

SCOMM

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and Delivery of Government Services

21ST ALASKA LEGISLATURE

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

FINAL REPORT

**APPENDIX A:
SUBCOMMITTEE REPORTS
VOLUME 2**

ENVIRONMENTAL CONSERVATION
FISH & GAME
GOVERNOR
HEALTH EDUCATION & SOCIAL SERVICES
LABOR
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JANUARY 2000

DEC
DEPT. OF
ENVIRONMENTAL
CONSERVATION

**COMMISSION ON PRIVATIZATION
AND
DELIVERY OF GOVERNMENT SERVICES**

SUBCOMMITTEE REPORT

ON THE

ALASKA DEPT. OF ENVIRONMENTAL CONSERVATION

November 4, 1999

Subcommittee Members

**Virgil Norton, Chair; Gus Andress, P.E.; Jerry Brookman; Keith Bucklin;
Doug Donagin; Bob Gilfilian, P.E.; Paul Hampton; Dee High, P.E.
Greg Horner, R.G.; Bill Lawrence; Stephanie Madsen
Greg Magee, P.E.; Vern McCorkle; Rick VanHatten**

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I. Department & Divisions

Alaska Department of Environmental Conservation

Divisions:

Office of the Commissioner
Division of Administrative Services
Division of Air & Water Quality
Division of Environmental Health
Division of Facility Construction & Operation
Division of Spill Prevention & Response
Division of Statewide Public Service

II. BRU and Components

Administration

Office of the Commissioner
Administrative Services

Exxon Restoration
Unallocated Reduction

Environmental Health

Environmental Health Director
Animal Industries
Seafood & Sanitation Inspection
Food Safety & Sanitation
Laboratory Services

Drinking Water
Solid Waste Management
Municipal Solid Waste
Industrial Solid Waste

Statewide Public Services

Statewide Public Services

Air and Water Quality

Air and Water Director
Air Quality
Water Quality

Non-Point Source Pollution Control

Non-Point Source Pollution Control

Spill Prevention and Response

Spill Prevention/Response Director
Contaminated Sites
Storage Tank Program
Industry
Preparedness & Pipeline
Prevention and Emergency
Response
Response Fund Administration

Contaminated Sites Program

Contaminated Sites Program

Local Emergency Planning Committees

Local Emergency Planning
Communities

Facility Construction and Operations

Facility Construction & Operations

Component Summary - FY00 Operating Budget

III. Total Budget: DEC

Agency: Department of Environmental Conservation

Page	Budget Component	FY98 Act	FY99 CC	FY99Auth	Gov Amd	House	Senate	ConfComm	FY99Auth to ConfComm	
Administration										
1	Office of the Commissioner	411.3	390.6	391.8	391.8	391.8	391.8	391.8	0.0	0.0%
2	Administrative Services	6,294.3	3,451.5	3,464.2	3,528.2	3,459.3	2,838.1	3,338.1	-126.1	-3.6%
3	Exxon Restoration	923.0	629.7	630.2	630.2	630.2	630.2	630.2	0.0	0.0%
4	Unallocated Reduction					-213.0	-266.6	-213.0	-213.0	0.0%
	* BRU Total	7,628.6	4,471.8	4,486.2	4,550.2	4,268.3	3,593.5	4,147.1	-339.1	-7.6%
Environmental Health										
5	Environmental Health Director	166.3	167.9	168.4	168.4	168.4	168.4	168.4	0.0	0.0%
6	Animal Industries	588.1	695.5	697.9	0.0	0.0	0.0	0.0	-697.9	-100.0%
7	Seafood & Sanitation Inspect'n	3,060.8	2,773.2	2,783.3	0.0	0.0	0.0	0.0	-2,783.3	-100.0%
8	Food Safety & Sanitation				3,811.2	3,481.2	3,481.2	3,142.2	3,142.2	%
9	Laboratory Services	2,024.4	2,250.6	2,259.3	2,232.7	2,232.7	2,232.7	2,232.7	-26.6	-1.2%
10	Drinking Water	1,998.9	3,756.7	3,764.6	3,864.6	3,814.6	3,814.6	3,814.6	50.0	1.3%
11	Solid Waste Management				1,078.3	1,078.3	1,078.3	1,078.3	1,078.3	%
12	Municipal Solid Waste	826.6	737.5	740.1	0.0	0.0	-0.0	-0.0	-740.1	-100.0%
13	Industrial Solid Waste		310.8	311.6	-0.0	-0.0	-0.0	-0.0	-311.6	-100.0%
W	* BRU Total	8,665.1	10,692.2	10,725.2	11,155.2	10,775.2	10,775.2	10,436.2	-289.0	-2.7%
Statewide Public Services										
4	Statewide Public Services	3,291.9	1,787.4	1,801.5	1,751.5	1,751.5	1,751.5	1,751.5	-50.0	-2.8%
	* BRU Total	3,291.9	1,787.4	1,801.5	1,751.5	1,751.5	1,751.5	1,751.5	-50.0	-2.8%
Air and Water Quality										
15	Air and Water Director	324.4	461.3	462.1	462.1	462.1	462.1	462.1	0.0	0.0%
16	Air Quality	4,013.9	4,825.4	4,840.2	4,840.2	4,840.2	4,840.2	4,840.2	-0.0	-0.0%
17	Water Quality	4,541.4	4,765.0	4,777.3	6,157.3	6,007.3	4,211.9	4,291.9	-485.4	-10.2%
	* BRU Total	8,879.7	10,051.7	10,079.6	11,459.6	11,309.6	9,514.2	9,594.2	-485.4	-4.8%
Non-Point Source Pollution Control										
18	Non-Pt Source Pollution Contrl						1,715.4	1,715.4	1,715.4	%
	* BRU Total	0.0	0.0	0.0	0.0	0.0	1,715.4	1,715.4	1,715.4	%
Spill Prevention and Response										
19	Spill Prevention/Response Dir.	191.3	192.6	193.1	193.1	193.1	193.1	193.1	0.0	0.0%
20	Contaminated Sites	4,395.9	4,899.2	4,911.6	4,911.6	4,911.6	0.0	-0.0	-4,911.6	-100.0%
21	Storage Tank Program	1,799.0	2,302.8	2,310.2	2,375.5	2,375.5	0.0	-0.0	-2,310.2	-100.0%
22	Industry	2,373.8	2,398.8	2,407.8	2,342.5	2,342.5	2,407.8	2,407.8	0.0	0.0%
23	Preparedness&Pipeline Prevention and Emergency	2,755.0	3,102.2	3,109.9	3,109.9	3,109.9	3,109.9	3,109.9	0.0	0.0%

Component Summary - FY00 Operating Budget

Agency: Department of Environmental Conservation

Page	Budget Component	FY98 Act	FY99 CC	FY99Auth	Gov Amd	House	Senate	ConfComm	FY99Auth to ConfComm	
	Spill Prevention and Response									
	Resp									
24	Response Fund Administration	2,100.2	2,185.5	2,185.5	2,185.5	2,185.5	1,642.1	1,642.1	-543.4	-24.9%
	* BRU Total	13,615.2	15,081.1	15,118.1	15,118.1	15,118.1	7,352.9	7,352.9	-7,765.2	-51.4%
	Contaminated Sites Program									
25	Contaminated Sites Program						6,443.4	6,703.4	6,703.4	%
	* BRU Total	0.0	0.0	0.0	0.0	0.0	6,443.4	6,703.4	6,703.4	%
	Local Emergency Planning Committees									
26	Local Emergency Planning Comm						543.4	543.4	543.4	%
	* BRU Total	0.0	0.0	0.0	0.0	0.0	543.4	543.4	543.4	%
	Facility Construction and Operations									
27	Facility Construc./Operations	4,175.0	4,694.5	4,704.6	5,306.5	5,306.5	5,150.7	5,150.7	446.1	9.5%
	* BRU Total	4,175.0	4,694.5	4,704.6	5,306.5	5,306.5	5,150.7	5,150.7	446.1	9.5%
28	*** Total Agency Expenditure	46,255.5	46,778.7	46,915.2	49,341.1	48,529.2	46,840.2	47,394.8	479.6	1.0%
	Federal Funds	10,847.9	13,430.7	13,462.8	14,612.8	14,612.8	14,612.8	14,612.8	1,150.0	8.5%
	General Funds	12,882.0	12,703.7	12,734.8	13,453.4	12,466.5	10,559.7	12,070.3	-664.5	-5.2%
	Other Funds	22,525.6	20,644.3	20,717.6	21,274.9	21,449.9	21,667.7	20,711.7	-5.9	-0.0%

IV. Revenue: Dept. of Environmental Conservation

-----Authorized Funding Less Exxon Valdez Oil Spill Funding-----

Revised: 8/3/99 BT

	FY91	*FY92	**FY93	***FY94	FY95	FY96	FY97	FY98	FY99	FY2000
General Funds										
General Fund Match	1,959.9	2,182.7	2,474.7	2,357.4	2,448.3	2,572.6	2,638.1	3,159.8	3,200.1	3,200.1
General Fund	25,267.9	19,818.4	15,622.5	13,542.9	12,933.2	11,402.7	9,968.4	7,268.8	6,943.8	5,731.3
General Fund Program Receipts	95.0	394.1	2,573.9	3,305.2	3,093.1	4,003.1	3,198.3	2,758.0	2,590.9	3,138.9
General Fund Designated Pgm. Receipts							100.0	0.0	0.0	0.0
ILTF								88.9	13.6	

	27,322.8	22,395.2	20,671.1	19,205.5	18,474.6	17,978.4	15,904.8	13,273.5	12,748.4	12,070.3
% (REDUCTION) OR INCREASE FROM PRIOR YEAR		(18%)	(8%)	(7%)	(4%)	(3%)	(12%)	(17%)	(4%)	(5%)
								% REDUCTION SINCE FY 91		(56%)

Other Funds

Federal	5,842.9	6,790.5	10,264.6	8,694.9	9,937.9	11,298.2	11,155.2	12,156.3	13,462.8	14,612.8
Interagency	549.8	454.5	449.0	1,120.0	980.7	835.5	787.1	845.6	891.9	894.9
Response Fund	6,810.8	7,193.7	10,627.7	11,370.6	13,041.6	11,981.4	11,780.7	12,421.5	12,444.6	12,478.6
Capital	740.5	335.7	337.7	433.7	1,144.9	1,350.1	1,269.6	2,230.0	2,389.6	2,218.5
Alaska Clean Water Fund	88.4	90.5	92.7	127.7	149.8	296.5	447.7	445.2	446.3	455.3
Storage Tank Fund		6,767.8	3,892.3	5,191.5	3,991.3	3,191.3	3,201.1	851.9	854.7	1,054.7
Clean Air Protection Fund							1,086.7	2,131.2	2,139.6	2,139.6
Cm Fish									175.0	175.0
Statutory Designated Pgm Receipts								452.7	454.5	534.5
Alaska Drinking Water Fund									277.6	518.4
Exxon							130.3	1,785.7	630.2	630.2

OTHER FUNDS	14,032.4	21,632.7	25,664.0	26,938.4	29,246.2	28,953.0	29,858.4	33,320.1	34,166.8	35,712.5
% (REDUCTION) OR INCREASE FROM PRIOR YEAR		54%	19%	5%	9%	(1%)	3%	12%	3%	5%
								% INCREASE OR OR (REDUCTION) SINCE FY 91		155%

Total Funds

TOTAL FUNDS	41,355.2	44,027.9	46,335.1	46,143.9	47,720.8	46,931.4	45,763.2	46,593.6	46,915.2	47,782.8
% (REDUCTION) OR INCREASE FROM PRIOR YEAR		6%	5%	(0%)	3%	(2%)	(2%)	2%	1%	2%
								% INCREASE OR (REDUCTION) SINCE FY 91		16%

Staffing

Permanent, Part Time and Temporary	492	488	505	504	510	506	491	494	497	488
% (REDUCTION) OR INCREASE FROM PRIOR YEAR		(1%)	3%	(0%)	1%	(1%)	(3%)	1%	1%	(2%)
								% INCREASE OR (REDUCTION) SINCE FY 91		(1%)

*FY92 Authorized "Other Funds" does not include funding attributed to the Exxon Valdez Oil Spill - 38891.8 RF & 7193.7 I/A.

**FY93 Authorized "Other Funds" does not include funding attributed to the Exxon Valdez Oil Spill - 33735.0 RF & 9045.0 I/A RF.

***FY94 Authorized "Other Funds" does not include funding attributed to the Exxon Valdez Oil Spill - 36,635.5 RF & 2,284.6 EVOS.

V. Constitutional and Statutory Provisions Governing Department Operation

AS 03.05	AS 46.04
AS 03.45	AS 46.05
AS 03.58	AS 46.06
AS 17.05	AS 46.07
AS 17.07	AS 46.08
AS 17.20	AS 46.09
AS 18.35	AS 46.11
AS 37.400-500	AS 46.13
AS 44.19	AS 46.14
AS 44.43	AS 46.30
AS 44.46	AS 46.40
AS 44.62	AS 46.45
AS 46.03	

VI. Department Mission

The mission of the Department of Environmental Conservation is to develop, coordinate, and administer policies, programs, and planning related to public health and the environment of the state.

Office of the Commissioner. The mission of the Office of the Commissioner is to set departmental policy and implement statutory requirements.

Division of Administrative Services. The mission of the Division of Administrative Services is to provide administrative support for the department's programs and personnel.

Division of Spill Prevention and Response. The mission of the Division of Spill Prevention and Response is to prevent, respond to, and ensure the clean-up of unauthorized discharges of oil and hazardous substances.

Division of Air and Water Quality. The mission of the Division of Air and Water Quality is to identify, prevent, abate, and control air and water pollution in a cost-effective, accountable manner.

Division of Environmental Health. The mission of the Division of Environmental Health is to prevent and control public health nuisances by establishing standards of cleanliness and sanitation for water, solid waste, and food where a lack of sanitation may create a condition that causes disease.

Division of Facility Construction and Operation. The mission of the Division of Facility Construction and Operation is to provide financial and technical assistance to local governments for construction and operation of water, sewage, and solid waste projects.

Division of Statewide Public Service. The mission of the Division of Statewide Public Service is to provide environmental compliance assistance to communities and businesses.

VII. Number of Employees

Staff positions in each division are listed below.

Division of Administrative Services	57
Division of Air & Water Quality	101
Division of Environmental Health	135
Division of Facility Construction & Operations	34
Division of Statewide Public Service	17
Division of Spill Prevention & Response	70
Contaminated Sites Program (new BRU)	63

VIII. Specialized Equipment & Expertise Used to Perform Mission

The following is a list of specialized equipment needed by the Department of Environmental Conservation in order to complete its mission to develop, coordinate, and administer policies, programs and planning related to public health and the environment of the state.

- Laboratory equipment is used to certify and accredit commercial labs and sample Alaskan produced food animals and products, including shellfish for PSP.
- Air monitoring equipment is used to measure public exposures to air pollution, evaluate the effectiveness of pollution reduction programs such as automotive tailpipe I/M testing, and to support public health advisories when pollution from natural events such as volcanoes and wildfires pose a public health threat.
- Water and sewer repair equipment is warehoused and maintained for immediate loan to communities faced with sanitation facility emergencies.
- Response gear has been provided to communities under community partnership agreements to increase their response capabilities.
- Communications equipment is maintained as a part of the department response capabilities.

The following is a list of specialized expertise needed by a department to fulfill its mission to develop, coordinate, and administer policies, programs and planning related to public health and the environment of the state.

Drinking Water and Wastewater Program

- Engineering
- Hydrogeology/hydrology
- Microbiology and chemistry of water

- A thorough understanding of the constantly evolving federal drinking water requirements

Food Safety and Sanitation

- Microbiology and chemistry of food
- Diseases that affect food animals; how to prevent or care for them
- Food processing techniques
- A thorough understanding of the conditions that can cause food borne illnesses and appropriate controls

Laboratory Services

- Chemical and microbiological laboratory analyses
- Contamination likely to be found in water, food and animals and how it can occur
- Environmental fate of pesticides

Solid Waste Management

- Hydrogeology/hydrology
- Landfill design and operations

Administration

- Extensive expertise in fund accounting, cash management, fund capitalization, and state and federal regulations to assure timely and accurate accounting for and reporting on all revenues received, posted, and expended through the Alaska State Accounting System (AKSAS).
- Extensive technical expertise to fully integrate department data to facilitate public access and inquiry in the department's data sets.

The expertise needed to successfully implement DEC's mission is not limited to scientific or technical expertise. Also required is the ability to

- communicate clearly
- exercise reasonable, rationale, responsible judgment
- build consensus

IX. Existing DEC Contracts: Professional Services ASPS/RAP Log FY99

Contract Number	ASPS Number (a)	RAP Number	Division	Contractor Name	\$ Amount	Fund Source		Term Period	Contract Mgr	Description
						GF	Other			
18-3010-99	N/A		A&WQ	Borechem Laboratories	\$6,604		X	8/24/98 - 9/30/98	A. Ash	Laboratory Analysis of stream water samples
18-3015-99	99-0119		A&WQ	Worldwide Environmental	\$52,480		X	8/23/99 - 6/30/00	C. Heil	I/M Program Emission Test System Dev.
18-3018-99	99-0148		A&WQ	Nat'l Wetlands Science	\$150,000		X	2/1/99 - 6/30/99	J. Powell	Wetlands Reg. Guidebooks and Workshops
18-3021-99	N/A		DAS	Nature Connections	\$20,600		X	5/27/99 - 8/10/99	T. Poe	Model Annual Report
18-3007-99	99-0072		EJI	Livingston Stone	\$131,000		X	8/18/98 - 10/31/98	D. Barrett	Food Safety Lab Feasibility Study
18-3011-99	N/A		EJI	Systems Management, Inc.	\$10,000		X	9/1/98 - 12/31/98	J. Weise	Drinking Water AREV Consulting
18-3009-99	N/A		FC&O	Northern Testing Laboratory	\$40,000		X	10/23/98 - 3/31/00	K. Lindley	Operator Training Materials Development
18-3019-99	N/A		FC&O	Craig Nordgren Consulting	\$4,700		X	4/6/99 - 4/30-99	K. Lindley	Operator Training Workshop
18-3023-99	N/A	Single Source	FC&O	Alaska Native Tribal Health Consortium	\$9,000		X	5/15/99 - 5/31/99	K. Lindley	Programmable Logic Controller Training
18-3001-99	N/A		SPAR	OilRisk Consultants	\$7,000		X	12/7/99 - 6/30/01	S. Bainbridge	Tesoro Risk Assessment Review- Group Two
18-3002-99	99-0060		SPAR	OASIS Environmental	\$100,000		X	11/16/98 - 9/30/99	T. Moore	Pipeline and Tank Leak Detection
18-3003-99	N/A		SPAR	OilRisk Consultants	\$15,000		X	8/14/98 - 6/30/01	S. Bainbridge	Review risk assessment work plans
18-3004-99	99-063		SPAR	OASIS Environmental	\$99,522		X	12/9/98 - 6/30/99	T. DeRuyter	Tundra Treatment Guidelines
18-3005-99	N/A		SPAR	HMS, Inc.	\$20,320		X	8/15/98 - 6/30/00	T. Boston	UST FAP Remediation Estimator
18-3008-99	N/A		SPAR	Resources Data	\$18,500		X	8/14/99 - 6/30-99	C. Kent	CS table & data migration to SQL server
18-3012-99	N/A		SPAR	Resources Data, Inc.	\$18,590		X	9/9/98 - 6/30/99	C. Pring-Ham	SQL Database Conversion
18-3016-99	N/A		SPAR	Collar Marine	\$50,000		X	12/15/98 - 3/31/00	J. Kotula	Hinchinbrook Reacur Tug BAT
18-3017-99	N/A		SPAR	Environmental Resources Assoc	\$6,000		X	1/26/99 - 6/30/99	C. Pring-Ham	Performance Evaluation Samples
18-3020-99	N/A	Single Source	SPAR	Resources Data	\$33,500		X	3/15/99 - 6/30/01	C. Pring-Ham	Merging, optimization, and modification of databases
18-3022-99	N/A		SPAR	Document Technology	\$15,706		X	5/21/99 - 6/30-99	L. Howard	Document conversion to CD-ROM
18-3024-99	N/A	Single Source	SPAR	Charles Webster & Associates	\$7,000		X	5/17/99 - 6/10/99	M. Burger	Circis Media Management Training
18-3025-99	N/A		SPAR	Resources Data, Inc.	\$25,000		X	7/12/99 - 12/31/99	C. Stephens	Map Interface Controls
18-3026-99	N/A	Single Source	SPAR	Shannon & Wilson	\$19,000		X	5/28-99 - 6/30/99	B. Jones	AK Specific Ecological Assessment Endpoints
18-3000-99	99-0030		SPS	Ross & Associates	\$54,000	\$1,620	\$52,380	7/16/98 - 12/30/99	D. Wigglesworth	AK Env. Leadership Program
18-3014-99	N/A		SPS	Montgomery Watson	\$29,976		X	11/1/98 - 8/31/99	A. Viteri	Lower Cook Inlet Waste Management Plan
18-3027-99	N/A	Single Source	SPS	Montgomery Watson	\$19,984		X	6/15/99 - 8/31/99	M. See	Lower Cook Inlet Waste Management Plan

(a) = \$50,000 or less

IX. Existing DEC Contracts:FY98 CONTRACT ENCUMBRANCES

EN#	CO #	DESCRIPTION	AMOUNT	COMMENTS
1890601	18-3001-99	Tesoro Risk Assessment Review	\$7,000	SPAR/STP - S. Bainbridge
1890602	18-3000-99	Ak Environmental Leadership Program	\$54,000	SPS - D. Wigglesworth
1890603	18-3002-99	Pipeline and Tank Leak Detection	\$100,000	SPAR/PERP - Kathleen Young
1890604	18-3003-99	Chevron Risk Assessment Review	\$12,000	SPAR/STP - S. Bainbridge
1890605	18-3004-99	Tundra Treatment Guidelines	\$100,000	SPAR/PERP - Deborah Williams
1890606	18-3005-99	UST FAPRemediation Estimator	\$24,900	SPAR/STP - T. Boston
1890607	18-3006-99	Source Control of Pipeline Oil Spills	\$50,000	SPAR/PERP - Kathleen Young
1890608	DOA to assign	UST Access 97 Customization Work	\$8,322	SPAR/STP - C. Pring-Ham
1890609	18-3007-99	Food Safety Lab Feasibility Study	\$145,700	EH/FSL - Dick Barrett
1890610	18-3008-99	CS Table & Data Migration to SQL Server	\$10,000	SPAR/CS - Chris Kent
1890611	18-3009-99	Operator Training Materials Development	\$25,000	FC&O/OA - Kerry Lindley
1890612	18-3010-99	Lab analysis of Birch Creek TMDL samples	\$5,500	A&WQ - Amy Ash
1890613	50-5021-99	Cleanup Standards Validation	\$3,750	SPAR/CS - Katarina Rukowski
1890614	18-3012-99	SQL Database Conversion and Optimization	\$16,900	SPAR/STP - Cynthia Pring-Ham
1890615	18-3011-99	Drinking Water, AREV Consulting	\$10,000	EH/DW - James Weise
1890616	18-3013-98	Village Y2K Equipment Project	\$10,000	FC&O/OA - Ken Smith
1890617	50-5019-99	AVOCET Consulting	\$3,200	SPAR/CS - L. Himmelbauer
1890618	50-5020-99	Coaching/Facilitation Pipeline C-Plan	\$5,000	SPAR/IPP - T. Chapple
1890619	50-5022-99	Gemwest Systems	\$2,500	SPAR/PERP - M. Burger
1890620	50-5023-99	VMT Slope Stability - Report Review	\$4,000	SPAR/IPP - B. Friedman
1890621	50-5024-99	The McCloskey Group, Inc.	\$4,900	SPAR/PERP - D. Gardner
1890622	50-5025-99	Professional Consultation	\$1,000	SPAR/STP - T. Boston
1890623	50-5026-99	Interlaboratory Round Robin Testing	\$5,000	SPAR/STP - C. Pring-Ham

IX. Existing DEC Contracts: AdminCO

Contract Number	RAP #	Contractor Name	\$ Amount	Term Period	Contract Mgr	Description	Solicitation	Comments		
18-10-5000	N/A		5,000	1/26 - 2/3/98	F. Podmolik	Customer Svc. Training	Informal RFP	Fran received assistance in prep		
10-5001-99	N/A	Debby Bloom	1,000	3/4 - 5/30/99	M. See	EVOS Final Report	Debby Bloom	EVOS project		

X. Summary of Department Privatization Activities

The following activities have been privatized in the **Division of Air and Water Quality**:

- Monitoring of water quality where public or environmental health threats need verification
- Field restoration of streams, rivers, lakes, and bays where damage has impaired the uses of the water that inhibits community, fisheries or other economic development.
- Water quality studies to assess damages or develop recovery plans.
- Development of public brochures or information flyers.
- All large photo copying jobs such as regulations, forms, newsletters etc.
- Review of stormwater plans in Anchorage was recently delegated to the Municipality.
- 3rd party work done through grants exceeds \$1.7 million. Local government, non-profits, contractors, the University and other agencies perform this work.
- 120 private garages conduct emissions test for the Inspection & Maintenance programs in Anchorage, Fairbanks, and the Matanuska-Susitna Valley.
- Laboratory testing of fuel samples for compliance with the ethanol-fuel program in Anchorage is contracted to a private laboratory.
- Contractors are used to provide technical assistance in developing air quality control plans for communities not meeting the health standards (FY99 \$365,000 expended)
- In FY00 a \$600,000 contract will be let for specialized cold weather automotive tailpipe testing in Anchorage and Fairbanks.
- Local governments in Anchorage, Fairbanks and Juneau perform very significant portions of the efforts and funds to achieve clear air goals. (Anchorage - 16 employees, Fairbanks - 11 employees)
- Collecting water quality data.
- Performing technical analysis to prepare permit applications, such as mixing zone modeling.
- Other technical engineering and geological/hydrological analyses for the applicant to assess potential impacts to the quality of the receiving waters.
- Permit application preparation
- Ambient pollution monitoring near regulated facilities, exhaust stack emission testing and monitoring
- Some air monitoring services in remote locations are contracted out. Fairbanks, Anchorage, and numerous industries operate air-monitoring stations.
- Most water quality sampling and laboratory analysis of samples are conducted through contractual agreements.
- Permitted dischargers conduct self-monitoring and reporting according to permit requirements.
- Some water body recovery work is accomplished through contractual arrangements with private entities.
- Information systems and needs assessments are contracted to the private sector.
- Public notices, and document printing.

