0		92.0		92.0		Recording activity increased due to low interest rates and increased mining activity
Section 14a&b	Section 15a	Public Safety	Alaska State Troopers	transfer to detachments					(200.0)		Transfer of funds between to BRUs (see below)
Section 14c	Section 15b	Public Safety	Alaska State Trooper Detachments						200.0		Transfer of funds between to BRUs (see above)
Section 14d	Section 15c	Public Safety	AST Detachments	Unanticipated costs	312.7		312.7		249.6		Unexpected cost increases for employee moves (63.1); academy cost (103.5); aircraft & Fbx Halo repairs (112.0); communication costs (34.1)
Section 15	Section 16	Public Safety	Fish & Wildlife Protection	Lapse date extension to allow for replacement of vessels							Technical change: original appropriation should have been a capital item
Section 16a	Section 17	Revenue	Child Support enforcement	Change wording to indicate it is "for operating costs"	880.0		880.0		880.0		
Section 16b	Section 17b	Revenue	Division of Treasury	For Investment Management Costs	460.0		460.0		460.0		This amount was requested in the CBR bill last year but did not get included in the final version of the bill
Section 17a,b&c	Section 18a	Transportation	International Airports	Add/delete capital supplemental for Fed aviation program							Fund source change (IARF to Fed Rcpts) and scope change
Section 17e-g	Section 18b	Transportation	Various	Delete GF/PR where receipt shortfalls are forecast in FY99	(307.9)		(307.9)		(307.9)		
Section 17d-e	Section 18c	Transportation	Measurement Standards	Transfer unused GF/PR to Design & Engineering							Net zero transfer - included FY2000 budget
		Transportation		Harborview facility maintenance	235.0		235.0				Transfer project to community per earlier agreement.
Section 18a-e	Section 19	University	UAF	Arctic Research Center -net zero, non-GF				7,000.0		7,000.0	Switch 7,000.0 funding from Student fees & Federal Rcpts. to University Receipts for new anticipated projects secured by the International Arctic Research Center (IARC). These receipts are expected from various national and international agencies.
Section 19	Section 20	Various Agencies		Miscellaneous claims & stale-dated warrants	69.0		81.2		81.2		Misc claims are prior year bills which cannot be paid from existing appropriations per AS 37.25.010(b). Stale-dated warrants are those warrants presented to the state for payment which are more than 2 years old
SUBTOTAL - DELETE/ADD SUPPLEMENTALS					2,361.7	5,786.3	(202.1)	12,486.3	(1,650.2)	14,688.2	
Section 20	Section 21	All departments		Governor's Unallocated Reductions	(6,251.0)		(6,251.0)		(6,251.0)		Governor's Unallocated Reductions
TOTAL DELETE/ADD SUPPLEMENTALS					(3,889.3)	5,786.3	(6,453.1)	12,486.3	(7,901.2)	14,688.2	
TOTAL SUPPLEMENTALS					23,091.8	8,201.6	18,863.0	14,901.6	13,919.9	18,162.5	

Senate Bill 83 - Supplemental Appropriations

(CS for SB 83) WORK DRAFT

CSSB 83 Draft	Governor's Bill	Department	Component	Supplemental Purpose	Governor's Proposed		Governor's Amended		Senate CS		Notes
					GF	Non-GF	GF	Non-GF	GF	Non-GF	
				FY 99 Spending plan supplemental target	16,500.0		16,500.0		16,500.0		
				Total above/(below) spending plan	<u>6,591.8</u>		<u>2,163.0</u>		<u>(2,580.1)</u>		
Section 21	Section 22	Administration	Central Duplication	Ratification: FY98 shutdown costs (193.6)							
		Education	District Support	Ratification: Adak school district close-out (FY97 & FY98) (136.2)							
		Natural Resources	Fire Suppression	Ratification: FY98 fire (disaster) costs (5,391.0)							
		Revenue	CSED	Ratification: FY98 costs (43.3)							
				RATIFICATIONS							

SB

84

SFIN

FILE

SB 84

was referred to the
Senate Finance
Committee

Hearing(s) were held

The bill did not move
from Committee

OVERVIEW OF TOBACCO ISSUES

prepared by Alaska Department of Law

March 7, 1999

INTRODUCTION

During the past two years, the Knowles administration, with the help of the Alaska Legislature, has addressed the problems caused by tobacco and the challenge of limiting access on a number of fronts. Our joint efforts have included legislation to increase taxes on tobacco products, measures to limit youth access to tobacco, stepped-up enforcement activities, and, of course, litigation and participation in the national settlement with the industry. The Department of Law's efforts have been closely coordinated with the Alaska Departments of Health and Social Services and Revenue, local tobacco control groups, and other state attorneys general

ENFORCEMENT OF TOBACCO VENDOR AND TAX LAWS

➤ **TOBACCO VENDOR ENFORCMENT (STING OPERATIONS):** During 1997 and 1998, the Department of Law ("Law") worked closely with the Anchorage and Juneau Police Departments to coordinate enforcement and prosecution of tobacco vendors that sold tobacco products to persons under 19. Law plans to work with the Fairbanks Department of Public Safety and Fairbanks City Attorney's Office during the early spring to emphasize enforcement of state tobacco laws.

- Last month Law announced a settlement related to tobacco business licensing litigation with 9 vendors operating a total of 11 stores (5 in Anchorage and 6 in Juneau). The vendors agreed to a settlement that required: (1) a three-day suspension of their tobacco licenses, (2) that they re-train all of their tobacco sales clerks in stores where violations occurred, and (3) that vendors make contributions totaling more than \$50,000 to a statewide youth tobacco prevention television campaign. This television campaign will air statewide for a month this spring.

➤ **STATE SALES TAX ENFORCEMENT:** State law requires any person who causes cigarettes to be brought into the state for personal consumption or resale to obtain a license from the Alaska Department of Revenue and pay the appropriate taxes. A federal law known as the "Jenkins Act" requires persons shipping cigarettes into Alaska to provide the state with a list identifying the recipients. With the growth of Internet sales, the Alaska Departments of Law and Revenue have worked closely with the federal Alcohol, Tobacco and

Firearms investigators and U.S. Attorney's Office to vigorously pursue illegal cigarette shipments. Investigations are currently underway, and additional investigations are likely.

- **EFFECTS OF TOBACCO TAX INCREASE:** In 1997 the Alaska Legislature adopted the nation's highest tax on tobacco products, \$1 per pack on cigarettes and 75 percent of the wholesale price on other tobacco products. According to a recent study released by the Departments of Health and Social Services and Revenue, taxable consumption of cigarettes has declined 17 percent since the tax went into effect. Although it will take several years to collect enough data to complete an analysis of the impact of the tax increase on tobacco consumption by youth and adults, the decline in consumption is viewed as a positive result of the increase in taxes. In addition, the monthly revenue from tobacco taxes has risen from \$1.5 million to \$4.3 million, a 190 percent increase, since the tax was raised.