The following activities have been privatized in the **Division of Facilities and Construction**:

- \$80 million annually (based on FY00) in feasibility studies, project design, construction, construction management.
- Village Safe Water project financial management.
- Annual loan program financial audits.
- Operator training material and curricula development.
- Operator training delivery.
- Operator certification exam proctors.

The following activities have been privatized in the **Division of Spill Prevention and Response**:

- Certified UST workers to close, install and test UST's.
- Qualified persons to collect samples at leaking UST sites, develop cleanup plans and remediate sites.
- Approved laboratories to analyze soil and water samples from LUST sites.
- Certified inspectors to inspect UST systems as a result of new regulations.
- Voluntary cleanup allows independent contaminated site cleanup by interested parties reducing government oversight.
- Use of qualified professionals to collect environmental samples and develop and implement cleanup plans.
- Use of independent laboratories to analyze soils and water samples from contaminated sites.
- Loan assistance for storage tank owners.
- Development of risk based regulations for establishing cleanup levels to allow flexibility for achieving cleanup based on risk to public health or the environment.
- Private party agreements for contaminated sites and leaking underground tanks (APC, KPC, ARR and others).
- Cleanup agreements with DOD for military site cleanups and NOAA for the Pribilofs.
- Underground storage tank agreements with NPS and FAA and other state agencies.
- State Memorandum of Agreement to conduct cleanup of state owned property (DNR, DOT, F&G and Education).
- Term contracts for a wide range of professional consulting services including cleanup, drills and technical services.
- Direct pay for logistical support services, transportation, warehousing, and rental equipment.
- Pre-positioned response equipment for use by spillers, on-scene coordinators and government agencies.
- Training and technical assistance for spill response and contaminated site workers through 40- hour HAZWOPER training.
- Competitive contracts for publications, spill summary reports, statewide HAZMAT response inventories, technical experts and others.
- Emergency contracts for initial containment and control actions.
- Memorandum of Agreements with EPA and USCG to coordinate prevention, preparedness and response.
- Memorandum of Agreements for transfer of spill response assests to local government for spill response.
- Integrated oil spill response and statewide disaster planning with other state agencies.

- Community Spill Response Agreements with over 20 communities.
- Incident Command System for emergency response.
- Anchorage and Fairbanks Hazmat agreements.
- Mutual aid agreement with the West Coast states and British Columbia.
- Mutual aid agreement with Canada for Southeast Alaska and Beaufort Sea spill response.
- Unified response planning with state, local and federal agencies.
- Private contracts for a range of professional consulting services, cleanup and technical services.
- Emergency contracts for immediate containment, control or patch and plug operations.
- Standardized tactics manual for oil spill response and cleanup agreements with various responsible parties to enhance spill cleanup.
- Alternative compliance option for non-crude shippers.
- Contracts for subject matter experts.
- Coordinated contingency plan reviews to streamline state and federal plan review requirements.
- Industry project review teams.
- Integrated tactics manual for oil spill response.
- Standardized spill scenarios.
- Coordinated cost recovery process with Department of Law.
- Streamlined cost recovery through implementation of regulations

The following activities have been privatized in the **Division of Statewide Public Services**:

- The Green Star program (waste reduction and recycling).
- Communities do most of the household hazardous waste collection program. DEC only provides oversight and assistance at household hazardous waste events.
- Large photocopying jobs, such as the Alaska Materials Exchange catalog.
- Private contractors develop some outreach materials.
- Supplemental Environmental Programs.

The following activities have been privatized in the **Division of Environmental Health**:

- Sanitary surveys for drinking water system done by private individuals
- Certified installer program for domestic wastewater systems (expands who can install these systems)
- Monitoring of drinking water systems done by private labs
- Moving certified installer training to University of Alaska
- Certification of on-lot septic systems now done by private engineers
- All large photo copying jobs such as regulations, forms, newsletters etc.
- Some HACCP and food server training
- HACCP plan preparation (done by processors and private consultants)
- Collection of water samples for shell fish growing
- Issuance of animal health certificates (by private veterinarians)
- Public service announcements

- Looking at creating certified 3rd party inspector program for low-risk facilities
- All laboratory analyses are done by private laboratories except:
 - Cryptosporidium and giardia in public water systems
 - Food testing
 - Some animal analyses for other state and federal agencies
- All landfill design work
- Some aspects of the landfill review may be contracted out
- Extremely complicated landfill designs
- High level engineering review
- All groundwater monitoring

XI. Subcommittee Recommendations per Section 5 of SB 33

Privatization Primer

Privatization options can range from contracting out or outsourcing, the most common type, to full-scale, privately financed design, build, and operations. In general, though, the common use of the term privatization refers to formal contracting out of the services by the government to the private for-profit and non-profit sectors. However, not all functions of state government can be privatized. There are functions that are inherently government and where the private sector cannot or will not perform.

The concepts of privatizing state government services in Alaska have become attractive to many residents and elected officials, including the past legislature session, where Senate Bill No. 33 was enacted into law. SB 33 created the Commission on Privatization and Delivery of Government Services to determine which state government functions can be privatized, but also which functions can be consolidated and transferred to other governments in order to reduce the dependency on the State of Alaska's revenues for the delivery of state government services.

Privatization is an idea that draws both supporters and detractors. Supporters applaud the improved efficiency and critics express concern about the reliability and fairness of privately provided services. Other reasons for supporting or opposing privatization are shown below:

<i>Reasons for Supporting Privatization</i>
• To obtain special skills or supplement government staff for short period of time • To meet demands beyond current governmental capacity • To reduce costs of government • To improve service quality and efficiency • To provide a choice of providers and levels of service

Reasons for Opposing Privatization

- **Loss of public employee jobs**
- **Relinquishes public responsibility for public funds**
- **Weakens and decreases public participation in government**
- **High potential for corruption (fraud, financial conflicts-of-interest and cost-overruns)**
- **Any resulting cost savings are directed away from the taxpayers and towards the contractor**
- **Threatens confidentiality of private information**
- **Increases the temptation to reduce quality of services**

It seems that both the public and private sectors can do some things better than the other. For instance, the government tends to be better at policy management, regulatory, and enforcement. While the private for-profit sector tends to be better at performing economic tasks, innovating, adapting to rapid change, and performing complex and technical tasks. And, the private non-profit sector tends to be best at performing tasks that demand compassion and trust for the health and welfare of the public.

Finally, privatization is a way to bring the advantages of competition, flexibility, and efficiency to the delivery of public services. In doing so, privatization also involves risk and requires careful management on the part of the public agency. To achieve the potential benefits of privatization, each privatization initiative undertaken as a result of SB 33 needs to be monitored to assure the benefits of cost effectiveness and quality in the delivery of publicly funded services.

Preface by Virgil Norton, Subcommittee Chair

OBJECTIVE

The objective of this report by the Alaska Department of Environmental Conservation Subcommittee on Privatization is to provide the Commission on Privatization and Delivery of Government Services our recommendations in accordance with Section 5 of Senate Bill 33. Comments and suggestions concerning management of the Department in general and of specific divisions are included.

SCOPE AND LIMITS

The content of this report is limited because of time constraints that allowed the subcommittee to become minimally familiar with the basic functions of the six divisions comprising the ADEC. The programs of each division largely escaped careful scrutiny, including the actual value or necessity of each program or each program's priority to the division's mission. Further, each program was not examined as to performance, or actual work being done, in comparison to the program's mission, goals and primary services. Thus, this report is not a complete review of the Department in general, nor of any single division in particular. The scope of work defined in Section 5 of SB 33 is a substantial undertaking for volunteer citizens given the time allowed.

Fortunately many subcommittee members have extensive experience as environmental contractors, consultants, or engineers for the private sector and deal professionally with one or more divisions of the ADEC on a daily basis. This fact alone enabled the subcommittee to construct a meaningful, albeit brief report. That the subcommittee regards this report as incomplete, when judged against the scope of work defined, should not be construed as diminishing the validity or worth of any comments, suggestions, or recommendations submitted herein.

The subcommittee agreed early on that any recommendations that impacted ADEC duties or functions not result in greater expenditures of state general funds, and that recommendations not result in reduction or elimination of legally mandated responsibilities.

It was also generally agreed that while some ADEC functions could be eliminated, allowing the EPA to takeover, the result might lead to frustrations and problems by Alaskans having to comply with decisions made in Seattle or Washington. The consensus of the subcommittee was that decisions concerning environmental issues should be made in Alaska by Alaskans.

The subcommittee began with the basic premise that any function of the ADEC, except enforcement duties, could be performed by the private sector. The issues would be cost, efficiency, and quality of service acceptable to the public. Legal issues such as union contracts, statute revisions, or state procurement laws and regulations were not addressed due to time constraints.

Finally, the chairman and members of the subcommittee believe that the full scope of work defined in section 5 of SB 33 requires a complete and extensive audit of the Department. And any future audit should include not only legislative and subcommittee participation, but all division directors and employees as well. Many are highly qualified and knowledgeable individuals who could provide valuable suggestions and recommendations. The legislature, as well as the employees union, would have to make assurances that there wouldn't be any political or bureaucratic repercussions for their cooperation.

METHODOLOGY

The subcommittee chose to remain comprised as a single work group in reviewing each division of the Department. Each division director, or their representative, received the better part of one subcommittee meeting (approximately 2 hours) to give their presentation and answer any questions.

Mary Siroky, manager for Information, Education & Coordination for the Division of Statewide Public Service in D.C. assisted in scheduling the various division presentations and served as Department contact person for general information or additional questions. She also assisted in the compilation of this report, which has been very helpful.

The Division presentations were necessary for the subcommittee and generally very informative. However, SPAR and EH were the only divisions that provided any suggestions, recommendations, or otherwise worthwhile commentary with regard to Section 5 of SB 33. It should be noted that both Larry Dietrick of SPAR and Janice Adair of EH did commendable jobs. Tom Chapple of A&WQ was helpful in pointing out a problem concerning seafood inspections, and Greg Capito seemed very knowledgeable in VSW activities.

Annette Krietzer of Senator Leman's office provided valuable information on budget and related issues. She attended nearly all of the subcommittee meetings and was a valuable resource for questions.

Debbie Higgins of Senator Ward's office along with Marco Pignalberi and Annette Deal of Representative Cowdery's office, all assisted the subcommittee in obtaining documents, publications and general information regarding privatization.

All comments, suggestions and recommendations by each subcommittee member are included in this report. They have been condensed under the headings for applicable Division(s) or in General Recommendations. The full text as written by each subcommittee member is attached following the report.



General Recommendations

- (#1) Improve Department effectiveness by using general permits (single authorization covering similar activities in similar locations) to cover de minimus activities such as minor wastewater discharges. May require statutory changes to AS 46.03.100.
- (#2) Use regulations to implement best management practices or best technology rather than issuing individual permits. This approach is used effectively by the Alaska Forest Resources and Practices Act, one of the best forest management laws in the nation.
- (#3) Establish a process whereby the regulated community, using state guidelines, prepares their own permits and certifications, then submits those draft products to ADEC for concurrence or revision. This would reduce heavy "front end" costs, both in staffing and actual costs, often claimed by the Department when initiating a specific project review.
- (#4) Save money by curtailing travel expenditures for general meetings, conferences, seminars, and workshops. Oftentimes four or five ADEC employees travel from Juneau to Anchorage or vice versa to attend the same meeting or event. Travel for "customer service" i.e. regulatory activities such as site inspections should be emphasized.
- (#5) Alaska's most significant and pressing environmental issues and problems should be prioritized to ensure that limited resources are most effectively used. Effective management of federal environmental regulatory programs on Alaska should be a top priority. Although ADEC is an Executive Branch department, legislative establishment of priorities may be appropriate in this unique case.
- (#6) The legislature should prohibit unnecessary and redundant rulemaking by the Department. For example, there have been two recent separate major revisions of the same solid waste regulations and the reason given is that "fine tuning" was necessary. A rulemaking process is expensive and creates uncertainty for the regulated community.
- (#7) Improve Department effectiveness to the regulated community by ensuring that regulations and permits offer legal certainty and do not subject the community to frivolous lawsuits brought by environmental organizations. The Department should, if necessary, provide recommendations to the state legislature.
- (#8) The review of engineering plans be performed by a private engineer under contract to the Department. Several programs administered by the Department require plans be prepared by a professional engineer. The plans are required to be submitted for review and approval by the Department. The programs that require plan review include drinking water systems, wastewater treatment and disposal

systems, solid waste facilities, storm water collection and treatment facilities and possibly several other areas. The Department could set up a contract procedure with private engineers specialized in these areas to provide the necessary services to review engineering plans for conformance and compliance with ADEC regulations. The Department will need to provide oversight of the review process and possibly, some mandatory plan reviews. It may be feasible to consolidate all program plan review functions from all Department Divisions into one clearinghouse for plan review, whereby private engineers are used on a contract basis to provide detailed plan review.

- (#9) The Alaska Legislature should authorize and fund a thorough audit of the Department. The audit should include the intent of SB 33 and the scope of work defined in Section 5. The Commission on Privatization and Delivery of Government Services should participate in the audit and provide oversight. Private companies and individuals, with backgrounds in environmental issues, and are familiar with the Department, should also be encouraged to participate. Participation from division directors and other employees within the Department should also be encouraged. The audit should also include a review of all statutes pertaining to the Department. The statute review should clearly detail mandated functions and should recommend any changes necessary to accomplish the intent of SB 33.
- (#10) All contracts written for services to be contracted out, which are currently being performed by DEC employees, should require performance references and or bonding to insure accountability.
- (#11) Specific criteria should be developed and implemented to obtain a pool of qualified contractors for different services that may be contracted for by the department. This could include past performance, adequate bonding, professional qualifications of the personnel employed, etc. and would enable the department to simplify the contracting process, and shorten the time necessary to obtain a qualified contractor for services needed.

Division of Administrative Services

- (#12) All employees of DEC that are classified as information officers, or whose work involves press relations or public information, should be transferred to the Division of Statewide Public Service. The Public Information and Information Systems programs, currently in the Division of Administrative Services, should be transferred to the Statewide Public Service Department.

Consolidation of all information and public assistance services into one division will allow more productive and efficient use of personnel. It will also allow the Division of Statewide Public Service to return to the "public service officer" concept in order to assist small businesses and individuals with a "one stop shopping" approach for all the divisions in the Department. Creating Public Service Officers to expedite

individual and small business needs with all divisions would enhance public confidence in the Department.

The public service officers could be Department employees, or contracted out to individuals with knowledge of Department functions and regulations, and experience in the permitting process. This option to privatize would be especially useful in remote locations, especially those off the road system.

Other benefits derived from this consolidation would be to allow the other divisions to concentrate on their specialized areas of expertise, such as science, engineering and technical work particular to the respective divisions. The Administrative Services Division would retain only functions relating to Human Resources, Financial Services and Budget Services.

This consolidation need not increase the number of programs in the Statewide Public Services Division. Transferred programs from the Administrative Services Division could be accomplished by enlarging the Community Assistance and Information Program currently in the Statewide Public Services Division.

Division of Spill Prevention and Response

- (#13) The Legislature should rescind the sunset date for the demise of the Board of Storage Tank Assistance. Further, the function of the Board should be privatized to serve as an appeal board for the private sector to seek resolution on conflicting issues with the Department. In addition to resolving disputes between the ADEC and the regulated community, the Board would review cleanup allowable technologies and serve as a board over the licensing of professionals working on low and medium cleanup projects proposed for privatization. In addition, the role of the Board should be expanded to include appeal services in additional programs in SPAR (such as aboveground tanks) and possibly other divisions where an appeal process would be helpful to the regulated community.
- (#14) Currently, term contracts for the investigation and cleanup of contaminated sites require consultants to have on staff employees with a wide-range of expertise. This requirement includes specialized experts (such as toxicologists) which in effect limits or restricts the hiring of small professional Alaskan firms. The large national firms generally have specialized expertise in their Lower 48 offices. Typically less than 5 to 10% of the work on the term contracts is performed by specialized experts, while over 90% of the work is performed by non-specialized experts (environmental scientists, hydrogeologists and engineers) who are usually on the staff of the smaller Alaskan firms. The Request For Proposals (RFPs) solicited for term contracts oftentimes penalizes or discourages the award of contracts to small Alaskan firms who may have most but not all of the expertise on their staff. The Department should amend this situation by eliminating the penalty in the RFPs and encourage the use of small qualified Alaskan firms. Also, the RFPs should provide incentives for the professional firms (large or small) to subcontract out the specialized expert services.

- **(#15) Privatize Low to Medium Priority Contaminated Site Cleanup** ADEC should proceed with evaluation of the feasibility of implementing a program similar to the licensed site professional (LSP) program in force in Massachusetts. Similar programs are in place in Ohio and Connecticut. ADEC has developed regulations in the area of risk-based cleanup standards and a Voluntary Cleanup Program (VCP) that are a sound foundation for development of an LSP program. Development of such a program can aid the private sector with enhancing property transfers, property development, and faster site cleanup resolution. However, development of such a program is necessarily a public process that involves the regulators, the regulated community, insurers, lending institutions, and certainly the professional consultants. Liability with respect to ascertaining site cleanup and regulatory adherence are foremost in the minds of the professional consultants. Formulation of an LSP program would require an LSP association of professionals, LSP board licensing and examination, and code of professional responsibility. Furthermore, it may take several years to design, revise, and implement a fully functional LSP program. Massachusetts began its program in 1992 and took over a year to promulgate LSP regulations. Although in favor of evaluating the prospect of an LSP, due to the relatively small number of contaminated sites in Alaska versus lower 48 states with LSP programs and the propensity of low and medium priority sites to be small in extent, I believe a cost benefit analysis should be performed. This analysis could also evaluate the practical performance and merit of ADEC's existing voluntary cleanup program (VCP). Perhaps by adding, or enhancing incentives to the VCP that progress can be made to remove low and medium priority sites.
- **(#16) Contaminated Sites Remediation Program (CSRP) Project Budgeting** Since the State of Alaska fiscal year (FY) ends in the middle of the Alaska field season (July 31) and funding approval for projects is not secured until after that date, as a contractor we encounter hurried field mobilization efforts. These hurried efforts often meet with difficulties in procuring subcontracted support services, including drilling, surveying, and analytical services. Project planning is also sometimes compressed into short difficult time frames. As such, it is my concern that project cost estimates and project support estimates encounter higher mobilization and logistics costs. If project planning budgets, for example work plans, could receive funding in the FY prior to planned implementation, then ADEC CSRP project costs may benefit from prior planning and "economy of scale" mobilization costs. ADEC CSRP management may also consider the practice of requiring CSRP project managers to prepare "government estimates" prior to preparing legislative budget requests.
- **(#17) Access to 470 Fund** should be restricted to legislative action or an emergency declared by the Commissioner of the Department. Such an emergency should be subjected to legislative review and oversight.
- **(#18) SPAR** should establish standard operating procedures for dealing with contaminated sites. The standard operating procedures should include providing a property owner with a checklist to accomplish clean up and a "no further action" letter if it is completed successfully.

- (#19) A model or template with examples of site assessment and risk based clean up plans should be developed and made available to the public. Every effort should be made to streamline this process so that private property owners can direct their resources to actually cleaning up the contamination.
- (#20) Require all contaminated sites project managers and contaminated sites program managers have a minimum of two (2) years actual field experience in assessment of contamination and remediation work. Educational background should include study in engineering, chemistry or a discipline other than biology or forestry. Develop a "user friendly" approach based on scientific and engineering principles.

Division of Environmental Health

- (#21) Currently, ADEC has laboratories located in Palmer and Juneau. Based on the findings of a recent evaluation of laboratories in ADEC and Department Health and Social Services (DHSS), it is recommended all ADEC laboratory facilities and services be combined in one central facility located at the new DHSS Public Health Laboratory (currently under construction on Tudor Road in Anchorage). The ADEC laboratory could be accommodated in a wing that could be added to the DHSS building. Although housed in a DHSS facility, the ADEC lab should continue to be operated and managed by ADEC. However, prior to developing plans to build the centralized laboratory, the Department should solicit letters of interest from private sector and university laboratories for providing laboratory testing services. If supply and demand justifies the new testing services offered by the private sector then the ADEC could appropriately reduce the amount of new laboratory space, equipment and staff needed to operate the new centralized laboratory. Lastly, the Department should continue to certify private sector laboratories.
- (#22) With the exception of a few sanitary surveys that are required to be performed by the Department to maintain primacy with the EPA, all sanitary surveys of public water systems should be performed by private engineers certified by the Department. Currently, the Department has a program that certifies private sector engineers to perform sanitary surveys. However, the Department field staff also provides the same services at a relatively low cost to the owner of the water system. Consequently, the Department often finds itself in competition with the private sector. To avoid the conflict of services, the Department should require all public water system owners to seek services rendered by the private sector.
- (#23) Privatize Wellhead/Watershed Protection Federal funds available under the Safe Drinking Water Act (SDWA) charge each of the states to evaluate the risk of potential contamination to public drinking water systems. These evaluations come in the form of source water protection plans (SWAP). A concern of the private contracting community is that EH accepted the funding and decided to conduct all of the work in-house. It is my understanding that EH plans to hire staff and/or find available federal government staff rather than consider using the hydrology and

hydro-geology capabilities of the private contracting community. Perhaps a cost benefit analysis was done by EH to evaluate whether this program should be done by in-house staff or contracted out. Admittedly, I have not yet inquired as to the entire evaluation process conducted by ADEC. Since this program intends to identify contaminated sites and their potential threat to public drinking water systems, a concern is that EH must coordinate its efforts with that of CSRP in order to avoid potential duplicity of effort that CSRP may have already contracted out in the past. Also, this is a very comprehensive program that will be conducted by ADEC over a period of four years and it may be completed over a shorter time interval if EH contracted out some of the effort.

- (#24) The Food Safety and Sanitation Program should investigate having appropriate staff work from their homes, eliminating the cost of establishing and maintaining offices in remote locations.
- (#25) A speedy review process should be developed to efficiently deal with appeals and waivers requested by private sector engineers on the preparation of engineering plans in all areas of environmental work (drinking water, wastewater, storm water, etc.). The appeal committee should include qualified representatives from both the Department and private sector engineers.

Division of Air & Water Quality

- (#26) Immediately reinstate, and place a high priority on, Section 401 review of federal water quality, wetland and all other federal permits. Alaska needs a strong environmental review and certification of federal permits to ensure that Alaska's interests are protected during the federal permitting process. If ADEC does not unilaterally resume this highly important program the Legislature should either (1) direct that ADEC conduct, the 401 certifications or (2) reassign the activity to another state department. A general permit approach, i.e. general certifications for federal permits should be explored and implemented if practical.
- (#27) Reevaluate the costs and benefits of primacy for water pollution control. Legislative action may be required. Alaska may be better served by maximizing, to the extent allowed by federal law, the State's role in the National Pollutant Discharge Elimination System Permit program. It would seem beneficial that that EPA not control the permit process for regulated activities in Alaska.
- (#28) Evaluate Privatization of Air and Water Quality Permit Review The Division of Air and Water Quality (AWQ) should consider privatizing some portions of permit reviews such as reviews of models and risk assessment. These functions have been successfully privatized by CSRP without reducing ADEC's responsibility to make final cleanup decisions, or in AWQ's case permit decisions.

Division of Facility Construction & Operation

- **(#29) VSW: Contract to fill new Project Manager positions in VSW.** Last August, VSW issued a Request for Proposal (RFP) to the private sector to provide a project manager (PM) to supervise VSW projects, like the current project managers that are on staff. Contracting for a VSW/PM has not been tried before, so the outcome is uncertain on how well it will succeed. Before additional VSW/PM positions are procured to the private sector, a cost benefit analysis should be completed after the first year to determine whether this action did not result in a greater expenditure to the state.

There will probably be many difficulties to overcome during the first year of the contract because it is a new concept for VSW. Since it is expected that insights will be gained from this first-time experience, further contracting of VSW/PM positions will be less awkward and more established. However, there is still a need to maintain a staff for oversight and accountability, inherent with the grant funding programs.

- **(#30) VSW: Outsource the annual VSW Capital Budget Questionnaire efforts.** This work could be contracted to an engineering firm that is experienced in rural sanitation. However, this function may be an inherent government responsibility that only VSW should perform to ensure impartiality. If contracted, the firm would validate the information submitted by the rural communities and then score and rank the proposed sanitation projects. They could also obtain information for those villages that did not submit. In addition, the firm could assist VSW with improving the questionnaire and process, including database development.
- **(#31) VSW: Privatize the development of a comprehensive statewide database of rural sanitation facilities in Alaska.** Assuming there is still a need to develop a comprehensive statewide database of rural sanitation facilities for documenting current conditions and assessing future needs and funding is available, a private engineering firm could be contracted to complete this task. A Preliminary Audit Report by the Legislature Budget and Audit Committee, dated October 2, 1998, recommended that VSW create a detailed inventory of all village sanitation systems in order to make informed program decisions. The private sector can complete this work more resourcefully while meeting VSW needs and expectations.
- **(#32) VSW: Commission a study to provide evidence that force account construction is better method for building rural sanitation projects.** The debate over force account versus public bid construction has been going on for many years between the public and private sectors. It centers on issues of cost, quality control, and accountability. To date, only narratives without documented evidence have discussed these issues at best. For instance, no comprehensive study has been conducted on completed rural sanitation projects to substantiate that force account construction is markedly cheaper than contracting. Therefore, it is recommended that an independent study be commissioned by the legislature to research this matter under the auspices of VSW.

Besides cost comparisons, the study would also evaluate work quality and performance differences. A private contractor could perform the study.

Presently, force account construction is the preferred method to construct rural sanitation projects. Although private construction contractors dislike it because it limits their opportunities, it has more positive attributes than contracting from the village's viewpoint. VSW is encouraged to monitor closely that each decision made to select force account construction is correct and in the best interest of the community. VSW is also encouraged to maximize contracting opportunities for contractors where expertise and experience are required.

- (#33) MG&L: Contract MG&L/PM positions. If contracting results of the VSW/PM position are positive, it would seem that a project manager position or two in MG&L could also be contracted to the private sector. However, staff will be needed to provide the inherent oversight and accountability of the contract employees.
- (#34) MG&L: Privatize the accounting/bookkeeping functions of the loan programs and projects to a private accounting firm. There will still be need for an administrative assistant position to perform the inherent program duties. No opportunity exists to privatize the project accounting function under the Municipal Matching Grant Program. Project accounting for municipal grants differs from the VSW grant program. Under municipal grants, the grantee (local government) pays vendors directly and provides project accounting. Under VSW, an accounting firm that pays the vendors for the project on behalf of the community performs project accounting.
- (#35) MG&L: Outsource the auditing functions of the internal auditor position to a private accounting firm. However, the financial management duties of this position are inherent to the grant and loan programs and should be performed by MG&L.

XII. Problems/Barriers to Implementing Proposed Recommendations

There are existing state and federal statutory and legal provisions that inhibit privatization within ADEC. The primary barriers pertain to federal and state grant funding and regulatory requirements, but there are internal system (standard operating procedures) barriers as well. Federal funding for capital improvements or even regulatory programs often come with strings attached which require inherent government control. There are cumbersome legal barriers in law and regulations concerning liability issues in contracting out public provided services. Legislation is needed to enact privatization laws to remove these barriers.

Most of the recommendations proposed by the subcommittee in this report can be implemented by administrators within the Department. The recommendations requiring statute review and/or revision, or other action by the Alaska Legislature are as follows:

Recommendation #1 may require statutory changes to AS.46.03.100.

Recommendation #5 may require the Legislature to set priorities.

Recommendation #6 should be reviewed and acted upon by the Administrative Regulation Review Committee of the Alaska Legislature.

Recommendation #9 requires the Alaska Legislature to authorize and fund a complete audit of the Department. In conjunction with the recommended audit, the Department should be directed by the legislature to provide the Commission on Privatization with a report that addresses accomplishing the intent and scope of work outlined in SB 33.

Recommendation #26 requires an investigation and action by the Alaska Legislature. Obviously the legislature cannot micro manage the Department, but in this era of budget reductions some direction and prioritizing of funding may be necessary.

The Alaska Legislature should authorize and fund a review of liability statutes pertaining to private sector consultants and contractors employed by the state. Some limited liability immunity will be required, or possibly extending official immunity status with limiting provisions may suffice.

Finally, for privatization and other issues defined in section 5 of SB 33 to occur, the full cooperation of the Department should be required.



MEMORANDUM

State of Alaska

Department of Environmental Conservation
Office of the Commissioner

TO: Virgil Norton, Chairman
DEC Privatization Committee

DATE: 11/23/99

FILE NO:

THRU:

PHONE NO: 465-5066

FROM: Kurt Fredriksson
Acting Deputy Commissioner

SUBJECT: Comments on Subcommittee
Recommendations

The department appreciates this opportunity to provide comments on the draft recommendations prepared by your subcommittee to the Commission on Privatization and Delivery of State Services. We have worked closely with our subcommittee and appreciate the time and effort that has been committed to producing the recommendations.

The subcommittee prepared a total of thirty five recommendations which the Committee has asked to be ranked in priority order. In considering the relative value of the subcommittee's recommendations, the department grouped them into the following six common themes in priority order:

1. Increased use of private contractors
2. Permit streamlining
3. Consolidate some functions in a single division or location
4. Currently being pursued by the department
5. Additional state expense
6. Ongoing legislative process

Our comments on each of these categories and the recommendations that fall under them follows. It is the department's position that only the first three categories merit further consideration by the Committee.

We would also point out that neither the subcommittee nor the department has done a serious cost/benefit analysis to determine if these recommendations would result in reduced state costs without harming their legislatively mandated service. It is likely that some of the recommendations included in the three categories meriting further consideration could result in additional state expense upon further study.

Increased Use of Private Contractors

Recommendations # 8,10, 11, 14, 15, 22, 23, 25, 28, 29, 30, 31, 33, 34, 35 all touch on some aspect of contracting out department services. While not all contracting will result in cost savings, the department agrees with the general direction of the recommendations to investigate how contracting can be used to reduce the cost or increase the efficiency of conducting state business.

The department currently uses private contractors to carry out very technical tasks or scientific analysis on a temporary or project specific basis. We agree with the subcommittee recommendations (# 11, 14, 23, 25, 28, and 31) that encourage greater use of contractor services. However, department compliance and approval functions are legislatively mandated responsibilities that can not be carried out by private contractors. The department is also bound by contractual agreements with the State's employee unions to evaluate the costs and benefits of work done by private contractors that might otherwise be done by department staff.

The department appreciates the subcommittee's attention to the issue of how and when to use private contractors to support department activities. The subcommittee's recommendations in this area should be a high priority for further review by the Committee.

Permit Streamlining

Recommendations #1, 2, 3, 26, and 27 propose steps that could be pursued to streamline the department's permitting process. The department supports the recommendations made by the subcommittee and agrees more can be done to make the permitting process as efficient as possible.

The department will soon release a general permit for temporary camps that covers permits from a number of different department programs (solid waste, wastewater, food safety, etc.) The department has also recently established an industry and special interest stakeholder working group, the Wastewater Permit Workgroup, to evaluate the current water quality permitting program and recommend improvements. The use of general permits, permits by rule, best management practices, and assumption of the National Pollution Discharge Elimination System Permit Program from EPA are all being explored by the Workgroup.

The subcommittee's recommendations for improving the department's permitting procedures should be treated as the second priority for the Committee's attention.

Consolidation of Laboratory and Public Information Services

Recommendation #21 addresses benefits that might be achieved by consolidating all department laboratory services at a single department location, preferably in conjunction with the new Department of Health and Social Services Public Health Laboratory under construction in Anchorage. This recommendation merits further consideration by the Committee. The recommendation could result in long term cost savings to the state, but would require additional short term funding to either expand the Health and Social Services laboratory or lease a consolidated facility.

Recommendation # 2 seeks to increase efficiency by having all public information officers managed by the Division of Statewide Public Service. The department does not believe any cost

savings would be generated by this recommendation nor have any been calculated by the subcommittee. Unlike the recommendation to consolidate laboratory services in a single location, this recommendation would only make minor management adjustments with no cost savings. This recommendation does not warrant further consideration by the Committee.

Currently Being Pursued by the Department

A few recommendations proposed actions that are already in place or are being actively pursued by the department (# 16, 17, 18, 19, 20, and 29) and should be treated as a lower priority by the Committee.

Additional State Expense

Three recommendations (#9, 13, and 32) called for additional legislative audits and the extension or creation of additional boards and commissions. These recommendations would result in a greater state government expense inconsistent with the subcommittee's statement that all recommendations must be evaluated against two criteria:

1. The implementation of a recommendation will not result in any greater expenditure of state general funds.
2. The implementation will not reduce the legally mandated services of the Department.

Consistent with the subcommittee's guidelines we do not believe further study of these recommendations is warranted.

Ongoing legislative process

Five of the subcommittee's general recommendations (#4, 5, 6, 7, and 24) addressed broad administrative or budget issues that are the subject of legislative debate each year. Reducing travel expenditures, prioritizing environmental issues and problems, prohibiting unnecessary regulations, eliminating frivolous lawsuits; and having some department staff work from their homes were all mentioned under this category. These recommendations should be placed in the lowest priority for the Committee's attention.

To summarize, the department appreciates the thoughtful review and recommendations prepared by the subcommittee. Of the subcommittee's thirty five recommendations, there are twenty recommendations that warrant further consideration by the Committee in the areas of the department's use of private contractors, steps to improve the permitting process and cost savings that might be realized by consolidating the department's laboratory services.

bcc: Mike Conway, Director of Statewide Public Service

FULL COMMISSION MTG SCHEDULED ATTENDANCE

		Nov 24	Nov 30	Dec 1	Dec 7	Dec 8	Dec 13	Dec 14
Adams		YES	NO/MAYBE	NO/MAYBE	NO/MAYBE	NO/MAYBE	YES	YES
Allen		YES	YES	YES	YES	YES	YES	YES
Brice		YES	YES	YES	NO/LS	NO/LS	YES	YES
Cowdery		YES	YES	YES	YES	YES	YES	YES
Fink		YES	YES	YES	YES	YES	YES	YES
Harper		YES	YES	YES	YES/TEL	NO	YES	YES
Nottl		YES	YES	YES	YES	YES	YES	YES
Thomas		YES	YES	YES	YES	YES	YES	YES
Valesko		NO	YES	YES	YES	YES	YES	YES
Ward		YES	YES	YES	YES	YES	YES	YES
Wuerch		YES	YES	YES	NO	YES	YES	NO
LS (LEAVING STATE)								



Date: October 10, 1999

To: Virgil Norton, Committee Chairman

From: Gus Andress, P.E.

Re: The Commission on Privatization: Subcommittee on ADEC

A. Plan Review of Engineering Designs by ADEC

I have discussed ADEC's design review process with several professional engineers. There was one common concern among the engineers interviewed. ADEC has the capability to require the design engineer to submit a design that will meet ADEC's satisfaction. The resulting design may or may not be the most prudent or best design for the respective project. Furthermore, ADEC accepts no professional responsibility for the design. On the other hand, the design engineer is required to stamp the final design and is, therefore, legally and financially responsible for that design.

In many instances, designs may require a waiver to ADEC regulations. The engineers interviewed all commented that the waiver process was, at times, a difficult situation. The ADEC reviewer may reject the request for a waiver simply out of hand without what appears to be just cause.

If the design engineer feels the waiver is justified and is willing to accept responsibility for the design, then ADEC should grant the waiver. However, that is not always the case and the engineer is generally reluctant to pursue the request for a waiver for his client.

If the engineer develops a reputation of resisting ADEC's design demands or ADEC's refusal to grant a waiver, then he or she can develop a reputation with ADEC as a problem engineer. This reputation can hurt the engineer's relationship with ADEC which in turn can hurt him financially with future clients.

Suggestion: Currently, there is no recourse to ADEC's refusal to approve an engineer's design or to grant a request for a waiver. An independent board of professional engineers could be established to review these cases on a monthly basis.

Another solution may be to place the plan review process in the hands of the private sector. As of now there is no easy recourse for the design engineer to challenge ADEC's decisions regarding waivers and design changes.

B. Village Safe Water (VSW)

1. VSW, Division of Facility Construction and Operation (FCO), under Municipal Grants and Loans, administers the Alaska Clean Water Fund and Alaska Drinking

Water Fund. These funds are used to provide low interest loans to communities for water, sewer and solid waste sanitation projects.

Suggestion: Could VSW contract the services of an accounting firm to administer these funds? They contract with an Anchorage accounting firm to procure insurance and provide bookkeeping, banking and reporting services for each VSW project.

2. Each year VSW sends questionnaires regarding village sanitation to various communities in Alaska. Completed questionnaires are scored and prioritized according to a capital project ranking methodology that considers factors such as public health hazards, local priorities, federal assistance, project status, increased economic development potential and current operation and maintenance capabilities.

Suggestion: Let the accounting firm that procures insurance, provides bookkeeping, banking, etc. handle the questionnaires for village sanitation.

3. VSW operates the Rural Utility Business Advisor (RUBA) program and the Remote Maintenance Worker program. RUBA consists of 6 full-time employees within the Department of Community and Regional Affairs who currently work with approximately 30 communities across the state. RUBA employees assess a community's management system and financial records and develop a work plan to improve performance. Implementation of the work plan is dependent on the actions of the village. RUBA provides instruction through on-site assistance and through regional workshops in the areas of: bookkeeping; billing and rate setting; personnel procedures and wage rates; office procedures and record keeping; coordinating other training needs.

Suggestion: Privatize these efforts with an accounting firm and possibly private engineers where needed. The Rural Sanitation 2005 Action Plan recommends that the RUBA program be expanded from 6 to 12 positions by 2005.

4. Areas that could be further investigated for privatization efforts are as follows:

Community development; operation and maintenance; education and training; research and development; communications; and finance.

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FAX

To: Virgil Norton Chairman, ADEC Subcom- mittee	From: Gus Andress, P.E.	Date: 10/27/99 Number of Pages: 2 including cover
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Remarks:

Virgil, I have reviewed the Subcommittee Report on the Alaska Department of Environmental Conservation you faxed me today. I found it to be very well written and organized. In the limited time you had to organize the committee and develop an agenda, this report is exceptionally complete.

As I mentioned on the phone yesterday I received a call from Greg Capito regarding 3 of my suggestions for privatization in the VSW program. These recommendations appear on page 15 of the report under the heading **Division of Facility Construction & Operation**. That page is attached to this fax and I have numbered those suggestions for your reference. Greg had the following remarks regarding those suggestions:

- ① Apparently the accountant who performed the audit on VSW/FC&O was confused regarding who administers the Alaska Clean Water Fund and the Alaska Drinking Water Fund. This is part of the Municipal Grants Program and not part of VSW. Therefore, any privatization would have to be done within the Municipal Grants Program. According to Greg Capito, this should be deleted as part of our efforts to privatize activities within VSW.
- ② The questionnaires sent out annually by VSW regarding village sanitation are too complicated to be administered by an accounting firm. If these were to be privatized, an engineering firm would be better qualified to evaluate and score the questionnaires for village sanitation.

We could change the suggestion to read: Let a professional engineering firm handle the questionnaires for village sanitation.

- ③ According to Greg Capito, ADEC does not administer the Rural Utility Business Advisor (RUBA) program. This program is handled by the Department of Commerce and Economic Development and any privatization efforts should be directed to that agency. Therefore, this suggestion should be deleted as part of our report.

I will be out of town from 10/28 until 11/10. If you have any questions, please leave a message at 283-9003 and I will call you back as soon as possible. I have thoroughly enjoyed working with you on this subcommittee and look forward to discussing our work with you further when I return.

Regards, Gus Andress

OCT-27-99 WED 02:54 PM

FAX:

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2 of 2

successfully privatized by CSRP without reducing ADEC's responsibility to make final cleanup decisions, or in AWQ's case permit decisions.

Division of Facility Construction & Operation

- ① • **Village Safe Water (VSW):** VSW, Division of Facility Construction and Operation (FCO), under Municipal Grants and Loans, administers the Alaska Clean Water Fund and Alaska Drinking Water Fund. These funds are used to provide low interest loans to communities for water, sewer and solid waste sanitation projects. **Suggestion:** Could VSW contract the services of an accounting firm to administer these funds? They contract with an Anchorage accounting firm to procure insurance and provide bookkeeping, banking and reporting services for each VSW project.
- ② • Each year VSW sends questionnaires regarding village sanitation to various communities in Alaska. Completed questionnaires are scored and prioritized according to a capital project ranking methodology that considers factors such as public health hazards, local priorities, federal assistance, project status, increased economic development potential and current operation and maintenance capabilities. **Suggestion:** Let the accounting firm that procures insurance, provides bookkeeping, banking, etc. handle the questionnaires for village sanitation.
- ③ • VSW operates the Rural Utility Business Advisor (RUBA) program and the Remote Maintenance Worker program. RUBA consists of 6 full-time employees within the Department of Community and Regional Affairs who currently work with approximately 30 communities across the state. RUBA employees assess a community's management system and financial records and develop a work plan to improve performance. Implementation of the work plan is dependent on the actions of the village. RUBA provides instruction through on-site assistance and through regional workshops in the areas of: bookkeeping, billing and rate setting; personnel procedures and wage rates; office procedures and record keeping; coordinating other training needs. **Suggestion:** Privatize these efforts with an accounting firm and possibly private engineers where needed. The Rural Sanitation 2005 Action Plan recommends that the RUBA program be expanded from 6 to 12 positions by 2005.
- **Eliminate Forced Account program.** ADEC should be able to follow procurement procedures every other state agency has to follow.
- **Complete the contract for the new VSW/PM position.** Before additional VSW/PM positions are procured to the private sector, a cost benefit analysis should be completed after the first year to determine whether this action did not result in a greater expenditure to the state.

There will probably be many difficulties to overcome during the first year of the contract because it is a new concept for VSW. Since it is expected that insights will be gained from this first-time experience, further contracting of VSW/PM positions will be less awkward and more established. However, there is still a need to maintain a staff for oversight and accountability, inherent with the grant funding programs.

MEMORANDUM

TO: Members of DEC Subcommittee, Commission on Privatization of government services, State of Alaska

FROM: Gerald R. Brookman, Subcommittee Member

SUBJECT: My recommendations for the Subcommittee's final report to the Commission

DATE: October 26, 1999

I have five specific recommendations, all of which are general in nature (that is, they apply to the Department as a whole, not to any particular division or function). They are as follows:

1. Any recommended changes should meet two criteria: They should not result in any greater expenditure of state funds, and they should result in no reduction of legally mandated state services performed by the DEC. (It was generally agreed, early in the process, that these two criteria make sense and should be applied to any contracting out or other privatization of DEC services that might be done.)

2. A well qualified management consulting firm should be contracted with, to audit and report on the organization, management, and performance of the DEC, and to make recommendations on how these could be improved. Such an audit, by an impartial, independent, third party would give the legislature useful and objective information on which to base changes (if any are desirable) in the legislation under which the DEC operates.

3. Any contracts written for services to be contracted out, that are at present performed by DEC employees, should include provisions that will insure adequate accountability (bonding, etc.) on the part of the contractor.

4. Specific criteria should be developed and implemented to obtain a pool of qualified contractors for different services that may be required by the department (pre-qualification). This could include past performance, professional qualifications of the personnel employed, etc., and would enable the department to simplify the contracting process, and shorten the time necessary to obtain a qualified contractor for services for which it may need or desire to do so.

5. To ensure accountability and avoid legal challenges to actions of the department, regulatory and enforcement functions should not be contracted out.

I will follow these specific recommendations with a memorandum giving my comments on what I believe are the possible consequences of privatization of some, or all (excluding those that cannot be, by law) of the functions of the DEC, which I hope the committee will read and bear in mind when considering all of the proposals it receives.

Sincerely,



Gerald R. Brookman
DEC Subcommittee member

MEMORANDUM

TO: Members of the DEC Subcommittee, Commission on Privatization of government services, State of Alaska

FROM: Gerald R. Brookman, Subcommittee Member:

SUBJECT: My thoughts on the general question of privatization of DEC functions

DATE: October 26, 1999

I have submitted a memorandum giving my specific recommendations for five items. In addition to these specific items, I would like to add some thoughts on the subject in general.

I have tried to visualize the process of how privatization would be carried out. It is not unprecedented, and I am somewhat familiar with one example of it having happened in the past: this was the privatization of instruction at the Federal Aviation Administration Academy.