LITIGATION AND THE NATIONAL SETTLEMENT

- **ALASKA'S LITIGATION:** In April 1997, Alaska filed suit against the major tobacco manufacturers based on state consumer protection and antitrust laws. The suit was scheduled to go to trial in February 2000.
- **NATIONAL SETTLEMENT:** On November 23, 1998, after extended negotiations, the State of Alaska and 45 other states reached a final settlement of litigation with the tobacco industry - Mississippi, Texas, Florida, and Minnesota had already settled their lawsuits. The settlement, which was approved by the Juneau Superior Court on February 9, 1999, ends the State's litigation with the industry. The settlement will mean payments of nearly \$670 million to Alaska over the next 25 years, starting in FY 2000.
- **PUBLIC HEALTH TERMS:** The significant public health terms of the settlement require: bans on marketing to youth; changes in corporate culture; disbanding trade associations; lobbying restrictions; opening industry research; and creation of a national teen smoking foundation and public education fund. The full settlement agreement is available at www.naag.org on the Internet.
- **THE PAYMENT STREAM:** The State of Alaska **does not** need to pass any legislation to receive payments under the settlement. However, legislation is required to protect Alaska's payments from the rather remote possibility of a nonparticipating manufacturer reduction, which is discussed in more detail below. The State also needs protection against attempts by HCFA (the federal Health Care Finance Administration) to recoup a portion of the state's funds, as will also be discussed below.

Under terms of the settlement agreement, Alaska will receive the following payments:

PAYMENTS TO ALASKA		
under		
SETTLEMENT OF TOBACCO LITIGATION		
	Date of Payment	Amount of Payment
Up-front Payment	between April 1999 and June 2000 (depending on actions of other states)	\$8,194,049.54
Annual Payments	between April and June 2000	\$21,890,915.46
	April 2001	\$23,638,672.09
	April 2002	\$28,383,145.58
	April 2003	\$22,651,761.36
	April 2004	\$23,912,967.90
	April 2005	\$23,912,967.90
	April 2006	\$23,912,967.90
	April 2007	\$23,912,967.90
	April 2008	\$24,387,539.93
	April 2009	\$24,387,539.93
	April 2010	\$24,387,539.93
	April 2011	\$24,387,539.93
	April 2012	\$24,387,539.93
	April 2013	\$24,387,539.93
	April 2014	\$24,387,539.93
	April 2015	\$24,387,539.93
	April 2016	\$24,387,539.93
	April 2017	\$24,387,539.93
	April 2018	\$27,327,155.20
	April 2019	\$27,327,155.20
	April 2020	\$27,327,155.20
	April 2021	\$27,327,155.20
	April 2022	\$27,327,155.20
	April 2023	\$27,327,155.20
	April 2024	\$27,327,155.20
	April 2025	\$27,327,155.20
	TOTAL	\$668,903,056.53

- **TIMING OF UP-FRONT PAYMENT:** On December 28, 1998, the tobacco companies paid an up-front payment into escrow as part of the agreement. No legislation is required for Alaska to receive its up-front payment, which will be disbursed to Alaska only when 80 percent of the states' lawsuits are dismissed without any appeal, or on June 30, 2000, whichever comes first. Right now, there are appeals in California and New York, so the anticipated receipt of the up-front payment will probably come closer to June 30, 2000.
- **TIMING OF ANNUAL PAYMENTS:** The first annual payment will be available no later than June 30, 2000. No legislation is required for Alaska to receive its annual payments. Alaska's first annual payment could come as early as April 2000, if 80 percent of the states' lawsuits are dismissed without any appeal, but in any case will be made no later than June 30, 2000. Beginning in 2001, the annual payments will be made to the state on April 15 each year.
- **ATTORNEYS' FEES:** The State of Alaska was represented in the tobacco litigation by the law firm of Hagens & Berman, which represented all the Northwest states. The settlement agreement allows the state's outside counsel to seek payment from the tobacco companies without affecting Alaska's share of the settlement. Hagens & Berman requested reimbursement directly from the tobacco companies, which agreed to pay \$10 million as full payment for the firm's representation of Alaska. This payment did not affect Alaska's share of the settlement. However, when compared to the state's settlement of \$668,903,056.53, the Hagens & Berman fee is approximately 1.5 percent.

THREAT TO SETTLEMENT FROM HCFA

- **FEDERAL RECOUPMENT:** The U.S. Health Care Finance Administration (HCFA) has taken the position that as much as half of the funds recovered through the national settlement are subject to the agency's right of recoupment. HCFA apparently bases its position on an interpretation of §1903(d)(2)(A-B) of the Social Security Act, which states that reimbursements to a state by a third party are "overpayments" from which HCFA may claim a pro-rata share.
 - The agency's position is based on the assumption that the state was specifically suing to collect state and federal dollars under a Medicaid reimbursement theory. One estimate shows that HCFA's interpretation of §1903(d) could result in a loss to the State of Alaska of \$400 million over 25 years. The Department of Law is working through Alaska's congressional delegation and other states to solve this problem, and it will defend the state's right to settlement funds in court if necessary. HCFA has represented

that it will assert its claim against annual state payments beginning after the Year 2000 payment.

- **ALASKA'S RESPONSE TO THREAT: Alaska's Objectives** - The State had four primary objectives when it brought suit against the tobacco industry: (1) to end the industry's targeting of Alaska's children as new consumers for its products; (2) to force the industry to disclose the harmful effects of smoking and decades of research demonstrating that tobacco kills; (3) to thwart the industry's apparent efforts to prevent the development of a safer product; and (4) to require the industry to pay for the harm it already has caused and, in the future, fund public health programs directed at alleviating the related public health concerns.
- **Alaska Sued to Protect Alaskans:** Alaska brought suit to protect Alaskans and to protect the fiscal integrity of the state's Medicaid program against future smoking-related treatment costs. Unlike other states, Alaska did not specifically plead a federal Medicaid recoupment claim in state superior court. Collecting federal dollars is the responsibility of HCFA and the U.S. Department of Justice. The U.S. Department of Justice declined to sue the tobacco industry on behalf of HCFA, and HCFA provided no support to the states during the litigation.
 - **First Proposed Settlement and Congress vs. State Settlement:** The first settlement was signed by the states and tobacco industry on June 20, 1997. It called for the tobacco industry to make payments to the states and fund federal enforcement programs totaling \$368.5 billion over 25 years. This settlement also required congressional approval, which did not occur. Accordingly, the states returned to litigation and resumed negotiations with the industry on their own. The litigation and resumed negotiations resulted in the second state settlement of November 23, 1998. HCFA could have acted along with the states to protect its rights during the second settlement process, but chose not to.
 - **Use of Settlement Funds:** A key provision of the McCain Bill in the 105th Congress provided that if states directed 50 percent of the settlement money (of the proposed 1997 settlement) to supplement but not supplant existing health care programs, HCFA could not assert its claim for recoupment. Although the McCain Bill did not pass and the states take the position that all settlement dollars are state funds, many states are abiding by the provisions of the McCain Bill (spending no less than 50 percent to supplement health care-related programs) to protect against recoupment by the federal government. Governor Knowles' proposal for spending tobacco settlement proceeds on annualized payments for Head Start, Healthy Families, and tobacco prevention programs will provide a strong argument against recoupment by HCFA.

- **Recent Development: SB 346:** On February 3, 1999, U.S. Senator Frank Murkowski and U.S. Senator Kay Bailey Hutchinson co-sponsored SB 346. SB 346 would protect all the states' settlement dollars from HCFA's attempted recoupment.