As we all are familiar with, every Governor, on taking office, appoints Commissioners to run each department of state government. This provides some new thinking, and generally results in changes (if not always improvements) in the management of those departments. Now, suppose for a moment, that every four years, the positions below Division Director (which, I believe, should continue to be appointed by the Commissioners) are contracted out. A time schedule for this process could be established, in order to minimize any discontinuities in the functioning of the department. Many of the employees of the present (soon to be past) contractor, call it the ABC Corporation, would apply for employment to the new contractor, call it the XYZ Corporation. Any discontinuity in functioning, through judicious scheduling, could be minimized, but I do not believe it could be eliminated entirely. Employee retirement systems could be vested, and other benefits could be required as a part of the contracting process; nevertheless, I believe that some loss of morale by the department's employees would inevitably result. This may be expected to result in some loss of operating efficiency by the department.

As I hope we would all agree, just about every benefit we obtain, in life, has a certain cost attached to it. Privatization might, and very likely would, result in reduced costs to the state government. This monetary saving, I believe, needs to be balanced against any costs in effective functioning of the state's departments charged with carrying out certain functions to benefit its citizens, present and future. I hope that all the members of this subcommittee will bear this in mind, in considering the specific items brought before it this coming Thursday, October 28, in our final meeting.


Gerald R. Brookman

October 15, 1999

To: Virgil Norton, Privatization Committee Chairman

From: Keith Bucklin

Re: Recommendations

1. Retain the services of a management-consulting firm for the review of ADEC.
Areas of key interest, redundant programs in the DEC its self and other state agencies and ways of combining those programs.
2. Eliminate Forced account program. ADEC should be able to follow procurement procedures every other state agency has to follow.
3. Establish a private sector board of professional Engineers to set standards for certification of private engineering firms to meet the ADEC standards.
4. Eliminate PR department

Memorandum

To: Virgil Norton, Chair
ADEC Privatization Subcommittee

From: Bob Gilfilian, P.E., Subcommittee Member

Date: October 11, 1993

Re: Recommendations on ADEC Privatization



This memorandum provides a summary of recommendations for privatization of certain functions performed by the Alaska Department of Environmental Conservation (ADEC). These recommendations apply primarily to the Division of Environmental Health (DEH) and Spill Prevention and Response (SPAR). Although the recommendations are given below in brief summary form, I am prepared to give additional information during oral presentations to the Subcommittee at our meeting scheduled for Monday, October 11, 1999.

1. Privatize Plan Review

It is recommended the review of engineering plans be performed by a private engineer under contract to the Department. Several programs administered by the Department require plans be prepared by a professional engineer. The plans are required to be submitted for review and approval by the Department. The programs that require plan review include drinking water systems, wastewater treatment and disposal systems, solid waste facilities, storm water collection and treatment facilities and possibly several other areas. The Department could set up a contract procedure with private engineers specialized in these areas to provide the necessary services to review engineering plans for conformance and compliance with ADEC regulations. The Department will need to provide oversight of the review process and possibly some mandatory plan reviews. It may be feasible to consolidate all program plan review functions from all Department Divisions into one clearinghouse for plan review, whereby private engineers are used on a contract basis to provide detailed plan review.

2. Combine Environmental Health and SPAR Laboratories

Given the multiple laboratories currently in ADEC that are located in Palmer and Juneau and in consideration of the findings of a recent study on the evaluation of laboratories in the Departments Health and Social Services (DHSS) and Environmental Conservation, it is recommended laboratory facilities and services be combined in one central location. A wing could be added onto the new DHSS Public Health Laboratory that is currently under construction on Tudor Road in Anchorage. All laboratory functions that are currently performed by DEH and SPAR in Palmer and Juneau could be performed more efficiently in one facility in Anchorage. The Anchorage site is the most cost effective location in the state. In addition, all laboratory testing services should be contracted out to private

laboratories when possible. The certification of private laboratories should remain with the Department.

3. Privatize All Sanitary Surveys of Public Water Supplies

With the exception of a few sanitary surveys that are required to be performed the Department to maintain primacy with the EPA, all sanitary surveys of public water systems should be performed by private engineers certified by the Department. Currently, the Department has a program that certifies private sector engineers to perform sanitary surveys. However, the Department field staff also provides the same services at no cost to the owner of the water system. Consequently, the Department often finds itself in competition with the private sector. To avoid the conflict of services, the Department should require all public water system owners to seek services rendered by the private sector.

4. Privatize and Expand the Role of the Storage Tank Board

The Legislature should rescind the sunset date for the demise of the Board of Storage Tank Assistance. Further, the function of the Board should be privatized to serve as an appeal board for the private sector to seek resolution on conflicting issues with the Department. In addition to resolving disputes between the ADEC and the regulated community, the Board would review cleanup allowable technologies and serve as a board over the licensing of professionals working on low and medium cleanup projects proposed for privatization (see below recommendation 6). In addition, the role of the Board should be expanded to include appeal services in additional programs in SPAR (such as aboveground tanks) and possibly other divisions where an appeal process would be helpful to the regulated community.

5. Revise Term Contract Proposal Requirements

Currently, term contracts with the contaminated sites program require the private sector contractors to have on-staff (in-house) a wide-range of expertise that is not commonly needed except in unusual circumstances. This requirement discourages the use of subcontracts with small Alaskan firms who may possess some but not all of the expertise required in the Request for Proposals. Term contracts should allow for subcontracts with small Alaska firms where local Alaskan experience is provided as well as allow smaller firms to subcontract out specialized services to qualified vendors.

6. Privatize Low to Medium Priority Contaminated Site Cleanup

Similar to a well-established program developed by the State of Massachusetts, it is recommended a Licensed Environmental Professional Program be developed to allow licensed site professionals (LSP) in the private sector to handle the low to medium priority contaminated sites. The proposed appeal board (currently Board of Storage Tank Assistance) would oversee the administration of the privatization of the assessment and cleanup of the low to medium priority contaminated sites. The Department would continue to oversee the Contaminated Sites Program but would focus their resources on the high priority sites.



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October 21, 1999

Virgil Norton
Chairman

Alaska Department of Environmental Conservation (ADEC) Privatization Subcommittee

Re: Comments/Recommendations on ADEC Privatization

Mr. Norton:

It has been a pleasure participating with you and the active members of the subcommittee to evaluate potential privatization of ADEC functions. Your chairmanship of the subcommittee has been balanced and given ADEC division directors the opportunity to present the strengths of their staff and division accomplishments. I hope my involvement with the subcommittee and my comments and recommendations benefit you as chairman and other subcommittee members.

Per your direction, I have prepared comments and/or recommendations on the functions of two ADEC divisions, the Division of Spill Prevention and Response (SPAR) and the Division of Environmental Health (EH). I also prepared a comment that addresses a function of work performed by a third division, the Division of Air and Water Quality (AWQ). Since I am submitting my comments/recommendations after those submitted by other subcommittee members, I note that some of their commentary does not particularly address the topic of privatization of ADEC functions. In light of this, with the chairman's permission, I offer commentary on issues related to contracting with ADEC and the overall mission of ADEC in its role as steward of the environment and resources of Alaska.

During employment as an environmental consultant for Ecology and Environment, Inc., I have worked under contract to SPAR, primarily for the Contaminated Sites Remediation Program (CSRP). Under term assessment contracts, my firm has implemented over 100 contract actions for CSRP. Presently CSRP has five consulting firms under term assessment contracts. In my opinion, CSRP privatizes much of its work via these term assessment contracts to private contractors who work on behalf of CSRP. Projects conducted by term assessment contractors include assessment and remediation of state-owned properties, site assessments, design, and remediation for state-lead projects, review of documents prepared for submittal to ADEC on behalf of responsible parties, and other activities. Frankly, I do not see significant opportunities for additional privatization of CSRP functions, other than the potential for development of state licensing of environmental and engineering professionals to address lower priority sites. I have provided some commentary on ways in which CSRP may realize cost benefit under the implementation of term assessment contracting.

My commentary on EH is drawn from only the presentation and discussion of the division as presented to the subcommittee. Other subcommittee members have provided you thoughtful insight into the functions of EH and options for privatization.

Since participating in this subcommittee I have developed a greater understanding of the functions, missions, and funding sources for the divisions within ADEC. I am indebted to ADEC staff and the subcommittee for this education. Particularly with respect to funding sources, I was

Page 2
Mr. Virgil Norton
October 21, 1999

quite pleased to note that although ADEC's authorized funding has increased 16% over the last 10 years the contribution of federal funds to ADEC's funding has increased 250% over this time, and the contribution of state general funds has declined over 225%. Perhaps contrary to the opinions of some members of the subcommittee and committee, even with a growing budget I see this shift in funding sources as a lessening on the taxpayers in Alaska. I sense that ADEC

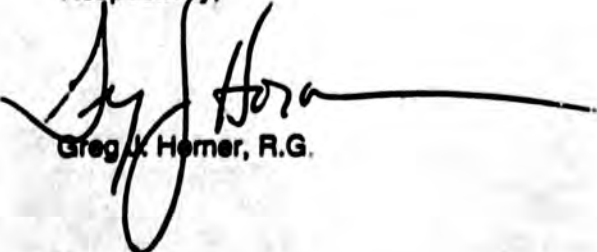
management and staff, in addition to state legislators, deserve credit for shifting the financial burden of stewardship of Alaska's environment and resources.

Lastly, I feel warranted in presenting additional commentary on two other topics discussed during subcommittee meetings, and included in some subcommittee members recommendations. First, some subcommittee members have proposed the elimination of staff positions in one or more divisions without, in my opinion, an evaluation of the level of effort and/or workload charged to those positions. Given the relative short time the subcommittee was given to "evaluate" options for privatization of department functions, we have not ascertained whether the personnel levels in all divisions of ADEC are sufficient for the performance of their missions. Subcommittee members have uttered phrases such as "...what do those people (sic ADEC staff) do over there?" Without the opportunity, or the qualifications to evaluate such specifics, I am concerned that subcommittee recommendations to reduce staff may be premature. That is why I concur in part with recommendation number two of Mr. Gerald R. Brookman that perhaps an audit of ADEC operations is warranted. Personally, many private businesses and government agencies may benefit from independent, third party management audits. This situation is not unique to ADEC.

Second, a recommendation to revise the term contracting proposal allowances for subcontracting has been advanced in light of an interpretation that present allowances restrict access to contracting opportunities for smaller Alaska contractors. I concur there is difficulty for smaller Alaskan firms that do not carry the full suite of disciplines to support environmental consulting services to support the entire breadth of services requested by ADEC's CSRP. Therefore, I encourage the prospect of allowing smaller Alaskan firms to team up and cover the resources required under these types of contracts. However, those firms such as E&E do provide a benefit to Alaska not normally espoused when the local hire only issue is raised. Routinely, E&E sends Alaska staff to support projects in the lower 48 and overseas thereby providing work to Alaskans. E&E's Alaska resources are presently managing the supplemental environmental impact statement and providing fieldwork support to study addition of another runway at the SEATAC airport. This is a direct example of benefit to Alaska.

In closing, I want to thank you for allowing me to contribute comments and recommendations to the subcommittee. I anticipate continuing to assist the subcommittee through completion of its report.

Respectfully,


Greg K. Horner, R.G.

MEMORANDUM

To: Virgil Norton, Chairman

From: Greg Horner, R.G., Subcommittee Member

Date: October 21, 1999

Re: Comments/Recommendations on Privatization Potential for the Alaska Department of Environmental Conservation (ADEC)

Overview

The following commentary pertains to the ADEC divisions of Spill Prevention and Response (SPAR), Environmental Health, and Air and Water Quality. As stated in the cover letter to this memorandum, some of the following commentary is not directed at privatization, but perhaps toward evaluation of cost benefit of current practices.

1. Privatize Low to Medium Priority Contaminated Site Cleanup

ADEC should proceed with evaluation of the feasibility of implementing a program similar to the licensed site professional (LSP) program in force in Massachusetts. Similar programs are in place in Ohio and Connecticut. ADEC has developed regulations in the area of risk-based cleanup standards and a Voluntary Cleanup Program (VCP) that are a sound foundation for development of an LSP program. Development of such a program can aid the private sector with enhancing property transfers, property development, and faster site cleanup resolution. However, development of such a program is necessarily a public process that involves the regulators, the regulated community, insurers, lending institutions, and certainly the professional consultants. Liability with respect to ascertaining site cleanup and regulatory adherence are foremost in the minds of the professional consultants. Formulation of an LSP program would require an LSP association of professionals, LSP board licensing and examination, and code of professional responsibility. Furthermore, it may take several years to design, revise, and implement a fully functional LSP program. Massachusetts began its program in 1992 and took over a year to promulgate LSP regulations.

Although in favor of evaluating the prospect of an LSP, due to the relatively small number of contaminated sites in Alaska versus lower 48 states with LSP programs and the propensity of low and medium priority sites to be small in extent, I believe a cost benefit analysis should be performed. This analysis could also evaluate the practical performance and merit of ADEC's existing voluntary cleanup program (VCP). Perhaps by adding, or enhancing incentives to the VCP that progress can be made to remove low and medium priority sites.

2. Contaminated Sites Remediation Program (CSRP) Project Budgeting

Since the State of Alaska fiscal year (FY) ends in the middle of the Alaska field season (July 31) and funding approval for projects is not secured until after that date, as a contractor we encounter hurried field mobilization efforts. These

hurried efforts often meet with difficulties in procuring subcontracted support services, including drilling, surveying, and analytical services. Project planning is also sometimes compressed into short difficult time frames. As such, it is my concern that project cost estimates and project support estimates encounter higher mobilization and logistics costs. If project planning budgets, for example work plans, could receive funding in the FY prior to planned implementation, then ADEC CSRP project costs may benefit from prior planning and "economy of scale" mobilization costs.

ADEC CSRP management may also consider the practice of requiring CSRP project managers to prepare "government estimates" prior to preparing legislative budget requests.

3. Privatize Wellhead/Watershed Protection

Federal funds available under the Safe Drinking Water Act (SDWA) charge each of the states to evaluate the risk of potential contamination to public drinking water systems. These evaluations come in the form of source water protection plans (SWAP). A concern of the private contracting community is that EH accepted the funding and decided to conduct all of the work in-house. It is my understanding that EH plans to hire staff and/or find available federal government staff rather than consider using the hydrology and hydrogeology capabilities of the private contracting community. Perhaps a cost benefit analysis was done by EH to evaluate whether this program should be done by in-house staff or contracted out. Admittedly, I have not yet inquired as to the entire evaluation process conducted by ADEC.

Since this program intends to identify contaminated sites and their potential threat to public drinking water systems, a concern is that EH must coordinate its efforts with that of CSRP in order to avoid potential duplicity of effort that CSRP may have already contracted out in the past. Also, this is a very comprehensive program that will be conducted by ADEC over a period of four years and it may be completed over a shorter time interval if EH contracted out some of the effort.

4. Reevaluate Primacy for Water Pollution Control

Alaska may be better suited to assume primacy for the National Pollutant Discharge Elimination System Program. I concur with comment number 7 submitted by subcommittee member Bill Lawrence.

5. Evaluate Privatization of Air and Water Quality Permit Review

The Division of Air and Water Quality (AWQ) should consider privatizing some portions of permit reviews such as reviews of models and risk assessment. These functions have been successfully privatized by CSRP without reducing ADEC's responsibility to make final cleanup decisions, or in AWQ's case permit decisions.

October 8, 1999

To: Virgil Norton, Chair, ADEC Subcommittee, Privatization Committee

From: Bill Lawrence, Subcommittee Member

Subject: Recommendations

Given that the mission of the Privatization Commission (SB 33) is:
Identify state government functions capable of more efficient performance in the delivery of government services, and determine whether those identified functions could most effectively be provided by other means which include:

- Transferring to the private sector or contracting out,
- Transferring to other levels of government,
- Consolidating or making other efficiency changes, or
- Any combination of the above.

My recommendations for "privatization of ADEC" are:

- 1. Improve Department effectiveness by using general permits (single authorization covering similar activities in similar locations) to cover de minimus activities such as minor wastewater discharges. May require statutory changes to AS 46.03.100.**
- 2. Use regulations to implement best management practices or best technology rather than issuing individual permits. This effective approach is used by the Alaska Forest Resources and Practices Act, one of the best forest management laws in the nation.**
- 3. Immediately reinstate, and place a high priority on, Section 401 review of federal water quality, wetland and all other federal permits. Alaska needs a strong environmental review and certification of federal permits to ensure that Alaska's interests are protected during the federal permitting process. If ADEC does not unilaterally resume this highly important program the Legislature should either (1) direct that ADEC conduct the 401 certifications, or (2) reassign the activity to another state department. A general permit approach, i.e. general certifications for federal permits should be explored and implemented if practical.**
- 4. Notwithstanding No 3., evaluate the effectiveness of combining certain ADEC water regulatory and planning activities with ADNR Division of Mining and**

Water Management. This would require some realignment in both departments.

- 5. Establish a process whereby the regulated community, using state guidelines, prepares their own permits and certifications, then submits those draft products to ADEC for concurrence or revision. This would reduce heavy "front end" costs, both in staffing and actual costs, often claimed by the Department when initiating a specific project review.**
- 6. Save money by curtailing travel expenditures for general meetings, conferences, seminars, and workshops. Oftentimes four or five ADEC employees travel from Juneau to Anchorage or vice versa to attend the same meeting or event. Travel for "customer service" i.e. regulatory activities such as site inspections should be emphasized.**
- 7. Reevaluate the costs and benefits of primacy for water pollution control. Legislative action may be required. Alaska may be better served by maximizing, to the extent allowed by federal law, the State's role in the National Pollutant Discharge Elimination System Permit program. It would seem beneficial that that EPA not control the permit process for regulated activities in Alaska.**
- 8. Alaska's most significant and pressing environmental issues and problems should be prioritized to ensure that limited resources are most effectively used. Effective management of federal environmental regulatory programs on Alaska should be a top priority. Although ADEC is an Executive Branch department, legislative establishment of priorities may be appropriate in this unique case.**
- 9. Eliminate public information officers. ADEC top managers should be able to effectively articulate agency policy. Publications and web pages can be contracted to the private sector.**
- 10. The Legislature should prohibit unnecessary and redundant rulemaking by the Department. For example, there have been two recent separate major revisions of the same solid waste regulations and the reason given is that "fine tuning" was necessary. A rulemaking process is expensive and creates uncertainty for the regulated community.**

Improve Department effectiveness to the regulated community by ensuring that regulations and permits offer legal certainty and do not subject the community to frivolous lawsuits.

Subject: DEC Recommendations

Date: Thu, 21 Oct 1999 16:20:17 -0800

From: Stephanie Madsen

* Recommend that the Food Safety and Sanitation Program investigate having appropriate staff work from their homes, eliminating the cost of establishing and maintaining offices in remote locations.

Memorandum

To: Virgil Norton, Chairman
ADEC Privatization Subcommittee

Subject: Findings and Recommendations
for FC&O

From: Greg Magee, P.E., Member

Date: October 29, 1999

This memorandum provides my findings and recommendations based on my involvement with the subcommittee as a volunteer. This is the first time that I have participated in the public format of this manner and I have enjoyed it.

As you know, I was previously employed by the Alaska Department of Environmental Conservation (ADEC) for ten years (1981 to 1991). I enjoyed very much my employment with ADEC and have many satisfying memories working there. Since January 1992, I have been a private consultant, providing professional sanitary engineering and environmental services and I am enjoying it too. Because of my public and private employment backgrounds, I hope that my institutional knowledge and experiences with ADEC have been valuable to the subcommittee. It has been a pleasure working with you, the active members of the subcommittee, and ADEC on this task and I look forward to finalizing our report. Finally, I would like to thank the National Society of Professional Engineers / Professional Engineers in Private Practice – Alaska Section for providing me this opportunity by nominating me to the subcommittee.

PRIVATIZATION PRIMER

Since privatization has multiple meanings, forms, and approaches, it seems appropriate to provide for the subcommittee a brief primer on privatization of state government services for possible use in our report. Furthermore, it is meant to be a starting point for me to prepare my findings and recommendations in a useful manner.

Privatization options can range from contracting out or outsourcing, the most common type, to full-scale, privately financed design, build, and operations. In general, though, the common use of the term privatization refers to formal contracting out of the services by the government to the private for-profit and non-profit sectors. However, not all functions of state government can be privatized. There are functions that are inherently government and where the private sector cannot or will not perform.

The concepts of privatizing state government services in Alaska have become attractive to many residents and elected officials, including the past legislature session, where Senate Bill No. 33 was enacted into law. SB 33 created the Commission on Privatization and Delivery of Government Services to determine which state government functions can be privatized, but also which functions can be consolidated and transferred to other governments in order to reduce the dependency on the State of Alaska's revenues for the delivery of state government services.

Privatization is an idea that draws both supporters and detractors. Supporters applaud the improved efficiency and critics express concern about the reliability and fairness of privately provided services. Other reasons for supporting or opposing privatization are shown below:

Reasons for Supporting Privatization
• To obtain special skills or supplement government staff for short period of time • To meet demands beyond current governmental capacity • To reduce costs of government • To improve service quality and efficiency • To provide a choice of providers and levels of service

Reasons for Opposing Privatization
• Loss of public employee jobs • Relinquishes public responsibility for public funds • Weakens and decreases public participation in government • High potential for corruption (fraud, financial conflicts-of-interest and cost-overruns) • Any resulting cost savings are directed away from the taxpayers and towards the contractor • Threatens confidentiality of private information • Increases the temptation to reduce quality of services

It seems that both the public and private sectors can do some things better than the other. For instance, the government tends to be better at policy management, regulatory, and enforcement. While the private for-profit sector tends to be better at performing economic tasks, innovating, adapting to rapid change, and performing complex and technical tasks. And, the private non-profit sector tends to be best at performing tasks that demand compassion and trust for the health and welfare of the public.

Finally, privatization is a way to bring the advantages of competition, flexibility, and efficiency to the delivery of public services. In doing so, privatization also involves risk and requires careful management on the part of the public agency. To achieve the potential benefits of privatization, each privatization initiative undertaken as a result of SB 33 needs to be monitored to assure the benefits of cost effectiveness and quality in the delivery of publicly funded services.

According to Section 5, Paragraph 3 of SB 33, the Commission is to identify and evaluate which state governmental functions could be delivered more effectively by:

- 1) Transferring to the private for-profit sector or contracting out;
- 2) Transferring state government functions to local governments or regional service organizations (private non-profit);
- 3) Transferring to the federal government;
- 4) Consolidation or other efficiency changes of state government functions; and

- 5) Some combination of the approaches under 1 – 4 above.

FINDINGS AND RECOMMENDATIONS

Division of Facilities Construction and Operation

My findings and recommendations pertain to ADEC's Division of Facility Construction and Operation (FC&O). First, I provide general information about the division and then discuss the different units and programs within the division. After each unit, I provide my recommendations in accordance with Section 5, Paragraph 3 of SB 33. Overall, FC&O does accomplish much of its functions through contracting to private for-profit and non-profit sectors and agreements with local governments. Although small, some potential for privatization does still exist within the division.

The Division of FC&O exists within ADEC to promote public health and environmental protection by providing financial and technical assistance to urban and rural communities for the development and operation of water, sewer, and solid waste projects. The division has three units to administer five programs to achieve this goal. The units are Municipal Grants and Loans, Village Safe Water, and Operation Assistance. The programs are municipal grant, municipal loan, village safe water, remote maintenance worker, and operator certification.

Village Safe Water (VSW) Unit

This unit provides state and federal grants to smaller, Alaska Native communities with populations of 25-600. Grants are awarded each year based on a Capital Improvement Project Priority List and are typically 100% of the costs to improve water, sewer, and solid waste facilities.