LEGISLATION

- **MODEL STATUTE:** The state is not required to pass the model statute included in the settlement to receive settlement payments. However, if the state does not pass the model statute, the state will risk a possible reduction in payments under the nonparticipating manufacturers' payment (NPM) reduction formula of the settlement. The settlement provides for an adjustment to the state's payments if the participating manufacturers experience a disadvantage and lose market share for sales of their tobacco products to other nonparticipating manufacturers as a result of the marketing restrictions, payments, and other restrictions in the settlement agreement.
- **NPM Risk Low In Alaska** - At this point, the risk to Alaska of a non-participating manufacturer reduction is minimal, given that many of the very small tobacco product manufacturers have decided to sign on to the settlement, which reduces the risk that they will take market share away from the largest companies. The risk is further lowered by the fact that the small tobacco products manufacturers only represent 1-2 percent of the U.S. market, making it unlikely that sales of their products will trigger the nonparticipating manufacturer reductions.
- **NPM Risk Can Be Eliminated** - The risk of nonparticipating manufacturer reductions can be eliminated by passage of the model statute (SB 84/HB 102). Under the terms of the settlement agreement, if the state passes the model statute and enforces it, the state will be exempt from any payment reductions even if the settlement was a significant factor contributing to the participating manufacturers' loss of market share.

CONCLUSION

In the upcoming months, Law will be working closely with the Alaska Departments of Revenue and Health and Social Services, and the federal Alcohol, Tobacco and Firearms investigators to assure full compliance with state tax laws. Law is also working closely at the direction of the governor with members of Alaska's congressional delegation to protect the state settlement from HCFA.

*Prepared by Alaska Department of Law
March 7, 1999*

LEGISLATION TO ACCOMPANY TOBACCO SETTLEMENT

"MODEL STATUTE" – HB 102/SB 84

The Tobacco Settlement: The tobacco manufacturers that participated in the November 23, 1998, settlement with the states represent over 98 percent of the tobacco manufacturing industry. The participating manufacturers agreed to make payments to the state for their violations of state law and to restrict their marketing practices. Alaska's payments over 25 years will total nearly \$670 million. No legislation to approve the terms of the settlement is required. However, the Master Settlement Agreement (MSA) contemplates important legislation, referred to as the "Model Statute," to assure that all manufacturers of tobacco products are accountable to Alaskans for potential future costs associated with their tobacco sales in the state.

Overview of the Model Statute Legislation: The settlement contemplates that all states will pass a model statute, with the goal being to provide assurances that all companies that sell tobacco products, including those that did not participate in the settlement, are financially capable of fulfilling their economic obligations, if any, to citizens and to the states. The model statute will give all tobacco manufacturers that sell their products in a state the option to either 1) sign on to the settlement agreement or 2) establish an escrow account and pay into that account at a stated rate per unit of tobacco sold in the state. The rates are proportional to the payments to be made by the participating manufacturers under the settlement. In other words, a tobacco manufacturer that did not participate in the settlement agreement could not get around the restrictions in the settlement and sell its products in Alaska with impunity, leaving either individual Alaskans, or the state, to pay the costs of treating resulting illnesses.

In addition, passage of the model statute legislation will protect the state's annual payments from a potential, but unlikely, Non-Participating Manufacturer Adjustment (see explanation below).

This statute was the subject of extensive and difficult negotiations, including discussions on whether the statute would survive legal challenges. The statute was reviewed by a number of antitrust and constitutional law experts who opined that this statute would survive legal challenge. Except for a few minor procedural changes, SB 84 and HB 102 are identical to the Model Statute provided in Exhibit T of the MSA.

Importance of Model Statute: Alaska is not required to pass the model statute to receive payments under the terms of the settlement. However, if Alaska does not pass the model statute, it will risk a reduction in payments under the Non-Participating Manufacturer (NPM) Adjustment formula of the settlement. Passing and enforcing the model statute will protect against such a reduction.

The settlement provides for an adjustment to a state's payments if the participating manufacturers experience a disadvantage and lose in-state market share for sales of their tobacco products to non-participating manufacturers as a result of the marketing restrictions, payments, and other provisions in the settlement agreement. However, each state has a safe haven from the application of the reduction formula: if it passes the model statute and enforces it, the state will be exempt from any payment reductions even if the settlement was a significant factor contributing to the participating manufacturers' loss of market share. Indeed, even if a court were to find the statute unconstitutional, the maximum NPM Adjustment Alaska would have to bear is 65% of the payment in any particular year. Without the passage of the statute, the maximum NPM Adjustment would be 100%.

Sectional Analysis

Section One: Section One is the findings and purpose section of the model statute legislation. Section One identifies tobacco as a serious public health problem in Alaska and discusses the burden that treating tobacco-related illnesses places on the State of Alaska. This section also establishes that it is the policy of the State of Alaska that tobacco product manufacturers—not the state or its citizens—bear the financial costs of treating smoking-related illnesses. Section One establishes the need to prevent other non-participating manufacturers from reaping short-term profits in Alaska, while leaving the state and its citizens without any financial protection from the known harms related to cigarette smoking. Finally, Section One identifies the purpose of the model statute legislation as the implementation of the November 23, 1998, MSA.

Section Two: Section Two amends Alaska Statutes, Title 45, by adding Chapter 53, which is entitled "Cigarette Sales."

Sec. 45.53.010 recognizes the MSA entered into between the State of Alaska, and the Participating Manufacturers in *State v. Philip Morris*, 1JU-97-915 Cl.

Sec. 45.53.020 requires that all tobacco product manufacturers do one of two things: (1) participate in the MSA, or (2) establish an escrow account and place dollars into that account at a stated rate per unit sold in this state. The rates are calculated to be equivalent to the rates paid by the Subsequent Participating Manufacturers (tobacco companies that signed the MSA after it was signed by the four original participating manufacturers) pursuant to the MSA. The changes in the rates also mirror the changes in the MSA annual payments on a per unit basis.

A manufacturer who places funds in escrow is entitled to withdraw interest or other earnings from the account as they are earned. The principal deposited in escrow can be released from escrow only:

1. to pay a judgment or settlement on any claim brought by the State or a party located in or residing in Alaska;
2. if the manufacturer establishes that the amount it would have paid the State had it participated in the MSA is less than the amount the manufacturer is required to place in escrow. In this case the manufacturer is allowed to withdraw the excess from the escrow; or
3. if the funds have remained in escrow for a period of 25 years from the date of payment.

Sec. AS 45.53.030 requires the commissioner of revenue to adopt regulations under the Administrative Procedure Act necessary to determine the volume of cigarettes manufactured by a tobacco product manufacturer that enter Alaska for sale in the state based on the amount of excise taxes paid. This will allow the commissioner of revenue to determine whether a tobacco manufacturer that does not sign the Master Settlement Agreement is making the appropriate deposits into the escrow account provided under AS 45.53.020.