VSW staff consists primarily of engineers that serve as project managers. These engineers provide technical oversight and assist the community with decision making concerning the project. Their job is to provide engineering assistance and to assure proper accountability and management of grant funds. Sometimes, the staff prepares engineering documents depending on workloads. However, some of the grant funds are administered by the Alaska Native Tribal Health Consortium (ANTHC), a private non-profit organization, under an agreement between VSW and ANTHC. Also, vice versa, VSW administers ANTHC funding under the same agreement. (On October 1, 1998, the ANTHC assumed the programs, functions, services and activities of Alaska Area Native Health Service under a contract with federal Indian Health Service.)

Nearly all phases of a VSW capital project involve the private for-profit sector and local governments. For instance, private engineering firms are used to perform planning, design, and construction management services. Actual construction is performed by either a contractor procured by competitive bid or through force account labor. If force account labor is used, VSW assists the community in hiring a project superintendent (and possibly a foreman) from the private sector. Then the community hires local residents as the labor force. A private accounting firm, through a contract with VSW, performs project accounting services. (For ANTHC projects, their staff performs much of the engineering and accounting work. However, they do

October 29, 1999

contract out some of the engineering work and utilize the force account method of construction. Also, ANTHC is presently studying the privatization issue.)

Since the mid 1990's, VSW workload has increased from additional state and federal funding. Because of this burden and the past legislative session not approving the request for more project manager positions, VSW was encouraged to seek additional staff from the private sector. Last August, VSW issued a Request for Proposal (RFP) to the private sector to provide a project manager (PM) to supervise VSW projects, like the current project managers that are on staff.

Contracting for a VSW/PM has not been tried before, so the outcome is uncertain on how well it will succeed. It appears that the work is more suited for the small engineering firm or an individual based on the contract value of about \$180,000 the first year. It is a term contract for three years, with two 1-year renewal options. Also, the selected contractor cannot compete for engineering work for the communities covered under the contract. For all intents and purposes, the contractor probably won't be able to compete for other VSW work outside the contract for fear of having a conflict. Because of these reasons, most engineering firms would rather compete for work from all of the VSW project managers.

Force accounting is a method of construction in which the community (grant recipient) assumes the role of a contractor and constructs a project using local labor resources. State procurement procedures are followed for purchasing equipment and materials and contracting specialized services. Proponents of the force account construction method believe that it promotes the following:

- Increases local involvement and strengthens local ownership in the project;
- Provides local employment and supports the local economy;
- Allows more flexibility for change and incurs less cost in making changes;
- Strengthens local ability to operate and maintain the project improvements from knowledge gained from constructing the project; and
- Lowers project costs by not paying Alaska Title 36 wages and contractor's profit, overhead and contingency.

On the other hand, opponents believe that the community should not be competing with private contracting community. Also, they argue that contractors can complete the work more efficient, sooner, and cheaper and provide local employment as well.

Not all projects can utilize the force account construction method. In some instances, contracting may be a better option depending upon the skilled labor and equipment available in the community and the degree of difficulty of the work. Many times, construction of a project is accomplished using a combination of both force accounting and contracting. It should be noted that VSW and the Governor's Council on Rural Sanitation are strong advocates of force accounting versus contracting. From a political view point, force account construction is very popular with rural communities.

Recommendations

- *Complete the contract for the new VSW/PM position. Before additional VSW/PM positions are procured to the private sector, a cost benefit analysis should be completed after the first year to determine whether this action did not result in a greater expenditure to the state.*

There will probably be many difficulties to overcome during the first year of the contract because it is a new concept for VSW. Since it is expected that insights will be gained from this first-time experience, further contracting of VSW/PM positions will be less awkward and more established. However, there is still a need to maintain a staff for oversight and accountability, inherent with the grant funding programs.

- *Contract out the annual VSW Capital Budget Questionnaire work to an engineering firm that is experienced in rural sanitation. However, this function may be an inherent government responsibility that only VSW should perform to ensure impartiality. If contracted, the firm would validate the information submitted by the rural communities and then score and rank the proposed sanitation projects. They could also obtain information for those villages that did not submit. In addition, the firm could assist VSW with improving the questionnaire and process, including database development.*
- *Assuming there is still a need to develop a comprehensive statewide database of rural sanitation facilities for documenting current conditions and assessing future needs and funding is available, a private engineering firm could be contracted to complete this task. A Preliminary Audit Report by the Legislature Budget and Audit Committee, dated October 2, 1998, recommended that VSW create a detailed inventory of all village sanitation systems in order to make informed program decisions. The private sector can complete this work more resourcefully while meeting VSW needs and expectations.*
- *The debate over force account versus public bid construction has been going on for many years between the public and private sectors. It centers on issues of cost, quality control, and accountability. To date, only narratives without documented evidence have discussed these issues at best. For instance, no comprehensive study has been conducted on completed rural sanitation projects to substantiate that force account construction is markedly cheaper than contracting. Therefore, it is recommended that an independent study be commissioned by the legislature to research this matter under the auspices of VSW. Besides cost comparisons, the study would also evaluate work quality and performance differences. A private contractor could perform the study.*

Presently, force account construction is the preferred method to construct rural sanitation projects. Although private construction contractors dislike it because it limits their opportunities, it has more positive attributes than contracting from the village's viewpoint. VSW is encouraged to monitor closely that each decision made to select force account construction is correct and in the best interest of the community. VSW is also encouraged to maximize contracting opportunities for contractors where expertise and experience are required.

- *No potential opportunities exist to transfer VSW functions to the federal government or consolidate VSW functions within ADEC or with other state agencies.*

Municipal Grants and Loans (MG&L) Unit

This section provides financial (grants with a local match requirement and low-interest loans via approved priority lists for capital improvements) and engineering assistance to boroughs and urban communities for water, sewer, and solid waste improvements. Like VSW, MG&L staff consists primarily of engineers who act as project managers by assisting larger communities with financial and technical oversight for new and upgraded utilities. Besides the engineering assistance, their job is to administer and manage the funding programs in accordance with program regulations.

All the engineering and construction of a MG&L project is performed by boroughs or municipalities, who are the grantees and/or loan recipients. No direct engineering is performed by staff, i.e. preparation of plans and specifications, master plans, submittal reviews, etc. Most of these local government entities contract with private business for completing the planning, engineering, and construction functions.

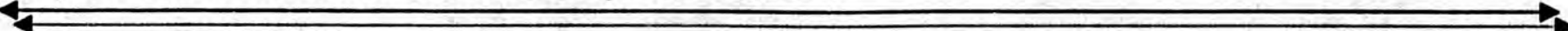
Unlike VSW, the project accounting/bookkeeping of the funding programs is performed by MG&L staff. One auditor resides in MG&L who provides financial management and conducts internal audits of projects for compliance of funding regulations. Private accounting firms complete annual audits of the loan programs. Development and publication of the annual report of the loan funds is contracted out.

Recommendations

- *If contracting results of the VSW/PM position are positive, it would seem that a project manager position or two in MG&L could also be contracted to the private sector. However, staff will be needed to provide the inherent oversight and accountability of the contract employees.*
- *Contract the accounting/bookkeeping functions of the loan programs and projects to a private accounting firm, except for the (inherent program) duties of the administrative assistant position. No opportunity exists to privatize the project accounting function under the Municipal Matching Grant Program. Project accounting for municipal grants differs from the VSW grant program. Under municipal grants, the grantee (local government) pays vendors directly and provides project accounting. Under VSW, an accounting firm that pays the vendors for the project on behalf of the community performs project accounting.*
- *Contract the auditing functions of the internal auditor position to a private accounting firm. However, the financial management duties of this position are inherent to the grant and loan programs and should be performed by MG&L.*
- *No potential opportunities exist to transfer MG&L functions to the federal government or consolidate MG&L functions within ADEC or with other state agencies.*

Department of Environmental Conservation, Administration

Report to the Privatization Commission September 22, 1999



ADMINISTRATION - WHAT IS IT?

Administration can be most succinctly described as an organization's "nuts and bolts", the mechanics behind the mission, the horsepower responsible for the forward momentum. The executive and legislative branches of government jointly collaborated on the Department of Environmental Conservation's design as the vehicle to help achieve healthy communities and a healthy environment. The people and services responsible for charting that vehicle's course and maintaining its road worthiness are what is referred to as "administration."

The Office of the Commissioner sets department policy and provides overall department management. The Commissioner's Office:

- ❑ Ensures that the department works cooperatively with regulated businesses, communities and the public;
- ❑ Sets policy;
- ❑ Ensures priority program emphasis;
- ❑ Provides paralegal support for regulatory programs; and
- ❑ Establishes and maintains an organization which emphasizes customer services.

The Division of Administrative Services is comprised of seven programs which provide timely and responsive support for the department's programs and personnel. These programs assure the department remains legally and financially accountable for every responsibility it has been tasked with, and that the tools necessary to successfully execute those responsibilities are in place and in good working order. Along that line, one of the main goals of the division is to continue to facilitate change and innovation in department operations. These programs are:

- ❑ Director's Office
- ❑ Finance
- ❑ Human Resources
- ❑ Data Processing/Information Systems
- ❑ Budget
- ❑ Information Office
- ❑ Divisional Administrative Support Staff

ADMINISTRATION -WHAT IS IT? (continued)

The Exxon Restoration program works to reduce the negative environmental impacts to local communities within the areas affected by the March 1989 Exxon Valdez oil spill in Prince William Sound through technical assistance and project management for restoration projects approved by the Trustee Council. The Exxon Valdez Trustee Council was created by the U.S. District Court following a joint civil and criminal settlement of state and federal natural resource damage claims with Exxon Corporation in 1991. By court order, the Department of Environmental Conservation is one of six public agencies whose designee must participate and agree on any expenditure of trust funds.

HOW ARE THEY FUNDED?

Office of the Commissioner

The Commissioner's Office is partially funded by indirect charges to different funding sources. Indirect costs are most easily defined as those costs incurred for a common or joint purpose benefiting more than one program.

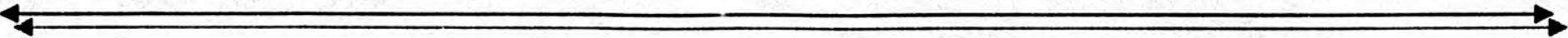
□ Federal Receipts	101.7	26.0%
□ General Fund	<u>290.1</u>	<u>74.0%</u>
	\$391.8	100.0%

The Commissioner's Office is staffed with five positions.

Administrative Services

The Division of Administrative Services is funded by an indirect funding pool which ensures that all funding sources, including the federal government, contribute.

□ Federal Receipts	966.6	28.9%
□ General Fund Match	146.5	4.4%
□ General Fund	799.3	23.9%
□ Inter Agency Receipts	94.5	2.8%
□ Response Fund	1,070.3	32.0%
□ Capital Project Receipts	28.6	1.0%
□ Storage Tank Fund	136.6	4.1%
□ Clean Air Protection Fund	<u>95.7</u>	<u>2.9%</u>
	\$3,338.1	100.0%



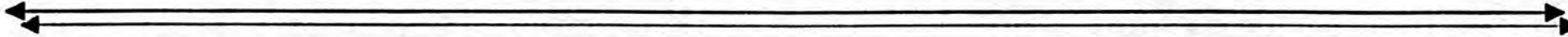
HOW ARE THEY FUNDED? (continued)

Exxon Restoration

The Oil Spill Trustee Council established a Restoration Office responsible for the coordination and supervision of the activities of the Council. The Restoration Office develops an annual budget which, upon approval by the Council, sets forth the anticipated expenditures of the Restoration Office.

The Restoration Office, through the Council, oversees an annual solicitation and review process for projects to address the purposes outlined in the MOA. The outcome of the process is the development of a fiscal year work plan, which approves the funding for all projects to be conducted during the fiscal year.

□ ExxonValdez Oil Spill Settlement Fund **\$630.2 100.0%**



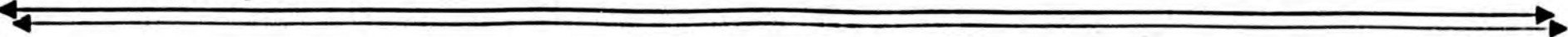
WHAT DO THEY DO AND WHY?

ADMINISTRATIVE SERVICES

Beginning in fiscal year 1996, the department centralized administrative support staff and their costs in this division. At that time there were 66 positions. The fiscal year 2000 budget provides authorization for 51 positions. Administration has gone back to the drawing board to learn how to think few, to concentrate on the essentials, to figure out what to ignore (i.e. those services that can be safely and legally eliminated), and to simply stop doing the same old things faster. Examples of efficiencies recently realized include:

- ✓ Increased internal financial auditing to ensure compliance with all laws, statutes, and regulations pertaining to appropriations and generally accepted accounting principles with no additional funding or positions.
- ✓ Reducing out of state contacts awarded from 45% in fiscal year 1996 to 12% in fiscal year 1998.
- ✓ Assuming full delegation for position classification from the Department of Administration with no additional funding or positions.
- ✓ Standardizing the department local area networks, resulting in a 50% reduction in down time.
- ✓ Reducing delivery time for electronic mail from up to 10 minutes to less than one minute in most cases.

Centralizing administrative positions that provide direct administrative support to the program divisions *in one place*, the Division of Administrative Services, offers two distinct advantages:

- It has maximized the utilization of the department's professional fiscal and management staff resources through continuous and ongoing cross training, consolidating duties and responsibilities whenever possible, and providing the opportunity to allocate financial management expertise/skills where and when needed most.
 - The ability to clearly see the number of professional level administrative support staff, and the total cost of the services provided.
- 

WHAT DO THEY DO AND WHY? (continued)

ADMINISTRATIVE SERVICES (continued)

- **Director's Office - 2 staff**
 - Direct and manage use of administrative resources in a cost effective and efficient manner.
 - Directs sound fiscal policy.
- **Financial Services – 22 staff**
 - Collect 5.6 million dollars annually under 41 fee programs.
 - Collect 33.4 million dollars annually from 6 different federal agencies under 80 different grants.
 - Prepare financial statements and audits for seven funds with assets in excess of 186 million dollars.
 - Pay over 21,000 invoices/reimbursements within 30 days of invoice date and reimburse travel claims within 10 days of completion of travel.
 - Conduct legal procurements for 30 professional services contracts and over 400 delivery orders annually.
 - Track over 4,000 items of controlled property.
 - Manage 29 office, laboratory and storage space leases in 16 locations statewide.
 - Collect 7.6 million dollars annually under 35 agreements with other agencies.
- **Human Resources – 7 staff**
 - Issue bi-monthly payroll to 500 employees.
 - Take classification action on 150 position descriptions annually.
 - Ensure department compliance with federal and state employment laws, collective bargaining agreements and personnel policy.
 - Track family medical leave benefits for 70 employees on an on going basis.
 - Review and approve over 500 evaluations annually.
 - Ensure the legality of 100 hires per year using Workplace Alaska.

WHAT DO THEY DO AND WHY? (continued)

ADMINISTRATIVE SERVICES (continued)

- **Data Processing/Information Systems – 8 staff**
 - Provide network and “at the desktop” support services to 500 users in sixteen locations statewide.
 - Convert 18 priority department databases to an integrated data warehouse.
 - Design and implement access methods for the general public, legislature, other agencies, industry and communities to query the department’s integrated databases directly.
- **Budget – 3 staff**
 - Prepare the annual operating, capital and loan budget requests.
 - Provide information to the general public, to legislators, and to legislative staff, including legislative finance regarding the department budget request.
- **Information Office – 3 staff**
 - Issue over 100 advisories annually to the general public on issues such as safe food and public health alerts; spills of oil and hazardous substances; paralytic shellfish poisoning; air quality advisories; recycling; solid and hazardous waste; contaminated soil and groundwater; water quality; permit and regulatory information; and criminal deterrents to environmental crime.
 - Provide public information via the internet, which experiences over 3,000 hits (visits) monthly, such as selected permit applications; real time oil spill information; current versions of regulations; and information to help businesses comply with the regulations.
 - Provide training and assistance to professional staff in effective communications with regulated industries and communities.



WHAT DO THEY DO AND WHY? (continued)

ADMINISTRATIVE SERVICES (continued)

- **Divisional Administrative Support** – 6 staff. Working directly with the other six divisions to:
 - Prepare and implement spending plans for the department's 19 components.
 - Provide administrative guidance and options for division directors, program managers and staff.
 - At the divisional and program level, ensure the cost effective and efficient administrative operation of department programs.

EXXON RESTORATION

Current year restoration operating activities funded through the Department of Environmental Conservation with Exxon Valdez Trustee settlement funds address marine pollution derived from land-based sources and waste management practices of remote communities. Specific projects for fiscal year 2000 include:

- Implementation of the Kodiak Island Borough Master Waste Management Plan to reduce pollution entering spill impacted marine waters. The project will upgrade and improve landfills, disposal sites and solid waste management practices, and provide for systems maintenance and repairs for seven villages on Kodiak Island.
- Technical assistance to provide seven remote communities on the benefits of properly handling solid waste, used oil, and household hazardous waste.
- In cooperation with local communities, oversee implementation of the Lower Cook Inlet Waste Management Plan to reduce the amount of community pollution entering spill injured marine waters.

Department of Environmental Conservation, Division of Air & Water Quality

What Is Air & Water Quality?

The Division of Air & Water Quality is comprised of five programs in three budget components that work together with Alaskans to provide clean air and clean water.

What is our Mission?

The mission of the Air & Water Quality Division is to identify, prevent, abate and control air and water pollution in a cost effective, accountable manner.

In other words our mission is: Clean Air, Clean Water.

Components and Programs

Director's Office (\$462.1)

Air Quality (\$4840.2)

- Air Permits
- Air Non-Point & Mobile Sources

Water Quality (\$5794.3)

- Air & Water Data & Monitoring
- Water Non-Point Sources
- State Water Discharge Permits &
- Certifications Plan

How Is Air & Water Quality funded?

The Division of Air & Water Quality is primarily funded by federal funds. The operating budget consists of 45% federal funds, 27% general funds, and 28% other funds.

FY00 Authorized Funding

Federal Receipts	4960.7	44.7%
General Fund Match	1322.7	11.93%
General Fund	1218.3	10.98%
General Fund/Program Receipts	443.4	4.0%
Inter Agency Receipts	582.9	5.25%
Clean Air Protection Fund	1925.4	17.3%
CIP	108.7	.98%
Statutory Designated Program Receipts	534.5	4.81%
	\$11,096.6	100%

Water Non-Point Source Pollution Control Program

What is Non-Point Water Pollution?

It is pollution resulting from surface water runoff

- soil erosion during timber harvest and log transfer operations
- high density recreation such as the Kenai riverbank erosion
- major construction and highway projects
- storm water drains from streets and parking lots
- run-off from mining waste, landfills and agriculture
- All but 6 of the 58 impaired water bodies in Alaska are due to non-point source activities.

Staffing

Manager	1
Env Specialist/Engineers	13
Support staff	4
Non-permanent	0
Total permanent staff	18

FED: 2868.2

GF: 496.1

OTHER: 141.0

TOTAL BUDGET = 3505.3

(2 BUDGET REQUEST UNITS)

We charge for:

Stormwater plan reviews

Water Non-Point Sources

Clean-Up & Restoration

Forestry

Stormwater

Wetlands

Who are our customers?

Municipalities and tribal organizations

Timber harvest operations

Developers who need stormwater plans reviewed

Public citizens with concerns or complaints about water quality

Other state and federal agencies such as ADFG, USFWS,

NOAA, NMFS

Nonprofit organizations engaged in watershed protection or restoration projects

Alaska's 17 soil and water conservation districts

Water Non-Point Source Pollution Control Program cont.

What do we do and why?

Primary Activities

Set statewide priorities to preserve and improve water quality.
Develop water body recovery plans for impaired water.

Manage third party grants and Reimbursable Service Agreements (RSAs) for non-point source pollution control projects and services.

Respond to public concerns and complaints on local water quality issues that may be a public or environmental health threat.

Review timber harvest plans and perform related field inspections for forestry operations.

Review highway projects and development projects greater than 5 acres in size and perform field related inspections to prevent erosion and contamination during stormwater events.

Develop methods for assessing wetland functions as a foundation for wetlands planning and permitting decisions.

Results

Identification of water quality priorities and needs in the State, including a list of impaired and potentially polluted waterbodies, so that local, state, and federal groups can focus their resources most effectively and efficiently.

Provide pass through funding and technical assistance to municipalities, local groups, and other state agencies involved in water quality projects designed to protect, enhance, or restore polluted waters and protect local watersheds

Assure that public complaints and concerns regarding water quality are addressed where public or environmental health threatened.

Ensure that appropriate and effective Best Management Practices (BMPs) are used to protect water quality and habitat during logging operations.

Work with developers to implement practices that ensure stormwater leaving the site does not contain levels of pollutants that exceed water quality standards and threaten the habitats and various uses of local waters.

Provide a scientific method for identifying high-value wetlands in order to expedite other agencies' permitting process and tailor the process to Alaskan conditions.

What's our relationship to the federal government?

DEC has been identified as the responsible state agency to receive and pass through federal Clean Water Act funding for projects designed to address water quality problems or non-point source pollution. DEC is also responsible for meeting several mandates of the Clean Water Act for which states have been designated responsibility, such as Sections 303(d) (list of impaired waters), 305(b) (bi-annual water quality assessment report), 319 (non-point source pollution program), 401 (water quality certifications) and 402 (national pollutant discharge elimination system).

Water Non-Point Source Pollution Control Program cont.

Why us and not the feds?

Clean Water Act mandates requiring water quality priorities and identification of impaired waters that are not done by the state would then be required be done by a staff person in Seattle Region 10 EPA., or worse yet, EPA Headquarters in Washington, D.C. Priorities and needs set by non-Alaskans tend to be overly conservative, not suited to real Alaskan needs, and unrealistic.

Section 319 of the Clean Water Act requires that a State pass through funding for water quality projects deemed important to the State. In accordance with the Clean Water Act, EPA is not allowed to pass funding directly to municipalities or other groups without going through the designated state agency (DEC).

A field presence by Alaskan staff rather than out-of-state federal staff allows for better working relationships with businesses and industry, to prevent erosion and other run-off problems via a more realistic assessment of problems and issues.

Although there is no "primacy" provision of the clean water Act for non-point source pollution control, continuation of federal grants to Alaska is based upon a state executed program. Otherwise, federal funds would simply go to the other states.

What's privatized in this program?

1. Monitoring of water quality where public or environmental health threats need verification
2. Field restoration of streams, rivers, lakes, and bays where damage has impaired the uses of the water which inhibits community, fisheries or other economic development.
3. Water quality studies to assess damages or develop recovery plans.
4. Development of public brochures or information flyers.
5. All large photo copying jobs such as regulations, forms, newsletters etc.
6. Review of stormwater plans in Anchorage was recently delegated to the Municipality.

*3rd party work exceeds \$1.7 million. This work is performed by local government, non-profits, contractors, the University and other agencies.

Air Non-Point & Mobile Sources

Air pollution from non-point and mobile sources are generated from automobiles and trucks, fireplaces and wood stoves, fuel storage tanks, aircraft, home and commercial building furnaces, auto body shops and numerous other activities.

Vehicle tailpipe emissions have long been Alaska's leading air pollution problem in Anchorage and Fairbanks when winter season temperatures inversions trap the dangerous carbon monoxide gases from combustion.

Staffing

Manager	1
Env. Specialist/Engineers	11
Support staff	1
Non-permanent staff	1
Total permanent staff	13

Funding

Federal:	1396.1
GF:	1046.5
Other	108.7
TOTAL	2551.3

What fees are charged?

We charge fees for permits and registrations for gasoline distributors of ethanol-blended fuel in Anchorage during the winter months.

The vehicle inspection & maintenance program charges fees for certificates of inspection for motor vehicles. These certificates are sold to private garages, which issue the certificates to private individuals following a successful vehicle emission test.

Air Non-Point & Mobile Sources

Mobile Sources

Air Toxics & Area Source Pollutants

Radiation Monitoring

Who are our customers?

- Communities with air quality problems for primarily carbon monoxide and breathable particulates concerns.
- Communities and individuals impacted by radioactive contamination in Alaska.
- Garages and mechanics who participate in the vehicle inspection & maintenance programs in Anchorage, Fairbanks, and the Matanuska-Susitna Valley.
- Gasoline distributors who provide ethanol-blended fuel to Anchorage during the winter months.

Air Non-Point & Mobile Sources cont.

What do we do and why?

Primary Activities

Develop air quality plans to help bring areas into compliance with health standards for carbon monoxide and particulate matter.

Oversee the implementation of the vehicle I/M program in Anchorage and Fairbanks and implement the Matanuska-Susitna Valley commuter I/M program.

Enforcement of the ethanol-blended fuel program in Anchorage.

Evaluate the public health threat of toxic air pollutants to Alaska citizens.

Participate in forestry and agricultural land clearing and burning projects with land managers to mitigate pollution exposures to nearby residences during large open burn projects.

Issue public health advisory when pollution from natural events poses a local threat due to volcanoes, wildfires, or glacial dust wind storms.

Amchitka Island is a former nuclear weapons test site. We provide oversight of the Department of Energy's environmental assessment and monitoring at Amchitka and work with local interested parties on this issue.

Results

Continued progress in Anchorage and Fairbanks to improve air breath- Carbon monoxide exposures are now very close to meeting public health standards.

Reduced breathable small diameter particulate matter pollution from wood smoke and road dust sufficient to meet public health standards in Juneau, Anchorage, Eagle River and portions of the Mat-Su valley.

Reduction in air pollution from motor vehicles in Anchorage from a cleaner burning fuel.

Especially sensitive individuals take precautions to avoid medical complications.

State concerns are brought to the attention of the federal government. Will determine what if any ongoing threat to citizens or marine environment from any potential ongoing radiation releases.

If not a member of the Northwest compact, or any other compact, Alaska would have to provide for storage and disposal of its own radioactive waste. Hospital and medical research waste are disposed of out-of-state.

Air Non-Point & Mobile Sources cont.

What's our relationship to the federal government?

Under Clean Air Act, and its amendments, EPA can delegate authority to states to implement air quality programs provided state standards are at least as stringent as federal standards and we meet the operational requirements set out in federal regulations and policy. This is called giving the state "primacy".

Alaska has had "primacy" since the early 1970s.

The federal government can impose sanctions on states for failure to meet requirements within Clean Air Act. Sanctions can impact industrial facilities and/or federal highway funds.

Why us and not the feds?

A state-run air quality program gives Alaskans the opportunity to tell the state how pollution control strategies will affect them on a local level. A federally administered program would trend to view control strategies from a national perspective.

A federal run vehicle inspection/maintenance program would be a centralized government function, eliminating the use of private garages.

The federal government has conducted nuclear weapons testing in Alaska in the past; the state oversight of the federal environmental assessment and monitoring of Amchitka helps to insure the impartiality of these efforts and a particular focus to local protection of citizens, the marine environment and any threat to fisheries.

What's privatized in this program?

1. 120 private garages conduct emissions test for the Inspection & Maintenance programs in Anchorage, Fairbanks, and the Matanuska-Susitna Valley.
2. Laboratory testing of fuel samples for compliance with the ethanol-fuel program in Anchorage is contracted to a private laboratory.
3. Contractors are used to provide technical assistance in developing air quality control plans for communities not meeting the health standards (FY99 \$365,000 expended)
4. In FY00 a \$600,000 contract will be set for specialized cold weather automotive tailpipe testing in Anchorage and Fairbanks.
5. Local governments of Anchorage, Fairbanks and Juneau perform very significant portions of the efforts and funds to achieve clean air goals. (Anchorage - 16 employees, Fairbanks - 11 employees)

Water Discharge Permits & Certifications Plan

The U.S. EPA is the primary agency for issuing water discharge permits in Alaska. Although Alaska has never received "primacy", the state issues discharge permits for small sewage treatment plants on other non-federal discharges. Until FY00, Alaska issued water quality "certifications" for federal discharge permits to

- 1) Assure protection of Alaska water quality and
- 2) provide flexibility for the operation via the federal permit through provisions such as mixing zones, zones of deposits, temporary variances and site specific water quality standards.

State Water Discharge Permits & Certifications Plan

Who are our customers?

- Alaskans and communities that use surface waters for personal, community or fisheries purposes
- All companies and community governments who discharge wastewaters to the waters or lands of the state. These include: sewage treatment plant operators, timber pulp or processing plants, mining operations, oil and gas exploration, production or refining and seafood processing plants
- All developers or local governments engaged in activities that fill, dredge or otherwise construct in wetlands or waterways.

Staffing

Manager	1
Scientist/Engineers	4
Non-professional support staff	1
Non-permanent staff	0
Total Permanent staff	6

Funding

FED	0.0
GF	635.4
RESTRICTED GF	<158.1>
OTHER	588.1
RESTRICTED OTHER	<548.8>
TOTAL AVAILABLE	516.6

We charge permit review fees for:

Permits to discharge domestic or non-domestic wastewater to the lands or waters of the state (except discharges of less than 100 gallons per day of domestic wastewater to a drainfield system)
Certifications of federal permits

Water Discharge Permits & Certifications Plan cont.

What do we do and why?

Primary Activities

Because of budget cuts in FY00, the program has ceased review and issuance of most certification of federal permits for: 1) wetland/waterway dredge and fill permits by U.S. Army Corps of Engineers and National Pollutant Discharge Elimination System by the Environmental Protection Agency.

Implement workgroup process to determine how to use existing resources and the future of the permit program.

Complete work on permits "in process" as of July 1, 1999.

Work on unique issues that may significantly affect state interest of liabilities.

Work on critical time sensitive EPA permits to issue a state certification within constraints of existing staff resources.

Results

Discontinue most permitting for industrial and community waste water discharge. Rely upon EPA and COE to protect water quality.

Protect water quality while legally authorizing wastewater discharges from small operations required to obtain only a state permit.

Finish permits for those facilities who began the permit process before July 1, 1999.

Protect water quality and insure reclamation of chemically treated tailings.

Continue work on closure of the Illinois Creek and other mines.

Issue state certifications of 4 NPDES renewals for EPA end of fiscal year deadline of Sept. 30.

What's our relationship to the federal government?

Alaska is not delegated primacy of the Clean Water Act wastewater discharge permit program.

EPA issues these permits although DEC staff have implemented a supportive and shared program in the past in order to assist state interest for water quality management and to insert flexibility into the federal permit for Alaska communities, businesses and industry. The state could seek delegation to garner full state level decision making.

The "dredge and fill" permitting under section 404 of the Clean Water Act is executed by the U.S. Army Corps of Engineers. It is not a program which could be delegated to DEC. In the past DEC has issued water quality certifications of these permits to assure preservation of local water quality. Recent funding reductions have eliminated that effort via a blanket waiver of DEC's review and certification.

Water Discharge Permits & Certifications Plan cont.

Why us and not the feds?

Through the state certification program for NPDES and COE permits we "Alaskanize" the conditions and requirements in those permits; we authorize mixing zones, zones of deposit, short term variances, and site specific criteria which protect the environment while providing significant flexibility to the applicant. Without state certification, applicants will not be able to comply with their permit limits because economically reasonable treatment technology does not exist for most operations in order to meet stringent water quality standards at the "end of pipe".

What's privatized in this program?

1. Collecting water quality data.
2. Performing technical analysis to prepare permit applications, such as mixing zone modeling.
3. Other technical engineering and geological/hydrological analyses for the applicant to assess potential impacts to the quality of the receiving waters.

Air Permits

Air Quality Permits are a tool to manage and control air pollution discharges from industrial operations or large open burning projects.

Staffing

Managers	2
Env. Specialist/Engineers	26
Support staff	3
Non-permanent staff	3
Total permanent staff	31

Funding

FED:	207.2
GF:	156.3
Other	1925.4
(Clean Air Protection Fund)	
TOTAL	2288.9

We charge permit fees for:

Under federal and state law, permittees are required to pay all direct and indirect cost for their air quality permits. These tasks include:

Permit application consultation, assistance, and completeness review;
Reviewing or assisting in the preparation of permit support documents, including on-site evaluations;

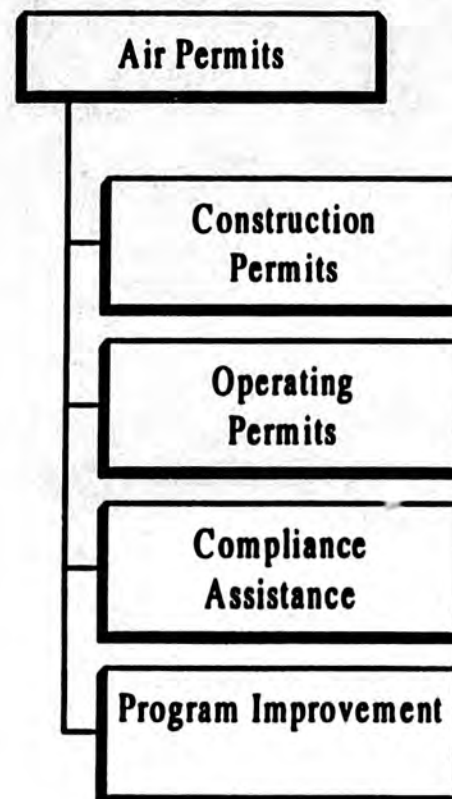
Preparing, processing, and issuing permits

Performing facility inspections and compliance evaluations;

Reviewing, reports of emission, ambient monitoring, or process measurement data;

Preparing, evaluating, or processing plans or documents to rectify noncompliance, but not including any enforcement actions; and

To recover program costs not directly attributable to a specific permittee an "emission" fee is assessed for each ton of out-of-stack pollutants.



Who are our customers?

- Owners and operators of facilities requiring air permits:
 - Those that are capable of emitting more than 100 tons per year of emissions or 25 tons per year of hazardous air pollutants;
 - Those that operate sources subject to federal emission standards.
- Regulated facilities include: electrical utilities; oil exploration, production and refiners; seafood processors; mining and timber operations; and
- Persons conducting large open burns
- Citizens of Alaska adversely affected by air pollution

Air Permits cont.

What do we do and why?

Primary Activities

Implement a permit program to

- manage industrial emissions of air pollution
- prevent air pollution from becoming injurious to Alaskans
- prevent significant degradation of air quality
- implement best available technology in industrial operations to reduce air pollution emissions

Provide compliance assistance at regulated facilities

Improve the state permit program

Results

Support economic expansion while preserving good air quality for the employment and health of Alaskans.

Help applicants to correctly identify the type of permit needed and the specific information needed for acquiring the permit.

Help permittees achieve compliance with permits.

Develop and adopt changes to regulations and policies to address stakeholder concerns, incorporate new federal requirements needed to retain a state-run program, and employ better approaches for meeting federal and state clean air goals that are more responsive to Alaskan concerns and the best interest of our communities and businesses.

What's our relationship to the federal government?

The Clean Air Act, passed by Congress in 1970, amended in 1977 and 1990, gives EPA authorities to delegate the management of air quality permit programs to the States.

EPA has delegated authority of the Clean Air Act permit programs to State of Alaska. EPA maintains oversight authority of the permit programs as needed to assure that the programs are implemented and enforced in accordance with the requirements of the Clean Air Act and it's implementing federal regulations.

Some of the provisions of the Clean Air Act are not well fashioned or suited to situations in Alaska. Considerable effort is expended to make this law more workable for our communities and business needs. Sometimes, this results in strained relations and professional differences of opinion with the federal government, EPA.

Air Permits cont.

Why us and not the feds?

Alaskans have more control over regulatory decisions when the permit program is executed at the state-level.

EPA is far less prone to using innovative approaches to implementing the permit programs.

EPA enforcement is penalty-oriented/State enforcement is assistance-oriented.

Clean Air Act imposes federal highway funds sanctions against states that do not run permit programs.

EPA permit fees likely to be significantly higher than state fees, increasing operating costs for permitted businesses in Alaska.

What's privatized in this program?

1. Permit application preparation
2. Ambient pollution monitoring nearby regulated facilities, exhaust stack emission testing and monitoring
3. All large photo copying jobs such as regulations, forms, newsletters etc.

Future opportunities: some technical aspects of permit application reviews to help reduce permit backlog

Air & Water Data and Monitoring

For environmental measurement data to support wise decision making, the data must be of known quality, focused to answer specific questions and readily accessible to decision makers that are internal and external.

FY00 funding by source

FED:	2,311.5
General Fund	1,502.1
Other	0.0

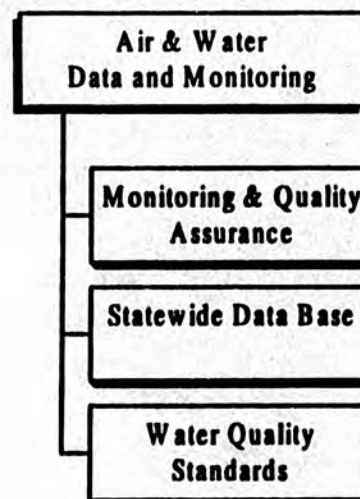
\$3,813.6

Staffing

Managers	2
Env. Specialist/Engineers	15
Support Staff	3
Non-permanent staff	0
TOTAL permanent staff	20

We charge for:

No fees are charged. However the costs of some projects are paid by other entities.



Who are our customers?

The public whose health and economic well-being depends on good air and water quality.

Public and private entities that discharge pollutants to the air and wastewater to the lands or waters of the state. These include local governments such as Anchorage, Fairbanks, Juneau, McGrath, Sitka, Mat-Su Borough; federal agencies such as BLM, and USFS; Alaska industries such as power generators, oil and gas, seafood and mining.

Air & Water Data & Monitoring cont.

What do we do and why?

Primary Activities

Monitoring and Quality Assurance

Operate ambient air quality monitoring networks for carbon monoxide and breathable particulate pollution.

Perform baseline assessment monitoring for new air pollutants (PM2.5 and Regional Haze)

Conduct and provide for ambient water quality monitoring (accomplished by grants, contracts, and the regulated community).

Provide technical assistance in developing monitoring plans for air and water monitoring projects.

Provide quality assurance oversight for statewide air and water quality monitoring operations.

Results

Maintain compliance with National Ambient Air Quality Standards (NAAQS) for the protection of public health.

Assess if Alaska will meet national fine particulate health standards under the Clean Air Act. Determine if national regional haze program will require emission reductions in Alaska.

Ensure Water Quality Standards are met to protect public health and aquatic life. Assess if water body recovery efforts are successful.

Ensure that monitoring methods are selected such that measurement data study meet the objectives of studies designed to answer the questions posed.

Ensure that the quality of the collected monitoring data represents actual field conditions and is useable for decision making.

Air & Water Data & Monitoring cont.

What do we do and why?

Primary Activities

Statewide Data Base

Develop and maintain air and water quality databases to provide rapid access to environmental data to improve assessment, mapping, and reporting of environmental conditions.

Water Quality Standards

Maintain Water Quality Standards that incorporate state-specific considerations.

Provide guidance and technical assistance to user groups.

Adopt site-specific water quality criteria when federal criteria are stricter than necessary or not strict enough to protect water uses.

Results

Communicate condition of Alaska's air and water quality to meet a variety of requests; provide baseline information to reduce permit applicant effort; provide basis for sound resource decisions; and provide information to the public about discharges of pollutants and the ambient status of the air and water quality resources.

Water Quality Standards protect water uses for fish habitat, drinking and recreation, economic and community development while taking into account Alaskan conditions.

Better voluntary compliance with the regulations that will prevent water quality problems.

Criteria that cost-effectively protect water uses.

Air & Water Data & Monitoring cont.

What's our relationship to the federal government?

The Clean Air Act requires each state air agency to submit ambient air data to the national database quarterly to enable EPA to monitor and assess the status of air quality in Alaska and the nation.

The Clean Water Act requires Alaska to report regularly on the status of waterbodies and water quality and to set priorities for directing resources for protection and restoration of water quality. These determinations are based upon the availability of water quality data to support the State's assessment.

The Clean Water Act requires states to adopt water quality standards to protect designated uses of surface waters, including drinking water, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes. For some pollutants including a list of priority toxic pollutants, the Environmental Protection Agency (EPA) publishes recommended criteria. In the case of priority toxic pollutants, if the state does not adopt criteria that are at least as stringent as the federal criteria or that are otherwise scientifically defensible, the Environmental Protection Agency will adopt criteria for the state. In 1992 the EPA did adopt certain criteria for Alaska in the National Toxics Rule.

Whenever the state revises the Water Quality Standards Regulations, the revisions must be reviewed and approved before the state WQS regulations can be used for Clean Water Act purposes including deriving effluent limits for NPDES permits, certifying federal permits, putting water bodies on the impaired water body list and writing Total Maximum Daily Loads (TMDL or water quality improvement plan) for impaired water bodies. If the EPA disapproves a Water Quality Standards provision, the EPA must promulgate a regulation for the state.

Why us and not the feds?

The federal government no longer has the staff or the experience to perform air and water quality monitoring in Alaska. While they could perform some functions in the permit review process, the monitoring workload is not one of them. If the present level of effort were not performed by the state, the reduction in service would jeopardize air and water permit programs and non-point source efforts linked to public health, fisheries sustainability and lead to potential federal sanctions of funds due to inability to achieve clean air goals.

Staff has spent many hours working with local governments, industry, and environmental groups in evaluating air and water quality problems in the state, developing cost effective solutions, providing training on instrument operation, and quality assurance and performing instrument repairs.

Air & Water Data & Monitoring cont.

Why us and not the feds? cont.

The State is in the position to make water quality assessments based upon local knowledge and unique site-specific requirements. The State is also in the position to identify and access information sources that may not be available to the EPA.

The Clean Water Act and lawsuits across the country require that where States fail to develop impaired waterbody lists and/or TMDLs, EPA is required to do so. States are much better off in controlling these outcomes if they are in the lead or in more of a control situation.

If the state adopts Water Quality Standards, the state can take into consideration conditions peculiar to Alaska. In the absence the EPA would adopt national criteria for Alaska that would not take into consideration local conditions or natural conditions such as glacial silt that exceed national recommended criteria.

The EPA also will not adopt site-specific criteria to take into account conditions peculiar to a particular water body and they will not grant any variances from the WQS regulations.

What's privatized in this program?

1. Some air monitoring services in remote locations are contracted out. Fairbanks, Anchorage, and numerous industries operate air monitoring stations.
2. Most water quality sampling and laboratory analysis of samples are conducted through contractual agreements.
3. Permitted dischargers conduct self-monitoring and reporting according to permit requirements.
4. Some water body recovery work is accomplished through contractual arrangements with private entities.
5. Information systems and needs assessments are contracted to the private sector.
6. Public Notices, and Document Printing also are purchased.

Department of Environmental Conservation, Division of Environmental Health

Report to Privatization Commission September 1st, 1999

What Is Environmental Health?

The Division of Environmental Health is comprised of ten programs in five budget components that work together with Alaskans to provide safe water, safe food, and healthy communities.

What is our Mission?

The mission of the EH is to prevent and control public health nuisances by establishing standards of cleanliness and sanitation for water, solid waste, and food, where a lack of sanitation may create a condition that causes disease.

In other words our mission is: Safe Water, Safe Food, Healthy Communities.

Components and Programs

Director's Office (\$168.4)

Drinking Water & Wastewater (\$3,814.6)

Food Safety & Sanitation (\$3,142.2)

- Food Safety and Sanitation
- Office of the State Veterinarian

Laboratory Services (\$2,232.7)

- Laboratory Services
- Pesticides

Solid Waste Management (\$1,078.3)

How is Environmental Health funded?

The Division of Environmental Health is primarily funded by general funds. Two-thirds of our operating budget - 64% - is general funds. One-third - 34% - is federally funded and 65% of those federal dollars support the Drinking Water Program.

FY00 Authorized Funding

Federal Receipts	3,562.0	34.1%
General Fund Match	957.2	9.2%
General Fund	3,111.8	29.8%
General Fund/Program Receipts	2,611.6	25.0%
Inter Agency Receipts	20.0	.2%
Response Fund	173.6	1.7%
	\$10,436.2	100%

Drinking Water and Wastewater

FY00 funding by source

General Fund	501.6
General Fund/Program Receipts	503.6
General Fund Match	496.9
Federal	2,311.5
	\$3,814.6

Who are our customers?

Owners and operators of public water systems

- Those that are expected to serve 25+ residents a year (Class A);
- Those that are expected to serve at least 25 people a day for at least 2 months (Class B);
- Any other public water system (Class C)

Owners and operators of domestic wastewater systems (septic and sewer)

We charge for:

Engineered plan reviews*

Determinations that a system is served by "groundwater under the direct influence of surface water"

Determination of optimal corrosion control when a PWS exceeds the allowable levels of lead and copper

Approval of surface water treatment rule filtration avoidance

System extensions

Contaminant monitoring waivers for PWS

Separation distance or other waivers

Certification of domestic waste water – septic system installers

Approval of sanitary surveyors and PWS inspectors

Approval of an "innovative" technology or device

Inspections, including follow-up on valid complaints and enforcement

* Engineered plan reviews are not done for domestic wastewater systems serving a single family home, a duplex, or a single commercial building with an expected peak design flow of 500 gpd or less, or for Class C water systems that use groundwater as their source of drinking water.

Drinking Water and Wastewater cont.

What do we do and why?

Primary Activities

Establish design, construction and operations standards for PWSs and wastewater treatment and disposal systems

Review public water systems and domestic wastewater system construction plans*

Review financial, managerial, and technical capacity for public water systems

Require laboratory testing of the water provided by public water systems

Require inspections and sanitary surveys of public water systems

Work with public water system owners to protect drinking water sources

Results

Systems that are capable over time of providing safe water in sufficient quantities or that can safely dispose of human wastes

Compliance with design standards

Public water systems capable of continued operations on a sustained basis

Water that is within acceptable contaminant levels (i.e. safe to drink)

Compliance with construction and operating standards

Reduction in potential contamination at the water source

What's our relationship to the federal government?

Safe Drinking Water Act, passed by Congress in 1974, amended in 1986 and 1996, gives EPA authority for Class A and Class B systems (Class A = community water systems and nontransient noncommunity water systems, Class B = transient noncommunity water systems)

EPA can delegate oversight authority to states provided state standards are at least as stringent as federal standards and we meet the operational requirements set out in federal regulations and policy. This is called giving the state "primacy."

Alaska has had "primacy" since September 22, 1978

Drinking Water and Wastewater cont.

Why us and not the feds?

Federal government pays for 75% of the management costs of the DW Program

State can issue contaminant monitoring waivers and separation distance waivers (saves water systems BIG money)

State has access to federal construction funds for public drinking water systems

EPA runs "enforcement only" program; does not provide technical assistance

What's privatized in this program?

1. Sanitary surveys for DW system done by private individuals
2. Certified installer program for DWW systems (expands who can install these systems)
3. Monitoring of water systems done by private labs
4. Moving certified installer training to University of Alaska
5. Certification of on-lot septic systems now done by private engineers
6. All large photo copying jobs such as regulations, forms, newsletters etc.

Food Safety and Sanitation

Food Safety & Sanitation (2903.7)
Office of the State Veterinarian (238.5)

FY00 funding by source

General Fund	698.5
Commercial Fish Revolving Loan Fund	175.0
General Fund/Program Receipts	1530.5
General Fund Match	244.1
Federal*	494.1
	3,142.2

* Some amount of federal funds will be restricted as uncollectable. The final amount is not yet known.

What fees are charged?