Sec. AS 45.53.040 provides for auditing by the Alaska Department of Revenue of payments into escrow required by a tobacco manufacturer and enforcement by the Alaska Department of Law. This section provides for different levels of penalties against a tobacco manufacturer that fails to make the required deposits into escrow. If enforcement by the department of law is required and

the state prevails in an action brought under this section, the court may award the department full reasonable attorney's fees.

Sec. AS 45.53.990 sets forth the definitions. Many of the bill's definitions incorporate by reference the definitions in the MSA. This was done to avoid any confusion between the two documents, and to prevent this legislation from being overly lengthy. The MSA is a public document approved by the Juneau Superior Court on February 9, 1999, in the case of *State of Alaska v. Philip Morris*, 1JU-97-915 CI. A complete copy of the MSA can be found at www.naag.org on the Internet.

Consequences If the Legislature Does Not Pass the Model Statute

It is important to note that the State of Alaska is **not** required to pass the model statute legislation. The MSA and the Consent Decree will remain in force and effect regardless of legislative action on this bill. However passage of this statute will help protect public health and will protect the state settlement payments from a possible draconian and dramatic reduction. The MSA provides for an adjustment to state payments if the disadvantages experienced as a result of the MSA are a significant factor contributing to the participating manufacturers' loss of market share, i.e., the "Non-Participating Manufacturer Adjustment" (NPM Adjustment) found on page 58, at Section IX (d), of the MSA

To illustrate the potential impact of the NPM Adjustment, assume the following hypothetical situation:

1. In 2003 the Original Participating Manufacturers' (as defined at Section II (hh) of the MSA) (OPMs) market share was reduced from 97.5% in 1997 to 93.5%;
2. The OPMs shipped fewer cigarettes into the United States and Puerto Rico in 2003 than they shipped in 1997;
3. The MSA was a "significant factor" contributing to the market share loss;
4. All states except Alaska, California, Colorado, and Wyoming have adopted a Model Statute; and
5. The year for which payments are being calculated is 2004.

Alaska's payments based on the above hypothetical would be calculated as follows if the state had not passed the model statute:

Step One: Calculate the total dollars to be adjusted. In this hypothetical the loss of market share for which an adjustment is required is 2%. That 2% is calculated by subtracting the 2003 market share of 93.5% from the 1997 market share of 97.5% for a total market share loss of 4%; however, the first 2% of the total market share loss is not counted as part of the NPM Adjustment calculations. Then multiply the 2% market share loss times 3, resulting in a total percentage adjustment of 6%. (Note: under the MSA each 1% loss in market share results in a 3% reduction until the loss in market share reaches 16 2/3%, at which time the percentage reduction is calculated at a variable ratio.)

The 2004 total annual payment of \$7,004,000,000.00 to all of the states is reduced by an NPM adjustment of 6%, or \$420,240,000.00.

Step Two: Allocate the \$420,240,000.00 among the four states that did not pass the Model Statute. The following illustrates the allocation method:

States	Allocation % Established in Exhibit A to the MSA	2004 payment without NPM adjustment	% share of NPM Adjustment	Total NPM Adjustment \$420,240,000.00	2004 adjusted Payments
CALIFORNIA	0.127639554	\$893,987,436.22	0.866846800	\$364,283,699.20	\$529,703,737.01
COLORADO	0.013708614	\$ 96,015,132.46	0.093100201	\$ 39,124,428.61	\$ 56,890,703.84
ALASKA	0.003414187	\$ 23,912,965.75	0.023186990	\$ 9,744,100.72	\$ 14,168,865.03
WYOMING	0.002483449	\$ 17,394,076.80	0.016866009	\$ 7,087,771.46	\$ 10,306,305.33
Totals	0.147245804	\$1,031,309,611.22	1.000000000	\$420,240,000.00	\$611,069,611.22

The "% share of NPM Adjustment" (fourth column above) is calculated pro rata based on the states' relative allocations given in Exhibit A to the MSA. For example, Alaska's allocation established in Exhibit A is .03414187% of the total allocation of the four states whose payments will be adjusted by the NPM Adjustment because they did not pass a Model Statute.

The NPM Adjustme it is calculated each year. For instance, if the Participating Manufacturers continued to lose market share and the market share in 2005 remained at 93.5%, these four states would continue to experience an NF Adjustment.

SENATE FINANCE COMMITTEE

SIGN-IN

SB 84-CIGARETTE SALES: AGREEMENT/ESCROW

NAME: Doug Gardner AAG Subject/Bill No: SB 84
Co./Dept./Title: Law Phone: 2133
Address: Diamond Ct hse. Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

LTN1100-R01
03/31/99

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 02
19:42:08

TCN: 90487 DATE & TIME: 03/31/99 18:00 TO 21:00 STATUS:5 IN PROG.

PARTICIPANTS IN:MATSU

MAT

AK (907)000-0000
TSFY. SB 113
AK (907)000-0000

2 MR BILL BRUU

**** UPDATES ****

01 03/29/99 12:04:28 ANNOUNCING TELECONFERENCE
02 03/30/99 11:25:40 FAIRBANKS ADDED ON
02 03/30/99 11:25:41 KENAI LIO ADDED ON
02 03/30/99 11:25:42 MATSU ADDED ON
02 03/30/99 11:25:43 OFFNET 1 ADDED ON

LTN1100-R01
03/31/99

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 01
19:42:12

TCN: 90487 DATE & TIME: 03/31/99 18:00 TO 21:00 STATUS:5 IN PROG.

**** ORDER SUMMARY ****

SPONSOR: SFIN SENATE FINANCE

CHAIRS: PARNELL

PURPOSE: PUB PUBLIC HEARING

LEGISLATIVE

TORGERSON

CONTACT: DARWIN

TEL#: (907)465-2138

CHAIRING SITE: JUNEAU

CAPITOL

CAP532

TOLL FREE: (907)269-0141

DIAL-UP:

LIO: (907)258-8772

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED

3 MINUTE LIMIT

TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.

SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES:10

MEETING ID = 7346

OTHER SITES MAY ADD.

TCN REQUESTED ON 03/31/99 AND HAS 2 UPDATES

**** AGENDA ****

- 1 SB 24 REGULATIONS: ADOPTION & JUDICIAL REVIEW
- 2 SB 113 FINANCES OF ALASKA HOUSING FINANCE CORP
- 3 SB 42 1999 REVISOR'S BILL
- 4 SB 84 CIGARETTE SALES: AGREEMENT/ESCROW

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
* JNU JUNEAU	CAPITOL	CAP532 LOCATION STAFF
KEN KENAI LIO	145 MAIN ST LOOP	LOCATION STAFF
MAT MATSU	600 E RAILROAD	LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

ZZZ OF1 OFFNET 1

ANCHORAGE

DENNIS WOLDOCK (907)562-7051

PARTICIPANTS IN:ANCHORAGE

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MR ERIC DYRUD

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3 MR DICK DOLMAN

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4 MS ARLENE PATTON

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5 MR ARTHUR CLARK

AK TSFY. SB 113
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SB

85

HFIN

FILE

HOUSE COMMITTEE REPORT

FURTHER REFERRALS:

Date Referred to Committee: April 11, 2000

Date of Committee Action: 4/15/00

The FINANCE Committee considered:

CSSB 85(RLS)

CS FOR SENATE BILL NO. 85(RLS)