All food-related permits (except for dairy processing) have fees associated with them to help defray the costs of the total program services. We do not have fee authority for any public facility oversight except for overnight accommodations, however we do not have fees in place. We also have authority to establish fees for veterinary services provided by the state vet, but have not yet adopted any fees for those services.

What do we do and why?

Primary Activities

Establish facility requirements; review and approve plans

Approve shellfish growing areas

Establish criteria for livestock imports and care

Conduct inspections

Who are our customers?

Anyone who sells or serves food to the public (retail food), such as:

- Restaurants
- Grocery stores
- Schools and day cares

Food processors, such as

- Dairy
- Seafood
- Shellfish growers/harvesters
- Bottled water
- Candy, syrups

Owners and operators of public facilities, such as

- Day care centers
- Overnight accommodations
- Pools/spas
- Schools and cosmetological establishments

Veterinarians & vet medicine manufacturers

Results

Reduction in potential for unsanitary conditions and contamination of food

Reduced likelihood of PSP contamination

Healthy animals for food production

Compliance with requirements; share food safety information with operators and employees

Food Safety and Sanitation Cont.

Primary Activities

Results

Operator/processor education

Fewer problems that can lead to foodborne illness

Laboratory testing of food products and shellfish growing water

Verify safety of food products

Participate in recalls

Remove unsafe food products from commerce

Investigate reports of foodborne and waterborne illnesses

Find and correct the cause of the illness

Provide technical/consultative assistance

Increase in compliance at the lowest cost to operators

What's our relationship to the federal government?

Dairy processing: must follow the Food & Drug Administration (FDA) Pasteurized Milk Ordinance to sell milk processed in Alaska interstate, to the military, or to schools.

Shellfish growing/harvesting: must follow FDA's Model Ordinance for the Control of Molluscan Shellfish to sell shellfish interstate and internationally.

Other seafood processing: must follow FDA's Hazard Analysis Critical Control Point regulations as well as FDA's Good Manufacturing Practices (GMPs) regulations to sell product interstate or internationally.

Other foods processed in Alaska must also be processed in accordance with the federal rules for that type of food. All must follow the GMPs.

There are no federal requirements for retail foods but there is a federal guideline called the "Food Code." There are also no federal requirements for public facilities.

Animal Health: the federal government sets minimum standards for disease control in animals that in turn affects interstate & international shipment of animals. States may set more stringent requirements.

Food Safety and Sanitation Cont.

Why us and not the feds?

The federal government does not provide direct services for food processors except for small, fairly targeted areas. However, the federal rules must be followed in order to assure market access to our processors.

It also does not provide animal health services to states.

Although we do not receive any financial support from the federal government for any of these services, they will contract with us to conduct some seafood inspections:

US Department of Commerce (USDC) has several types of inspection programs available to the industry on a fee-for-service basis. Listed below are the types of inspections we have performed for USDC. USDC pays us on a per-inspection basis.

Type 1 In-plant inspection – continuous product inspection to allow the product to be sold for certain federal government programs, such as the Grade A program and the Packed Under Federal Inspection (PUFI) program. The inspector must be in the plant throughout the production of that lot of product.

Type 2 Lot inspections – product is inspected for quality, condition and sometimes graded to buyers' specifications. A Certificate of Origin, Export Health Certificate, and European Union - country specific certificates are issued. This allows product to enter into countries that have imposed these requirements, or the buyer is ensured they are receiving the quality of product requested.

Type 3 Miscellaneous – includes, 1) cannery sanitation and retort survey inspections to get a cannery approved to produce product under the PUFI program, 2) routine USDC plant sanitation inspections to be listed on their list of approved establishments, and 3) fish meal plant inspections.

FDA will also contract with us to conduct federal HACCP inspections.

What's privatized in this program?

1. Some HACCP and food server training
 2. HACCP plan preparation (done by processors and private consultants)
 3. Collection of some water samples (by shellfish growers)
 4. Issuance of animal health certificates (by private veterinarians)
 5. All large photocopying jobs such as regulations, forms, and brochures
 6. Public service announcements
- Looking at creating certified 3rd party inspector program for low-risk facilities

RISK BASED INSPECTION FREQUENCY PROTOCOL

(Risk Level = # of routine inspections per year)

Where HACCP is mandatory or being voluntarily followed, only one inspection per year per process/product is a full HACCP inspection.

RISK LEVELS¹	PROCESS/PREPARATION OR CONDITIONS	EXAMPLES
Complaint Only	Ensure minimum health and safety standards are met through plan review and complaint investigation.	Cosmetology; very small bed and breakfasts; public toilets; showers, laundromats.
1	Limited preparation which may include assembling precooked/sliced items; cook and serve; Cold hold and display of prepackaged foods/produce Gill, gut, harvest, package fresh/frozen, (not ready to eat) Physical, microbial and chemical hazards are generally present	Limited food service; mobile food service; bars/taverns; convenience stores; grocery stores; warehouses; fresh/frozen produce and fish processors. Campgrounds (no RVs), hotels/motels/lodges; larger bed and breakfasts.
2	Assemble, cook and serve hot or cold hold (No cooling and reheating) Salvage and repackaging Shellfish harvesters Retail processing including meat and seafood slicing, cutting, and wrapping Processing of ready to eat or shelf stable non potentially hazardous foods Physical, microbial and chemical hazards are present	Delis; food banks; supermarkets; retail seafood and meat markets; bakeries; ice manufacturers; bottled water and other beverages; candy, jams, jellies and syrup manufacturing; fast food take-out. Spas, RV parks, tattoo parlors, residential care facilities, preschools, elementary and secondary schools.
3	Associated with known toxins (tuna, mushrooms, shellfish) Assemble, cook, cool, hold, and reheat Processing and packaging into ready-to-cook meals All processing of warm-blooded animals High physical, microbial and chemical hazards	Processing of foods with known toxins; full service restaurants; meat processing (not covered under MPI); labor camps; institutions. Day care centers and pools/spas.
4	Thermal processing of low-acid foods Reduced oxygen packaging Smoking or curing of ready to eat and shelf stable potentially hazardous foods Pasteurizing	Canning and smoking seafood, meats; roe processing; low-acid canning; any processor that ROPs.

RISK BASED INSPECTION FREQUENCY PROTOCOL CONTINUED

¹ Considerations that may increase or decrease the number of annual routine inspections:

Add one inspection per year for food facilities:

- The facility is an institution that accepts donations of traditional Native foods;
- The targeted population served by the facility is 1) children; 2) elderly; or 3) immunocompromised;
- The facility has a scored inspection of 84 or below;
- The facility has a non-scored inspection and has 3 or more critical violations OR 2 or more critical violations AND 2 or more repeated noncritical violations;
- The methods of food preparation at a food service establishment are complex (that is, there are a number of food items or ingredients are prepared in advance requiring cooling and reheating); or
- The facility is large (see note).

Add one inspection per year for public facilities if:

- Three or more critical violations during last routine inspection;
- Secondary school has an industrial arts program.

Deduct one inspection per year for a food facility if:

- The facility has a scored inspection of 94 or above and no critical violations for two consecutive inspections;
- The facility has a non-scored inspection with no critical violations and no more than 4 non-critical violations for two consecutive inspections;
- The facility is a participant in good standing in the Division's facility recognition program; or
- The facility has a sufficient HACCP plan that is being fully implemented.

Deduct one inspection per year for a public facility if:

- No critical violations during last two consecutive inspections.

NOTE: "Large" is purposely not being defined at this point since we do not categorize most of our facilities in that way however it is to relate to capacity or volume. For the time being, Program Managers are to determine whether or not a facility is "large" but they must be able to articulate their rationale to me so we can come up with appropriate definitions.

Laboratory Services

Food Safety Lab (1,024.8)
State Chemistry Lab (926.6)
Pesticides (281.3)

FY00 funding by source

General Fund	950.1
General Fund/Program Receipts	144.0
General Fund Match	215.2
Federal	729.8
Oil & Hazardous Response Fund	173.6
Interagency Receipts	20.0

2,232.7

Who are our customers?

Owners and operators of commercial labs

Food processors, especially seafood

Users of pesticides (primarily commercial and government users)

- Oil companies
- Commercial pest controllers
- Municipalities
- Agriculture
- Fishing industry

What fees are charged?

We charge fees to commercial labs that we certify

We also charge for any food testing done at the request of the processor, including testing necessary to export product out of the U.S.

Finally, we will charge for a PWS to test its water for cryptosporidium or giarida (there is now one private lab that can conduct these tests to which we will refer public water systems.

We do not have fee authority for any pesticide services

Laboratory Services Cont.

What do we do and why?

Primary Activities

Certify or accredit commercial labs to conduct analysis of public drinking water systems, as well as underground storage tank and contaminated site remediation

Conduct laboratory testing of commercial food products processed in Alaska, including testing of shellfish for PSP

Limited number of oil spill sampling

Train and certify pesticide applicators

Issue pesticide permits for 1) aerial application, 2) application by or for a governmental entity, and 3) projects that will affect land owned by separately by two or more people.

Conduct some analysis of animals such as reindeer for brucellosis or tuberculosis

Marketplace pesticide inspections

Results

Accurate measurements of contaminants in water and soil

Alaska-processed food that is safe to eat and has access to markets

Determine source of "orphan" oil spills

Reduce potential for improper pesticide use

Ensure public notice of large-scale applications

Prevent disease in Alaska's domestic animals

Prevent the sale of illegal pesticides

Laboratory Services Cont.

What's our relationship to the federal government?

Certification of commercial labs that test public water systems is a condition of primacy for the drinking water program. Federal funds help support this effort.

Like the Drinking Water program, EPA can also delegate responsibility for the pesticide program to states with standards that are at least as stringent as EPAs.

Why us and not the feds?

See Drinking Water program overview for benefits of primacy.

For pesticides, we also have primacy. Under the federal rules, the most toxic pesticides can only be used by certified applicators (restricted-use pesticides). With a state program, access to this certification is significantly greater than what EPA might offer.

The state also has the ability to approve a pesticide for a "special local need" that was not included in EPA's initial registration.

What's privatized in this program?

All laboratory analyses are done by private laboratories except:

- Cryptosporidium and giardia in public water systems
- Food testing
- Some animal analyses for other state and federal agencies

Solid Waste Management

FY00 funding by source

General Fund	618.2
General Fund/Program Receipts	433.5
Federal (NOAA, Pribilof Islands Project)	26.6
	1,078.3

What fees are charged?

Permit fees are charged for all types of solid waste permits except small, rural landfills (called Class III landfills). The nonmunicipal permits are 100% fee-based (except for travel costs which are covered by general funds)

What do we do and why?

Primary Activities

Establish design, construction and operation standards

Review and approve facility plans

Establish criteria for closing out solid waste disposal sites

Conduct inspections

Provide technical/consultative assistance

Who are our customers?

Owners and operators of municipal landfills, which in nearly all cases is some level of local government

Owners and operators of types of land disposal facilities for solid, not liquid, wastes, such as

- Construction/demolition debris
- Mining and wood waste
- Sewage sludge
- Oil drilling muds

Results

Facilities that are capable of handling wastes without causing off-site pollution; protect property values to the extent possible

Compliance with design standards

Fewer inactive solid waste sites that become contaminated sites

Spot any potential problems early when they can be most efficiently corrected

Increase in compliance at lowest cost to owner/operator

Solid Waste Management Cont.

What's our relationship to the federal government?

Resource Conservation and Recovery Act (RCRA) Subtitle D gives EPA authority to establish rules for municipal solid waste disposal. State programs must be approved by EPA.

Land Disposal Program Flexibility Act of 1996 allows the Governor of Alaska to exempt certain small, remote municipal solid waste landfills from those federal requirements. The state has developed its own standards for these landfills (we call them Class III landfills).

There are no federal requirements for other types of wastes.

Why us and not the feds?

For municipal solid waste, Congress allows states flexibility in approving landfill locations (earthquake-prone areas; wetlands) and construction material (liner materials.) These flexibilities can save landfill owners millions of dollars.*

For non-municipal wastes, the benefit is to "associated wastes", which come from oil and mining operations. They are specifically excluded from being regulated as hazardous wastes (RCRA Subtitle C) and instead are managed under states solid waste program.

What's privatized in this program?

1. All landfill design work
2. Some aspects of our review may be contracted out
 - Extremely complicated designs
 - High level engineering review
3. All groundwater monitoring
4. All large photocopying jobs such as regulations, forms and brochures.

* Federal law allows only one kind of liner – a geotextile liner over 2 feet of clay. The Municipality of Anchorage told us this would increase their costs by \$180,000 per acre of liner.

Department of Environmental Conservation, Division of Facility Construction and Operation

Report to Privatization Commission September 1999

What Is Facility Construction and Operation?

The Division of Facility Construction and Operation (FCO) is a BRU with a single component within the Department of Environmental Conservation. Services are delivered via five programs.

What Is our Mission?

The mission of FCO is to provide financial and technical assistance to local governments for construction and operation of water, sewerage and solid waste projects.

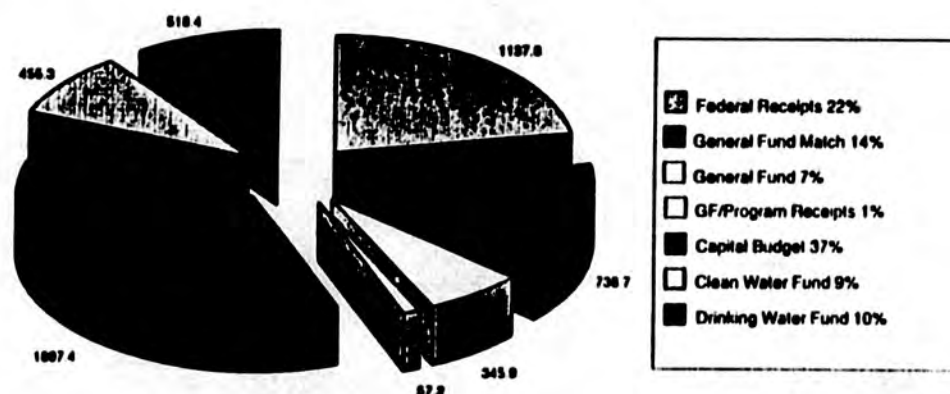
Programs

Village Safe Water
Municipal Water, Sewerage and
Solid Waste Matching Grants
Municipal Loans
Operator Certification
Remote Maintenance Workers

How Is the Division of Facility Construction and Operation funded (part one)?

The Division's operating budget relies on a mix of funding sources to cover operating expenses.

Federal Receipts	1137.8	22%
General Fund Match	738.7	14%
General Fund	345.9	7%
General Fund/Program Receipts	57.2	1%
Capital Budget Receipts	1897.4	37%
Clean Water Fund	455.3	9%
Drinking Water Fund	518.4	10%
	5150.7	100%



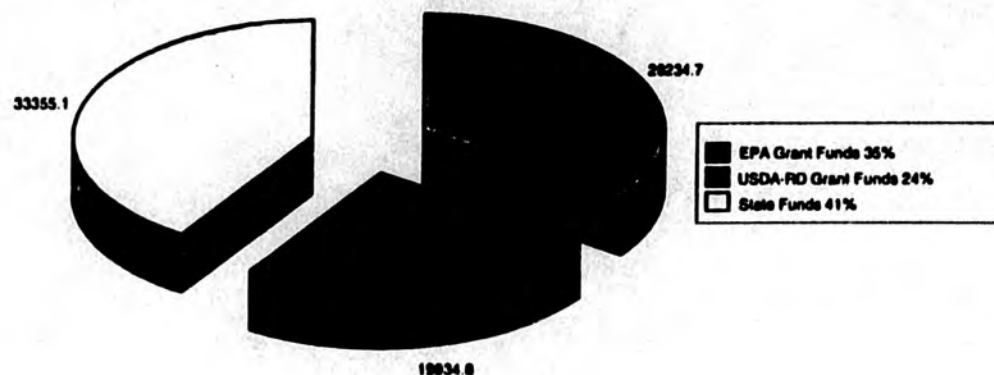
Facility Construction and Operation

How Is the Division of Facility Construction and Operation funded (part two)?

In addition to its operating budget, the Division also manages a capital budget.

EPA Grant Funds	28234.7	35%
USDA-RD Grant Funds	19934.8	24%
State Funds	33355.1	41%
	81524.6	100%

Ninety-eight percent (\$79.6 million) of this capital budget is provided to communities as grants or loans for water, wastewater and solid waste projects. Two percent (\$1.9 million) goes to the operating budget to pay for programs.



Who are our customers?

- Communities
- Community Water and Wastewater System Operators

Facility Construction and Operation

What fees are charged?

The division charges fees to certify operators of water and wastewater systems:

- Application Fee \$20
- Examination Fee \$30
- Certificate Renewal Fee \$50

What's our relationship to the federal government?

A large part of the funding for the five programs is provided by annual grants from the U.S. Environmental Protection Agency (\$28 million) and the U.S. Department of Agriculture (\$20 million). Receiving those grants obligates the state to comply with a number of federal rules governing how the State administers those funds including such things as assuring that funds are used in accordance with federal law, reporting program expenditures and achievements to the granting agency, conducting financial audits, etc.

The Municipal Loan Program must be administered in accordance with federal statutes, regulations and guidance.

The Operator Training and Certification program must meet minimum standards specified by the federal Safe Drinking Water Act and Clean Water Act, as well as associated federal regulations and guidance.

Why us and not the feds?

The programs operated by this Division are exclusively state initiatives. Unlike many other DEC programs, the state does not operate the programs in lieu of federal management. The programs can only be operated by the state. Federal management is not an option.

Facility Construction and Operation

What do we do and why?

Primary Activities

Village Safe Water

Provide financial and engineering assistance to Alaska's smallest communities for water, sewerage and solid waste facility planning, design and construction.

Municipal Water, Sewerage and Solid Waste Matching Grants

Provide grants with a local match requirement and engineering assistance to larger communities for water, sewerage and solid waste projects.

Municipal Loans

Provide low-interest loans and engineering assistance to communities for water, sewerage and other types of wastewater projects.

Operator Training and Certification

Develop training programs, administer certification exams, establish certification proficiency standards, coordinate statewide training schedules, staff the Alaska Water and Wastewater Works Advisory Board, and maintain files and a database of certified water and wastewater operators.

Remote Maintenance Workers

Provide over-the-shoulder and emergency assistance to remote community water and sewerage system operators.

Results

A new, basic level of water and sewer service extended to an average of 800 households in rural Alaska each year.

Upgrades in municipal water, sewerage and solid waste facilities to keep pace with community needs and evolving drinking water, wastewater and solid standards.

Upgrades in municipal water and wastewater facilities to keep pace with community needs and evolving drinking water and wastewater standards.

Individuals that are competent to operate Alaska's water and sewer systems.

No catastrophic water or sewerage system failures due to freezing since 1989.

Protection of the state and federal investment in sanitation facilities

Improved system operation, water and wastewater quality, compliance with state and federal standards.

Facility Construction and Operation

What's privatized in this Division?

1. \$80 million annually (based on FY00) in feasibility studies, project design, construction, construction management.
2. Village Safe Water project financial management.
3. Annual loan program financial audits.
4. Operator training material and curricula development.
5. Operator training delivery.
6. Operator certification exam proctors.
7. 10 of 13 Remote Maintenance Workers.

Department of Environmental Conservation, Division of Spill Prevention and Response

Report to Privatization Commission October 22, 1999

What Is Spill Prevention & Response?

The Division of Spill Prevention and Response is comprised of three budget request units and six budget components that work together with Alaskans and industry to provide the safe handling and storage of petroleum products and to cleanup spills and contamination where public health or our environment is at risk.

What is our Mission?

To prevent, respond to, and ensure the cleanup of unauthorized discharges of oil or hazardous substances.

Who are our Customers?

Citizens with concerns or complaints about spills, tank owners and operators, Underground Tank Owners and Operation Association (AUTOO), qualified consultants for assessment and cleanup of contaminated sites, municipalities, local governments and villages, owners and operators of contaminated sites, subsistence resource users, other state agencies, financial institutions and realtors, federal facilities such as U.S. Air Force, U.S. Army, U.S. Coast Guard, oil exploration, production and refinery industry, rural electric cooperatives, municipalities (City of Anchorage, North Slope Borough), oil vessel transporters (tankers and barges), refineries, crude oil transmission pipeline operators, numerous industry small bulk fuel facilities, environmental groups, chemical handlers and transporters, regional citizens' advisory councils.

How is Spill Prevention & Response funded?

The Oil and Hazardous Substance Release Prevention and Response Fund (Response Fund) was created by the Legislature in 1986 as a way to provide funding for the safe handling of oil and hazardous substances based on a "user pays" principle. There have been four amendments since then fine-tuning how it works with the most recent being in 1994 which created separate response and prevention accounts. The Division of Spill Prevention and Response receives no General Funds. The Alaska legislature created the Response Fund to specifically fund these activities. Furthermore, the legislature expressed its intent and declared it to be public policy that funds for abatement of an oil or hazardous substance release will always be available (AS 46.08.030). The department aggressively seeks to cost recover all State dollars spent from the Response Fund conducting cleanup or containment activities. Monies recovered from Responsible Parties are then returned to the Response Fund to pay for new cleanup and containment activities.

Federal Funds are also received for military site cleanups including formerly used defense sites, active installations, base relocation and closures, oversight of federal civilian cleanups at the Pribilofs, program operation and management, voluntary cleanup program, operation of the Underground Storage Tank (UST) Program and cleanup of leaking underground storage tanks. The Department performs cost recovery activities to recover LUST Trust Fund Federal dollars spent on cleanup and containment activities which are then reissued to the State as federal grants to fund additional LUST activities.

Components and Programs

Director's Office (193.1)
Contaminated Sites (7,088.4)
Industry Preparedness & Pipeline (2,407.8)
Prevention & Emergency Response (3,109.9)
Response Fund Administration (1,642.1)
Local Emergency Planning Committees (543.4)

FY 00 Authorized Funding

Response Fund	10,662.1	71%
Federal Receipts	3,077.4	20%
STAF	917.6	7%
CIP	249.1	1.5%
Inter Agency Receipts	78.5	.5%
	\$14,984.7	100%

Contaminated Sites Program

FY 00 funding by source

Federal	3,068.9
Response Funds	2,918.1
Storage Tank Funds	917.6
Capital Project Funds	183.8
	7,088.4

We Charge for:

We recover all state costs for site investigation and cleanup.
Annual Underground Storage Tank Registration Fees (900 tanks) = 50.0 (annually)
UST Site Risk Assessment Contract Costs (25.0)
Management of Department of Defense cleanups (through a federal grant)
Program operating costs through .03/barrel surcharge on crude oil production.

What we do and why?

Primary Activities

Assess and clean up the highest risk contaminated sites.

- Rank contaminated sites based on risk to public health and the environment.
- Ensure responsible parties clean up their contaminated sites.
- Investigate and clean up high priority state-owned sites and "orphan" sites where responsible party is unknown or unwilling to take action.
- Apply consistent and measurable clean up standards.
- Expand the voluntary clean up program to include low & medium risk sites contaminated with hazardous substances in addition to the current low/medium risk petroleum contaminated sites.
- Provide financial assistance to owners and operators of leaking underground storage tanks for cleanup.
- Provide technical assistance to responsible parties cleaning up contaminated facilities.
- Provide financial assistance and conduct compliance reviews and inspections for cleanup.

Promote cost effective solutions.

- Employ risk-based clean up standards.
- Involve the public in the clean up process.
- Encourage clean up and economic reuse of industrial properties through relieving prospective purchaser's liability in exchange for cleanup work.
- Authorize and monitor commercial remediation facilities that receive contaminated soils.

Results

Reduction in human exposure to hazardous substances in the environment.

Reduction in damage to property and natural resources

Increase in number of properties being placed back into economic reuse/development and subsistence and recreational use.