CREDITED SERVICE FOR TEMP EMPLOYEES:PERS

"An Act relating to credited service in the public employees' retirement system for temporary employment; and creating a public service benefit in the public employees' retirement system."

recommends it be replaced
with the following committee substitute _____

the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: _____

(Dept/Date)

fiscal note(s) _____

fiscal note(s) Senate DOA 2-15-00

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Therriault</i>	Therriault			X	
<i>Greg Bunde</i>	Bunde			✓	
<i>John Davies</i>	Davies	X			
<i>Ben Grussendorf</i>	Grussendorf	X			
<i>Gene Moses</i>	Moses	X			
<i>Larry Davis</i>	Davis	X			
<i>W.K. Williams</i>	Williams	X			
<i>Paul Phillips</i>	Phillips	✓			
<i>Ed Mulder</i>	Mulder	✓			
<i>John Foster</i>	Foster	X			
<i>John Austerma</i>	Austerma	X			

CHAIR'S SIGNATURE

Gene Therriault *Ed Mulder*

FISCAL NOTE

No. 2

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO Bill Version: CSSB 85 (FIN)
(S) Publish Date: 2-15-00

Revision Date	<u>2/14/00</u>	Dept. Affected	<u>Administration</u>
Title	<u>An Act relating to credited service that vested members of PERS receive for temporary service</u>	BRU	<u>Centralized Administrative Services</u>
Sponsor	<u>Senator Mackie</u>	Component	<u>Retirement and Benefits</u>
Requester	<u>(S) Finance</u>	Component No.	<u>64</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	4.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	4.0	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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (1029 P/E Retire)	4.0	0.0	0.0	0.0	0.0	0.0
TOTAL	4.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Contracted Services are required to provide computer system modifications to recognize purchased temporary service as credited service. Since the full actuarial cost of this service is to be paid by the member, there is no anticipated cost to the Public Employees' Retirement System employers.

See attached fiscal analysis of the PUBLIC SERVICE BENEFIT.

Prepared by: <u>Guy Bell, Director</u>	Phone <u>465-4471</u>
Division <u>Retirement and Benefits</u>	Date/Time <u>2/14/00 8:40 AM</u>
Approved by Commissioner: <u>Robert Poe, Jr. [Signature]</u>	Date <u>2/15/00</u>
Agency <u>Department of Administration</u>	

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SB 85
#2

Fiscal Note CSSB 85 (FIN) – Continued

Public Service Benefit

This amendment has been introduced or considered during a number of previous legislative sessions. The Senate Finance Committee asked for an explanation of the unfunded liability discussed in a previous review of this provision.

The public service benefit provision would entitle a person to a retirement benefit with at least two years of paid up PERS service and a total of at least five years of combined PERS and TRS service.

We have submitted a \$0 fiscal note for the legislation as amended. The public service benefit amendment requires members to pay the difference between the employer/employee contributions including interest earned by the system on those amounts and the full actuarial cost to receive this benefit.

Based upon an evaluation of system data, we have determined that there are only 22 members who have the required paid service in both retirement systems and are not currently employed.

This will have no measurable impact on employer contribution rates or the total funding of PERS and TRS. There will be a negligible impact on the total liabilities of the PERS and TRS funds (less than \$700 thousand for both systems as compared to the combined fund liabilities of more than \$10 billion. This represents less than 7/1,000% increase in system liabilities).

Since members are required to pay the full actuarial cost for these benefits, why is there an increase in total system liabilities?

The individuals affected by this legislation have left their money in the PERS and TRS systems but, because they are not vested, the systems have assumed no benefit liability for them. In effect, the systems have gotten an actuarial gain from their contributions (employer and employee). With this amendment, these members will be entitled to a benefit, therefore eliminating this actuarial gain and increasing system liability.

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ALASKA STATE LEGISLATURE

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-4925
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(907) 465-3517 (FAX)

SENATOR JERRY MACKIE

SENATE MAJORITY LEADER

MEMORANDUM

April 5, 2000

To: Representative Gene Theriault, Co-Chair
House Finance Committee
Alaska State Legislature

Representative Eldon Mulder, Co-Chair
House Finance Committee
Alaska State Legislature

From: Senator Jerry Mackie
Senate Majority Leader



Subject: **CSSB 85(Rules)** "An Act relating to credited service in the public employees' retirement system for temporary employment; and creating a public service benefit in the public employees' retirement system."

I respectfully request that you consider scheduling CSSSB 85(Rules) for a hearing in the House Finance Committee, pending referral from the House State Affairs Committee. The House State Affairs Committee will consider SB 85 on their committee calendar at **8:00 a.m., Tuesday, April 11th**. SB 85 passed the Senate March 30, 2000 by a vote of Y-19, O-N, and I-Absent.

I introduced this legislation at the request of several of my Kodiak constituents. SB 85 is an effective management tool for our State to utilize in minimizing the impact of current and future budget reductions. This bill will have the effect of allowing employees to meet their retirement eligibility threshold sooner than would otherwise be anticipated. Employees prone to use this benefit for retirement credit are employees with higher service totals, on the higher end of the pay schedule. Additionally, employer costs decrease when these employees are replaced through reduced costs to the Supplemental Benefit System and to the Retirement System. Savings are realized in the long term by replacing Tier I and Tier II category employees, due to lower benefit costs.

Employees who choose to use this benefit are required to pay the full actuarial cost of using the temporary service(AS 39.35.345). There is NO GENERAL FUND EXPENDITURE involved in this legislation. The fiscal note reflects a \$4,000 designated fund source - "the Public Employees Retirement Trust Fund", for contracted services for computer system modifications.

I am hopeful that you will schedule CSSB 85(RULES) in the near future. This legislation provides the State of Alaska with a simple economic remedy in minimizing the impact of downsizing Alaskan government.

**SPONSOR STATEMENT
CSSB 85(RULES)**

Re: SB 85 – "An Act relating to credited service in the public employees' retirement system for temporary employment." SPONSORED BY - SENATOR JERRY MACKIE

Currently, temporary employees in the PERS system can buy back their temporary time, however, this time does not count towards the minimum service time needed for retirement.

SB 85(Rules) amends AS 39.35.345(d) to allow employees covered by the Public Employee Retirement System (PERS) to buy up any temporary time and have it credited toward the minimum service time for retirement.

CSSB 85(Rules) also amends AS 39.35 by adding a new section **Sec. 39.35.375 Public Service Benefit**. This provision would entitle a person to a retirement benefit if they had at least two years of paid up PERS service and a total of at least five years of combined PERS and TRS (Teachers' Retirement System) service. When the Department of Education switched from the Public Employees System to the Teachers' Retirement System, employees were not able to get any credit for their previous PERS service.

Fiscal Impact

Temporary service as recognized under the retirement system under AS 39.35.345, provides that the full actuarial cost of using the temporary service be paid by the employee. There are no general funds involved in this proposal. The Department of Administration Fiscal Note dated 3/1/99 reflects a \$4 thousand dollar charge; the designated fund source is the Public Employees Retirement Trust Fund. This charge reflects approximately 40 hours of computer system modifications that will be required to initiate this change.

This legislation will allow the state to realize immediate cost savings by enabling employees to meet the retirement eligibility threshold sooner. The employees prone to use this for retirement credit are employees with higher service totals, thus they are on the higher end of the pay scale. Additionally, the employer costs decrease when these employees are replaced through reduced costs to the Supplemental Benefit System and to the Retirement System. Savings are realized in the long term by replacing Tier I and Tier II category employees with Tier III employees due to lower benefit costs.

SB 85 back-up information includes many support letters and petitions. Although I introduced this legislation at the request of several of my Kodiak constituents, this legislation has received the support from many Alaskan workers from throughout the State of Alaska. Also included are support letters from the AFLCIO and the Teamsters.

SB 85 is a responsible piece of the puzzle in the development of Alaska's long-term budget solution. This is a reasonably simple "economic tool" that may be used to minimize the impact of downsizing Alaska's state government.

Senate LABOR & COMMERCE Minutes



SENATE LABOR AND COMMERCE COMMITTEE

March 9, 1999

1:41 P.M.

SB 85-CREDITED SERVICE FOR TEMP EMPLOYEES:PERS

MS. JEAN SMITH, aide to Senator Mackie, sponsor of SB 85, said that currently temporary employees in the PERS can buy back their temporary time; however, they can't count that towards their time needed for retirement. This legislation amends AS 39.35. 345(d) by enabling employees covered by PERS to buy back their temporary time and have it credited toward the minimum service time for retirement. This legislation provides equity among all state employees in temporary positions by enabling them to count their temporary time towards their retirement eligibility.

MS. SMITH said the Department of Administration fiscal note, dated 3/1/99, said the full actuarial cost of this service is to be paid by the member. There is no anticipated cost to the Public Employee Retirement System employers. The Public Employees Retirement Trust Fund is the designate fund source and will be charged \$4,000 for approximately 40 hours of computer system modifications that will be required to initiate this change.

As stated in the Department of Administration's position paper, dated 3/1/99, this bill will have the effect of allowing employees to meet the retirement eligibility threshold sooner than would otherwise be anticipated. Since the employees likely to use this for retirement credit are employees with higher service totals on the higher end of the pay scale, it's more likely for the State to realize cost savings.

MS. SMITH noted there are a number of support letters and petitions from Kodiak and several other geographic areas of the State. There are also letters of support from AFL-CIO and the Teamsters.

She concluded that SB 85 adds a responsible piece to our long-term budget solution. In meeting budget reductions, this is an economic tool that may be used to minimize the impact of downsizing government. The passage of SB 85 is an opportunity to send a positive message to Alaska's State employees during a critical economic period within our state.

MS. SMITH said they also have an amendment that Mr. Church would explain.

SENATOR LEMAN said actuaries have testified to what is known as "adverse impact" in some cases, because those who benefit select something and those who don't benefit, don't select it. He asked if she had discussed this issue.

MS. SMITH answered that the employee would pay the cost of this and it's a considerable amount - perhaps \$50,000 for someone who is trying to get five years.

CHAIRMAN MACKIE said they discussed this issue and Mr. Bell and Mr.

Church would testify on it.

MR. BELL explained that this bill will allow a person who has had temporary service to use that time towards "20-and-out" or "30-and-out" by buying it. The actuarial cost is the net present value equation. A person makes his own determination whether it's worth it to them. He didn't think there was an adverse selection with this particular piece of legislation as their actuaries had already factored it into the rate.

SENATOR LEMAN asked if it would benefit an employee to retire and make lifestyle choices that would extend their lives longer, thus saving more from the system.

MR. BELL answered yes. He added regarding Amendment #1 that a question was asked if this could possibly put a person in an earlier tier. For example, if a person were employed in a temporary capacity only before July 1, 1986, when tier two retirement came into effect, and permanent service after July 1, 1986, if they purchased this service, would that make them tier one employees. The purpose of this amendment is to clarify that that's not the case. The date of hire for PERS purposes is the date the person became a permanent employee. Consequently, this does not change the original date of hire for a benefit calculation. The main issue with tier one is that a person is eligible to receive a medical retirement benefit on normal retirement, regardless of the age they retire. There is an age limitation of 60 - 65 for tier two.

SENATOR DONLEY moved to adopt Amendment #1: on page 1, line 9, to insert, "An election under this subsection does not change the date that an employee is considered to have commenced participatio. in the system under AS 39.35.120." There were no objections and it was so ordered.

SENATOR KELLY asked how many tiers there are.

MR. BELL replied that there are three: tier one is up until June 30, 1986, tier two is from July 1, 1986 to June 30, 1996, and tier three starts on July 1, 1996. The main issue is the 10-year vesting for the medical benefit.

MR. CHURCH added that the benefit in SB 9 is determined over the high five consecutive years as opposed to the high three consecutive years.

SENATOR KELLY asked when that started.

MR. BELL answered July 1, 1996.

SENATOR KELLY asked if the difference between SB 85 and SB 9 is that SB 9 covers school employees and isn't retroactive, whereas, SB 85 is state and local and is retroactive.

MR. BELL replied that was correct.

SENATOR KELLY asked if an employee buys time at today's retirement amount or at the amount he would have paid 10 years ago when he did the temporary time.

MR. BELL answered it would be based on today's salary and age.

SENATOR KELLY asked for an example of how much money they were talking about.

MR. BELL said they had not asked their actuary to come up with a table for this bill. There was no table for the last bill, but the direct percentage required to provide additional benefits. SB 85 would be set up just like the system for temporary service claims. For each age there is a percentage of salary a person would pay to buy a year of service. For example, a 30-year old person who is vested would pay 10.269 percent of their vesting year's salary to buy these benefits. Someone who is 40-years old would be paying twenty-odd percent of salary, because they are closer to retirement.

SENATOR KELLY asked if the department is assuming it would be withheld from a paycheck or if the employee could write a check.

MR. BELL answered some people might be able to just write a check. If an individual chooses to use this as a "20-and-out," like a police officer.

TAPE 99-6, SIDE B

The indebtedness would be required to be paid before retirement.

CHAIRMAN MACKIE said he had asked if it would cost the State more money in terms of employee contributions or anything else. He was told that this is clearly an optional thing for an employee to do at their own expense and it would not have an adverse effect on retirement and benefits. He asked Mr. Bell to explain how he arrived at that conclusion.

MR. BELL replied that the additional benefits would be fully paid by the individual with no impact to the employer. Another way it benefits the employer is that someone claiming this time will be eligible to retire sooner and lower the impact on the employer for ongoing employer contributions. If the position is subsequently filled, it would be at a lower range or step which equates to lower employer contributions.

SENATOR KELLY asked Mr. Bell when he talks about "employer" was he referring to the PERS Trust Fund or would the State be contributing the money.

MR. BELL answered he is talking about the nine percent of the payroll the employer would pay. He said there is no negative impact to the PERS Trust Fund.

SENATOR KELLY asked why anyone would pay more money if they don't expect to get more out of it.

MR. BELL replied that the advantage to the employee is they will get more money out of it through receiving retirement benefits earlier. A peace officer or fireman would not receive any more in value for the temporary time, but could have the temporary service treated as membership service which, when paid off, allows him to retire after 20 years. If he is in an elected position, he could retire after 30 years of service.

SENATOR KELLY asked how many people would respond to this.

MR. BELL replied that initially he thought they would be impacted with hundreds.

SENATOR KELLY asked, "Not thousands? You don't have thousands of people who have worked in temporary positions in the last 30 or 40 years?"

MR. BELL replied yes, but it won't help most people reach the service threshold. It will only benefit someone who has permanent service of less than 20 years, but when they add their temporary service to their credited service, it totals 20 or more years of service. They could pay that indebtedness, retire, and not work the additional time.

SENATOR KELLY asked about someone who buys their time, pays one month of the increased calculation, then quits state government, waiting till they're 55. "Would they have a benefit based on the time they bought, although they didn't pay for it?"

MR. BELL answered if they make this election, even though they are waiting until retirement age eligibility, if the benefits they are going to receive are greater than the indebtedness cost, then, yes, they would be credited with that service, even though they hadn't paid for it.

SENATOR KELLY said the same might be true of someone who bought this time and died before it was paid. Their spouse would continue to get the higher benefit based upon the time they never paid money for.

MR. BELL said that was correct.

SENATOR KELLY asked how far back the temporary service goes.

MR. BELL answered as far back as the initial point in time when an employee was hired by an employer under this system - back to January 1, 1961 for the State.

SENATOR KELLY asked if a vested employee is entitled to credit service for periods in which the employee regularly rendered full-time personal service to an employer excludes a four-month legislative stint.

MR. BELL answered before legislative time became covered under the retirement system, yes, as long as it was not previously purchased and claimed. He said legislative employment would only count for the four months of work.

SENATOR KELLY asked if a legislative employee gets a full year of credit.

MR. BELL replied that, if they work five sessions, under the conditional service provisions, they can receive a retirement benefit, but the benefit is still based only on the period of service that they worked. They don't get a full year credit.

SENATOR KELLY asked if he had a position on this bill.

MR. BELL said as with the other bill, they had no position.

Number 487

SENATOR LEMAN asked if it would be possible to minimize the number of calls by posting the calculations electronically so people could review them.

MR. BELL responded it could be put on their Internet system.

CHAIRMAN MACKIE asked if it could accurately be said it wasn't going to cost the State of Alaska any more money and could actually achieve a cost savings by allowing people to retire earlier than normally and that it has no adverse effect on the Retirement and Benefit Trust account.

MR. BELL answered that is all correct. He clarified that the State of Alaska is one employer in the system; the Municipality of Anchorage is another.

MS. BARBARA HUFF TUCKNESS, Teamster Local 959, supported SB 85. She said this bill specifically impacts a few of her members. She represents over 1,000 employees within the Anchorage school district, 650 in the Municipality of Anchorage, and a few folks in Fairbanks. A lot of retired military members work for government in the Municipality of Anchorage. Their years of military service count much more under a military scenario than they would from a temporary perspective, she said.

SENATOR KELLY noted that if you're in a uniform, you're at some pretty heavy risk.

MS. HUFF TUCKNESS added in the Municipality of Anchorage there are tech engineers who are going to school and may work three or four months in a temporary position and then are fortunate enough to go into a civil engineering position once they have graduated. However, that may or may not be incentive enough 25 years down the road for them to purchase it.

Teamsters Local 959 supports SB 85 because it would benefit a few individuals who would "ante up" the additional monies. It also lessens the payrolls.

Number 412

MR. LARRY BOYLE, ADF&G biologist, supported SB 85 principally because it's a fairness issue.

MR. MICHAEL DEAN, Division of Sport Fish employee, said he has 1.9 years of claimed temporary time that is paid up and if this bill passes, he would apply it to his retirement. He urged the committee to do all they could to pass this through.

SENATOR KELLY asked how this affects people who have already elected retirement.

MR. CHURCH answered that this would not affect them at all, because they have already retired and this bill targets people who have not retired by giving them the opportunity to retire earlier.

CHAIRMAN MACKIE thanked everyone who testified.

SENATOR DONLEY moved to pass CSSB 85(L&C) and the accompanying

fiscal note from committee with individual recommendations.

SENATOR KELLY objected, saying he wanted to know what effect this issue would have on collective bargaining agreements that are going on right now between the Administration and the four outstanding bargaining units. He asserted it seems that SB 85 is a benefit for the employees.

MR. BELL answered that this is outside the collective bargaining process since it is a statutory provision and is subject to legislative enactment.

CHAIRMAN MACKIE asked if it could potentially be a collective bargaining issue if the Administration wanted it.

MR. BELL said he didn't think it would be possible to do that.

SENATOR KELLY asked if he agreed this would be a benefit for those employees who are covered under some of the union contracts outside of the process.

MR. BELL answered that it wasn't an additional benefit, because the employee would be paying the full cost.

SENATOR KELLY asked if it was true that they don't have to put any cash up.

MR. BELL replied if a person wanted to do this to reach their "20-and-out" threshold for retirement eligibility, they would have to pay the full cost before retirement. It's not a "freebie."

SENATOR KELLY asked if they could do it over a period of years like normal indebtedness.

MR. BELL answered no. If a person chose not to use it to qualify for the 20-and-out and said they would just wait for retirement eligibility based on age, then, yes they could; but not when they are using the service to meet that eligibility threshold. That can only be met through service that is paid in full - whether it's temporary service or working for an employer.

SENATORS LEMAN, DONLEY, AND CHAIRMAN MACKIE voted yes; SENATOR KELLY voted no and CSSB 85(L&C) moved from committee.

Bill Root:

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Senate FINANCE Minutes



MINUTES
SENATE FINANCE COMMITTEE
March 31, 1999
8:03 AM

CS FOR SENATE BILL NO. 85 (L&C)
"An Act relating to credited service in the public employees' retirement system for temporary employment."

JEANNIE SMITH, staff to Senator Jerry Mackie sponsor of the bill, testified. Currently, employees in the PERS system could buy back their temporary time. However, this time did not count toward the minimum service needed for their retirement eligibility.

She told the committee this bill would allow these employees currently covered under PERS to buy any temporary time and have it credited toward that minimum service time for retirement. It would provide equity among state employees. It was an issue of fairness. They should be allowed to pay for months that they actually worked.

The fiscal impact on this legislation for temporary service as recognized under the retirement system provided that the employee would pay the full actuarial cost. There were no general funds involved. There would be computer programming necessary to implement the program as reflected in the Department of Administration fiscal note.

The legislation would allow the state to realize immediate cost savings by enabling employees to meet the retirement eligibility threshold sooner. The employees prone to use this for retirement credit were employees with the higher service codes thus they are on the higher end of the pay scale, according to Jeannie Smith.

She continued saying SB 85 was a responsible piece of the puzzle in the development of Alaska's long term budget solution. This was a reasonable economic tool that may be used to minimize the impact of downsizing Alaska's state government.

She spoke of a position statement submitted by the Department of Administration. It said that the bill would have the effect of allowing the employees to meet the retirement eligibility threshold sooner than they would otherwise be anticipated.

She then noted a list of Alaskan employers who were included within the umbrella of this bill who did not work for the State of Alaska.

She concluded by stating that this bill sent a positive

message to state workers and other employers and employees across the state.

Guy Bell and Bill Church returned to the table to address this bill. Guy Bell commented that this would allow employees to pay the cost to use temporary service that they had worked as membership service toward their retirement. Public employees with temporary service time would be affected. Currently, they could buy that temporary service time but could not use it toward retirement eligibility for 20 or 30 and out contracts. This would allow them to pay some extra, which would be the actuarial costs. He gave examples of the police or firefighter component of PERS. The full responsibility for paying the cost would rest with the employee.

Senator Randy Phillips asked if there was a difference between seasonal and temporary employees. Guy Bell explained that a seasonal employee was considered permanent and they did pay into PERS during their period of work. A temporary employee was not a PERS employee. There was no deduction from their salary and they did not receive PERS credit.

Senator Randy Phillips wanted to know how many temporary employees were in the state system and what was the average length of service in that status. Bill Church said the division did not know since people did not claim their temporary service. Senator Randy Phillips asked how many permanent temporary workers were there. Bill Church responded that the division did not track that information. Based on the employees who did claim their temporary service, they could prepare an estimate. Guy Bell added that there were many public employees in the retirement system and state employees were only a part. There were people with temporary service who worked for other employers.

Senator Al Adams asked about the fiscal note for SB9 and wanted to know if this program could be implemented with the computer modifications made to the other program for school employees. Bell replied that the changes were slightly different but that it was a small cost to the system. The two were calculated separately because it was not known if both bill would be adopted.

Co-Chair John Torgerson asked if this would be handled on an individual basis or would a single percent be imposed based on the actuarial costs. Guy Bell replied that it would be calculated on an individual basis since each case was different. The difference here was that an employee would purchase time that they worked probably a number of years ago. Very often, a person first worked as a temporary and then worked into a permanent position. That had to be calculated on an individual basis.

Senator Randy Phillips compared this to the last bill where seasonal employees had no control of the number of months they could work. He wondered if with the employees addressed in this bill, were there any inequities within the group of temporary employees that needed to be

adjusted. He spoke about the different classifications of people and assumed most were serving a probationary period before entering a full time status. Guy Bell said this was different than probationary since they were hired as temporary employees. When a person was first hired in a permanent position they were on probation but still contributed to PERS, he explained.

Co-Chair John Torgerson was confused about initial testimony saying that temporary time did not count. Could an employee go back and pick up time served in temporary service even when they were not in the system.

Bill Church responded that employees could once they were vested in PERS. Then they could claim all full-time temporary service. That was the main difference with this bill and SB 9. SB 85 dealt with employees who by the nature of their employment were excluded from becoming a vested member of PERS. They could then claim all full-time temporary service and pay the rate for that.

Co-Chair John Torgerson wanted to know if buying in counted toward becoming vested. Bill Church answered no; a person must already be vested. Co-Chair John Torgerson asked if once they were vested, how would the division calculate the payment for the five-year period. Bill Church said once they employee is vested they could go back and pay for the earlier temporary service. He detailed his own situation with his three months of temporary service.

Co-Chair John Torgerson wanted to know what was the average term of temporary service. Bill Church said it varied and depended on the term of employment. Co-Chair John Torgerson had questions about qualifications for PERS. Church replied it was calculated by time served as a paying member of PERS.

Co-Chair John Torgerson asked if this bill had a retroactive clause for an employee who was out of the system. Bill Church replied that an employee would be able to pay into the service to meet the eligibility for retirement. The employee could chose to buy it as just credited service or also for service to be credited for accrual. It was an individual decision.

Co-Chair John Torgerson asked if this was an irrevocable election. Bill Church affirmed.

Co-Chair John Torgerson asked why there weren't the same triggers in this bill as in the last bill of 90 days and 180 days.

Tape: SFC - 99 #74, Side B 8:50 AM

Bill Church responded there was already an existing period of service that had happened in the past. The election could be made at any time before the employee retired. The only difference would be the amount of interest accrued and charged based on how long ago the temporary service was

under a different retirement system.

Mr. Bell answered affirmatively.

Co-Chair Parnell asked how this department would be treated under a PERS and TRS scenario. If someone only had 4 and one-half years in PERS and then went to the Judicial system, could that person work a year in the latter and still link up for a benefit under this new legislation.

Mr. Church responded that these two retirement systems were not linked at all. These have been set up as different retirement systems, focusing on specific groups of people. They were originally established individually and funded separately. The only current link between the systems, is between PERS and TRS. If a person is vested in one system they can apply for a conditional service benefit only if they have a minimum of two years paid in the other companion system. Each benefit and the rate an employer pays are separate.

Co-Chair Parnell added that as a policy matter if it is good for one employee, it should be good for another. He asked if they had looked at the overall state retirement system to see how many different ones there were and how they could be linked if deemed appropriate.

Mr. Bell responded that the basic retirement systems in the state are PERS, TRS, Judicial, and the Elected Public Officers Retirement System (EPORS) which is a 60-person retirement system and one that existed for a very short period of time.

Senator Donley thought that the Employee Retirement Income Security Act (ERISA) required no more than a five-year vesting. He asked if the reason that TERS is eight years is because it is a state sovereignty question.

Mr. Bell responded that the state was not subject to ERISA.

Senator Green asked if this proposed legislation would apply only if someone qualified for benefits in neither system.

Mr. Church responded affirmatively.

EARL CLARK, former professor University of Alaska, and Project Coordinator, Department of Public Safety testified in favor of the proposed legislation. He outlined for the Committee, his work history over the years, the combination of which did not count towards retirement. He built up service in both systems, but does not have a retirement. He stated that this legislation rectifies a situation for employees that have served the State of Alaska.

CLARKE DAMON, testified in support of SB 85. He stated that his career was in education and throughout this period he participated in six different retirement programs. He receives \$88 from the Carpenter's union. He then gave a detailed synopsis of his work history for the Committee. Mr. Damon calculated his contributions to each of the

departments of which he had the opportunity to work for, along with the contributions made by the State into his retirement. As of July 1997, the balance of these funds was \$69,000 for his contributions and \$139,000 from the fund earnings. This retirement would work out to be \$606.00 monthly, \$237.00 for his benefit and \$348.00 for health benefits. After 18 years from the date of retirement, the total unrealized benefit to Mr. Damon would total \$584,000. Based on an average life expectancy, this total would go up to \$704,000 at an eight-percent earnings rate of \$4703.00 per month. At this present time, Mr. Damon is not eligible to receive any of these monies, due to the limitations of the present legislation. Mr. Damon made the point that he was at the mercy of reorganizations of departments and/or reclassifications of jobs.

MICHAEL DEAN, testified by teleconference in Anchorage in support of SB 85. He urged the Committee to do whatever was necessary to expedite this legislation.

Senator Taylor requested that the Division of Retirement & Benefits provide a fiscal note incorporating changes in the proposed amendment. Amendment #1 was TABLED. The bill was held in Committee.

ADJOURNED

Senator Torgerson adjourned the meeting at 10:59 am.
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SB 85 - "AN ACT RELATING TO CREDITED SERVICE IN
THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
FOR TEMPORARY EMPLOYMENT."

Sponsor: Senator Jerry Mackie

SUPPORT LETTERS AND PETITIONS