Reduce the financial burden on underground storage tank owners for compliance with federal spill prevention requirements.

Reduce the number and size of releases from underground storage tanks.

Increased rate of clean up at lower priority sites with reduced government oversight.

Reduce the number and size of spills at rural bulk fuel facilities by educating and training owners and operators about proper fuel handling/storage, prevention strategies, the hazards of improper handling/storage, and clean up of spills.

Contaminated Sites Program

Prevent spills from underground storage tanks.

- Register all tanks and enter all tanks, tank closures, site assessment/tank tightness tests, and upgrades on a statewide underground storage tank database.
- Provide financial and technical assistance to facilitate private and public underground storage tank owners' compliance with federal regulations for spill prevention upgrades or tank closures.
- Verify status of underground storage tanks compliance with spill prevention standards.
- Enter into compliance order by consent with tank owners who failed to meet 1998 deadline.
- Educate and train small volume commercial fuel tank owners and operators in proper tank operation and spill prevention and response methods.

What's our relationship to the federal government?

The federal government funds program development to increase state capacity to investigate and clean up contaminated sites.

The Department of Defense provides funding to the program to ensure their clean ups meet state requirements. Providing this funding "up front" results in full "cost recovery" of the program's management of Defense site clean ups without incurring legal costs to obtain recovery after state funds are spent.

DEC has been designated by the federal government to implement RCRA Subtitle I (UST/LUST) in Alaska. The federal government provides grant funds in support of this effort.

Why us and not the feds?

The state is funded by three federal agencies, Department of Defense (DOD), Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA) to oversee federal investigations and clean up of sites contaminated by oil and other hazardous substances in Alaska. Department involvement ensures that federal cleanups meet the same state standards required at all other contaminated sites. Without the state program, the DOD, EPA and NOAA would only address sites of national significance and would make their own clean up decisions without consideration of Alaskan communities and their best interests, including protection of subsistence resources. It is likely that petroleum contaminated sites would not be cleaned up at all. Property will be conveyed to public and private institutions with long term contamination and economic liabilities.

State development of the "core" contaminated sites cleanup program and the voluntary clean up program are funded by the EPA. Both are state run programs and neither service would be delivered by EPA in the State. Under the "core" program, the department receives federal money for cleanup program development, which is not related to any one site. This funds the development of clean up guidelines, policies, professional training for staff, and funds state review of federal cleanup guidelines. If the

Contaminated Sites Program

federal funds were returned, the state would need to fund these services or experience inconsistent clean ups with higher costs. The voluntary clean up program encourages private party clean up of contaminated sites with minimal department involvement. Without the voluntary clean up program, responsible parties will have no incentive for clean up, the contamination will remain, and in the future may result in a clean up requiring substantial state involvement and costs. The state receives federal funds to regulate underground storage tanks to prevent contamination from leakage. The state also receives federal funds to help the owner identify, investigate and clean up leaks once they do occur. This assistance facilitates property transfers and commercial transactions. Should the state stop providing the services, the EPA will assume responsibility for the program in the state. The federal approach is to employ strict enforcement and penalty assessment rather than the technical and financial assistance offered by the state. The likely affect of a federal takeover will be some owners being forced out of business, a reduced number of fueling points in the state, a reduction in contaminated groundwater clean up efforts, a slow down in commercial transactions, increased legal costs for owners, and potentially increased legal costs for the state in the form of third party lawsuits.

Privatization & efficiency measures

Certified UST workers to close, install and test UST's.

Qualified persons to collect samples at leaking UST sites, develop cleanup plans and remedial sites.

Approved laboratories to analyze soil and water samples from LUST sites.

Certified inspectors to inspect UST systems as a result of new regulations.

Voluntary cleanup allows independent contaminated site cleanup by interested parties reducing government oversight.

Use of qualified professionals to collect environmental samples and develop and implement cleanup plans.

Use of independent laboratories to analyze soils and water samples from contaminated sites.

Loan assistance for storage tank owners.

Development of risk based regulations for establishing cleanup levels to allow flexibility for achieving cleanup based on risk to public health or the environment.

Private party agreements for contaminated sites and leaking underground tanks (APC, KPC, ARR and others).

Cleanup agreements with DOD for military site cleanups and NOAA for the Pribilofs.

Underground storage tank agreements with NPS and FAA and other state agencies.

State Memorandum of Agreement to conduct cleanup of state owned property (DNR, DOT, F&G and Education).

Prevention & Emergency Response Program

FY 00 funding by source

Response Funds	3,109.9
	3,109.9

What do we do and why?

Primary Activities

Maintain response preparedness.

- Continue to improve statewide spill response preparedness through the development of local response agreements with Alaska communities.
- Develop and maintain statewide and regional spill response plans.
- Position response equipment for use by locally-trained personnel under Department direction.
- Develop and maintain statewide hazardous materials response capability.
- Conduct joint training and discharge exercises.
- Maintain and improve statewide spill reporting, resource mobilization and logistical support functions to ensure prompt and effective State response.
- Establish and maintain communication system in catastrophic spill areas.
- Train responders to use the Incident Command System for spill response management.

Respond to all releases of oil and hazardous substances.

- Protect public health and the environment from the effects of spills.
- Ensure the containment, control and cleanup of all significant spills.
- Require the responsible party to take prompt and appropriate action to contain, control and clean up spills.
- Identify spill response technologies suitable for Alaskan conditions.

We charge for:

We recover all state costs for spill cleanup and containment efforts. The program seeks to recover all costs incurred in responding to spills of oil and hazardous substances from the responsible party. These funds are redeposited in the oil and hazardous substance release prevention and response fund. Program operating costs through .03/barrel surcharge on crude oil production.

Results

Protect people and resources from the effects of the more than 2,000 spills of oil and hazardous substances which occur annually in Alaska.

Ensure that all spills are cleaned up as quickly as possible to minimize damage to public health and the environment.

Reduce impacts through preparedness and rapid response.

Prevention & Emergency Response Program

What's our relationship to the federal government?

Under State law, DEC is the lead agency for oil and hazardous substance release prevention, planning and response. Under federal law, the U.S. Coast Guard and the U.S. Environmental Protection Agency are also responsible for these activities although neither agency has the funding or staff to serve the entire state. By working together, the USCG, the EPA, and the Department are able to maximize response resources and minimize duplicative or conflicting efforts through MOAs, integrated planning, and use of a common incident command system. Participation in this partnership ensures that State interests are met in release prevention, planning and response.

Why us and not the feds?

The program represents State interests and enforces State laws regarding the protection and restoration of State resources from spill impacts. These interests are specific to the State of Alaska and require a dedicated State agency to ensure that Alaska's land, water and air is protected from the effects of oil and hazardous substance spills.

Privatization & efficiency measures

Term contracts for a wide range of professional consulting services including cleanup, drills and technical services.
Direct pay for logistical support services, transportation, warehousing, and rental equipment.
Pre-positioned response equipment for use by spillers, on-scene coordinators and government agencies.
Training and technical assistance for spill response and contaminated site workers through 40- hour HAZWOPER training.
Competitive contracts for publications, spill summary reports, statewide hazmat response inventories, technical experts and others.
Emergency contracts for initial containment and control actions.
Memorandum of Agreements with EPA and USCG to coordinate prevention, preparedness and response.
Memorandum of Agreements for transfer of spill response assets to local government for spill response.
Integrated oil spill response and statewide disaster planning with other state agencies.
Community Spill Response Agreements with over 20 communities.
Incident Command System for emergency response.
Anchorage and Fairbanks Hazmat agreements.
Mutual aid agreement with the West Coast states and British Columbia.
Mutual aid agreement with Canada for Southeast Alaska and Beaufort Sea spill response.
Unified response planning with state, local and federal agencies.
Private contracts for a range of professional consulting services, cleanup and technical services.
Emergency contracts for immediate containment, control or patch and plug operations.
Training and technical assistance for spill response and contaminated site workers through 40-hour HAZWOPER training.
Standardized tactics manual for oil spill response and cleanup agreements with various responsible parties to enhance spill cleanup.

Industry Preparedness & Pipeline Program

FY 00 funding by source

Response Funds	2,255.5
Inter Agency Receipts	143.8
FED	8.5
	2,407.8

We charge for:

Initial and renewal fees for registration of Primary Response Action Contractors.
Program operating costs through .03/barrel surcharge on crude oil production.

What do we do and why?

Primary activities

Verify facility & vessel operators have adequate resources to respond to oil spills.

- Approve oil discharge prevention and response contingency plans.
- Inspect response equipment inventories and conduct spill response exercises and drills.
- Certify that 100% of the operators have approved financial capability to respond to spills.
- Conduct drills to ensure response readiness.

Ensure facility and vessel operators are operating with required spill prevention technologies.

- Approve oil discharge prevention and response contingency plans.
- Prevent spills by inspecting facilities, pipelines and marine vessels.
- Ensure operators implement Best Available Technology in their operation and contingency plans.
- Verify that state-of-the-art escort tractor tugs under construction for the Prince William Sound tanker fleet are placed into operation before the winter of FY 2000.

Increase North Slope open water and broken ice oil spill response capability.

- Test ability of North Slope operators to respond in broken ice.

Results

Ensure that oil handlers prevent spills.

Ensure oil handlers are financially and technically prepared to clean up spills.

Industry Preparedness & Pipeline Program

What's our relationship to the federal government?

Federal contingency planning and financial responsibility requirements are distinct and separate from state requirements. The state has responsibility for contingency plans for onshore and offshore facilities out to the 3 mile limit and for any oil barge or tank vessels operating in State waters. For smaller onshore facilities that do not meet the State's regulatory threshold requirements, the EPA requires a Spill Prevention Control, and Countermeasure (SPCC) Plan. Federal offshore contingency plans are required and administered by the USCG for vessels and by Minerals Management Services (MMS) for oil development operations.

Why us and not the feds?

State contingency plan and financial responsibility laws and regulations are separate and generally more stringent than federal requirements. In many cases, state approved plans are submitted to federal agencies to meet their requirements, and supplemented as necessary. By statute, ADEC has the responsibility for ensuring compliance with State laws and regulations for contingency plans, drills, inspections and proof of financial responsibility for terminal and tank farm facilities greater than 10,000 barrels, oil tank and barge vessels, exploration, production and refineries, and for crude oil transmission pipelines.

Privatization & efficiency measures

Competitive contracts for publications, spill summary reports, statewide hazmat response inventories, technical experts and others.

Alternative compliance option for non crude shippers.

Contracts for subject matter experts.

Coordinated contingency plan reviews to streamline state and federal plan review requirements.

Industry project review teams.

Integrated tactics manual for oil spill response.

Standardized spill scenarios.

Term contracts for a wide range of private sector professional consulting services.

Response Fund Administration

FY 00 funding by source

Response Fund	1,642.1
	1,642.1

We charge for:

Program operating costs through .03/barrel surcharge on crude oil production

What we do and why?

Primary Activities

Recover the state's costs for responding to an unauthorized release of oil or hazardous substance.

- Notify spillers of their obligation to reimburse state expenditures for responding to the responsible party's spill.
- Record all state expenditures to control, contain and clean up oil or hazardous substance spills.
- Refer cost recovery cases to the Department of Law for settlement.
- Follow financial planning strategies to guide annual response fund budget requests.
- Recover eligible costs expended for spill cleanup and containment from the federal Oil Spill Liability Trust Fund.
- Consolidate state agency requests for response funds to carry out the state's spill prevention and response priorities.

Results

Track State costs for responding to spills and take appropriate action to recover those costs from the responsible party.

Reimbursable Services Agreements with Departments of Fish and Game, Natural Resources, Military and Veterans Affairs, Administration, and Law to conduct spill prevention and response activities such as Industry and State/Regional Contingency Plan Reviews, disaster planning and control, adequate telecommunications support, and legal support for cost recovery and enforcement activities result in coordinated approach to spill prevention and disaster planning.

What's our relationship with the federal government?

None.

Why us and not the feds?

Not delegable.

Privatization & efficiency measures

Coordinated cost recovery process with Department of Law.
Streamlined cost recovery through implementation of regulations.

Local Emergency Planning Committees (LEPCs)

FY 00 funding by source

Response Fund	543.4
	543.4

We charge for:

The Municipality of Anchorage has established a local Community-Right-to-Know reporting requirement and charges reporting fees to fund the Municipality's program.

What we do and why?

Primary Activities

- Implement Tier II reporting requirements under federal and State Community-Right-to-Know laws.
- Complete all hazmat annex plans for each local community emergency plan as required.
- Update inventory of businesses storing chemicals.

Results

Inform public about chemical hazards.

Ensure local response plans account for chemical hazards.

What's our relationship to the federal government?

This is an unfunded federal program to meet EPA's Community Right to Know law. EPA has provided minimal technical assistance and federal funds should be used to meet these federal requirements.

Why us and not the feds?

The State has chosen to fund this program in lieu of any federal funding.

Privatization and efficiency measures

Businesses required to report should pay fees necessary to cover costs of this program.

Department of Environmental Conservation, Division of Statewide Public Service

Report to Privatization Commission September 22, 1999

What is Statewide Public Service?

The Division of Statewide Public Service (SPS) is a BRU with a single component, within the Department of Environmental Conservation, that provides information, compliance and permit assistance to Alaska's citizens, communities and businesses in order to reduce pollution and resolve environmental problems. Additionally, SPS investigates environmental damage and threats to public health. Through compliance assistance, SPS helps small businesses and communities find ways to meet or exceed environmental protection standards and avoid onerous permitting processes.

What is our Mission?

The mission of SPS is to provide environmental compliance assistance to communities and businesses and to help Alaskans find cost effective ways to prevent or reduce pollution.

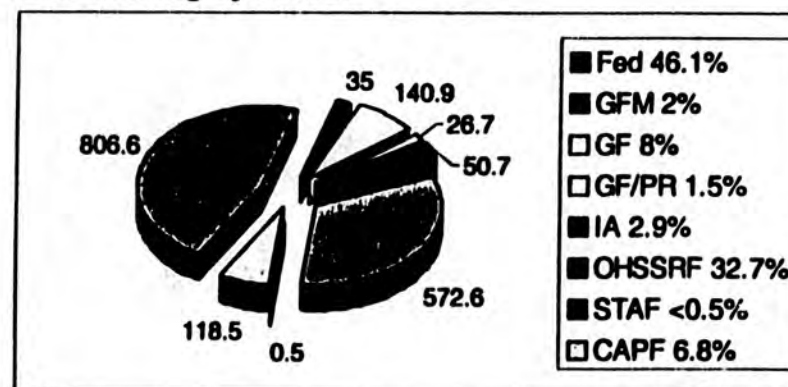
How is Statewide Public Service funded?

The Division of Statewide Public Service operates on a mix of funding sources. Nearly half of our operating budget is federal funds, one-third is Oil and Hazardous Substance Spill Response Fund dollars, and the remaining 21% is made up of general funds, interagency receipts, and monies from the Storage Tank Assistance Fund and the Clean Air Protection Fund. Additionally, Chugachmiut provides a staff person to work with SPS on the development of the "7 Generations: Addressing Village Environmental Issues for the Future Generations of Rural Alaska" environmental assessment guide and associated train the trainer program.

FY00 Authorized Funding

Federal Receipts	806.6	46.1%
General Fund Match	35.0	2.0%
General Fund	140.9	8.0%
General Fund/Program Receipts	26.7	1.5%
Inter Agency Receipts	50.0	2.9%
Response Fund	572.6	32.7%
Storage Tank Assistance Fund	0.5	0.0%
Clean Air Protection Fund	118.0	6.8%
Total	1,751.5	100.0%

FY00 funding by source



Statewide Public Service

Who are our customers?

- Small businesses
- Communities
- Industry needing multiple permits
- Any Alaskan in need of information or advice on how to navigate through the department, get a permit, or find ways to reduce or avoid pollution and solid or hazardous waste

What fees are charged?

SPS does not charge for any of our services. The division is funded by an indirect funding pool, which ensures that all funding sources, including the federal government, contribute to costs. Additionally our mission is to reduce compliance costs to businesses and communities.

Staff have worked with the court system and serious violators to have fines fund supplemental environmental programs. Fines have provided the Yukon River Intertribal Watershed Council funding to conduct a household hazardous cleanup program for communities on the Yukon and Koyukuk rivers. Currently, the division is negotiating with EPA to have fines that EPA is going to receive from the Coast Guard Base at Kodiak, transferred to DEC to make up for reduced federal funding for hazardous waste management compliance assistance.

What's our relationship to the federal government?

A significant portion of the program is funded by federal dollars for pollution prevention and hazardous waste management compliance assistance. We maintain a good working relationship with EPA, which allows the division to effectively facilitate environmental compliance for small businesses. It is our good relationship with EPA that allows for creative funding discussions such as that for use of Coast Guard fines.

Statewide Public Service cont.

What do we do and why?

Primary Activities

Results

Help communities assess, rank and begin to solve their own environmental problems	Representatives of more than 150 small communities have been trained in environmental assessment and evaluation techniques resulting in communities that can manage and prevent pollution and associated health hazards at the local level. The division developed the "7 Generations: Addressing Village Environmental Issues for the Future Generations of Rural Alaska" environmental assessment guide and the associated "Train the Trainer" course designed to build environmental management capacity within communities.
Reduce exposure to environmental hazards	The division assists communities in conducting household hazardous waste collection events, thus preventing dangerous disposal or dumping that could lead to pollution of water supplies. In 1998 the program helped communities collect well over 240 fifty-gallon drums of hazardous materials. The environmental crimes program provides deterrents to illegal dumping of hazardous substances by investigating and resolving serious violations.
Provide information and permit centers	Developed on-line and paper "permit questionnaire" to guide applicants through the permit process; developed fact sheets and "plain English" easy-to-understand guidance documents; provide assistance to Alaskans seeking information on a broad spectrum of environmental issues. Annually respond to over 5,000 requests for technical assistance.
Investigate and prosecute serious environmental violations	Prevents violators from receiving economic advantages and deters serious environmental crimes which endanger public health.
Reduce waste generated by businesses	More than \$1,400,000 has been saved by the reuse and recycling of valuable materials through the Alaska Materials Exchange. The division has assisted nearly 500 companies in implementing Green Star waste reduction and recycling activities, and significant waste reduction has already been achieved in some areas.

Statewide Public Service cont.

Ensure that small businesses get the specific assistance they need to prevent pollution and ensure environmental compliance	In 1999 alone, the division helped 60 companies identify and work toward correcting almost 400 hazardous waste compliance concerns, thereby avoiding EPA fines and enforcement actions
Improve voluntary compliance as an alternative to environmental regulation	Program helps small businesses complete environmental permits and reduce permit costs. Provides on-site compliance assistance to businesses too small to have the resources to understand and implement complex hazardous waste management requirements.
Cross-program and major project review coordination	Staff the state emergency response commission; developed department's disaster and Y2K response plans; manage multi-program/multi-permit projects such as the Ketchikan Pulp Mill closure, clean-up and re-use, and the Anchorage Airport Gateway project.

Why us and not the feds?

- ❖ EPA's programs are typically enforcement only.
- ❖ We provide compliance assistance that EPA does not.
- ❖ We "Alaskanize" our assistance, rather than trying to force everyone into the "one size fits all" federal mold.

What's privatized in this program?

1. The Green Star program (waste reduction and recycling).
2. Most of the household hazardous waste collection program is done by communities. DEC only provides oversight and assistance at household hazardous waste events.
3. Large photocopying jobs, such as the Alaska Materials Exchange catalog.
4. Some outreach materials are developed by private contractors.
5. Supplemental Environmental Programs.

FISH + GAME

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

SUBCOMMITTEE REPORT

ON THE

DEPARTMENT OF FISH AND GAME

NOVEMBER 24, 1999

**Subcommittee Members: Mead Treadwell, Chair;
Rod Arno, Sue Aspelund, Representative Tom Brice, John Burke, Amy Daugherty,
Duncan Fields, Cliff Judkins, Dale Kelley, Steve Kemper, Bruce Knowles,
Stephanie Madsen, Kris Norosz, Jef Patterson, Pat Simpson**

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Report of the Fish and Game Subcommittee to the Commission on Privatization and Delivery of Government Services

- 1. This committee reviewed the Alaska Department of Fish and Game and the Commercial Fisheries Entry Commission, which is part of the ADF&G budget.**

- 2. ADF&G BRU's:**

Commercial Fisheries
Glacier Bay/Commercial/Subsistence Fishing Legal Defense
Sport Fisheries
Wildlife Conservation
Administration and Support
State Facilities Maintenance
Commissioner's Office
Subsistence
Subsistence Field Offices
Habitat
Limited Entry Program and Administration

- 3. The total budget for ADF&G authorized by the Legislature (approved by Conference Committee) from all sources in FY 2000 is \$111,819 million.**

Funding Source	Funding Amount (1000's of \$)
Federal Funds	33,939
General Funds	30,254
Fish and Game Funds	21,174
Other (e.g., Interagency Receipts)	9,940
Exxon Valdez Oil Spill Settlement	6,350
Test Fisheries Receipts	3,971
Statutorily Designated Receipts	3,481
GF Program Receipts	2,711
TOTAL	111,819

Significant revenues are generated for the state treasury from the use of fish and wildlife resources. The fisheries business tax and the fisheries landing tax generate approximately \$39 million annually (FY96-FY98 average). Crewmember licenses, limited entry permit fees, and commercial fishing vessel fees generate approximately \$6.5 million annually. Other revenues associated with commercial fishing include

Federal revenues, marine fuel taxes, test fish receipts, and statutorily designated program receipts. In FY 98, total revenues to the state treasury associated with commercial fishing exceeded \$71 million.

Recreational fishing and hunting also generate significant revenue for the state. These come primarily from two sources: federal revenues and state license and tag fees. However, recreational fishermen also contributed an estimated \$1.6 million in marine fuel taxes in FY 98. In FY 98, total revenues from recreational hunting and fishing totaled \$49 million.

The department oversees wildlife, fisheries, and habitat that account for many indirect sources of income to the state or its citizens. The exvessel value of Alaska's commercial fisheries is over \$1 billion. First wholesale values are approximately \$2.5 billion. Commercial fishing and seafood processing activities generate secondary and indirect benefits by their purchase of goods and services in Alaska. A 1994 report commissioned by the Pacific Seafood Processors Association estimated the economic impact on Alaska from just the onshore processing sector to be \$3.9 billion dollars.

Sport fisheries are major drivers of employment, local sales tax revenue, and other tourism induced dollars brought to the state. Preliminary estimates from a recent study commissioned by the Department of Fish and Game place the economic impact of recreational fishing at a half of a billion dollars.

Many nonresidents come to Alaska to hunt because of the big game hunting opportunities offered by Alaska. It has been estimated that the economic impact of the guiding industry is \$100 million annually. In addition, trapping of fur bearing animals has long been an important source of cash to rural residents.

While Alaska's fish and wildlife can never be expected to contribute the same kind of revenue to the state treasury, as does the oil and gas industry, they consistently rank as a primary engines in the state's economy.

4. Constitutional and Statutory Provisions Governing Agency Operation

Alaska's right to manage its fish and game was established under the Statehood Compact, and is provided for in the constitution.

This right of the state is also an obligation, as all Alaskans own the fish and game of the state, and it is not appropriate to delegate authority for management to any other party.

Laws providing for the department's functions are the Alaska Constitution, Title 8 and Title 16 of the state statutes.

We did not specifically review delegated or contracted authorities to the department from the federal government, but note that federal management of subsistence, certain species such as marine mammals, and joint management offshore in the EEZ require substantial state cooperation.

5. Agency Mission, Goals and Objectives

Senate Bill 169 provided mission statements to the department, the commissioner's office, the Divisions of Commercial Fisheries, Habitat and Restoration, Subsistence, Sport Fish, and Wildlife Conservation and the Commercial Fisheries Entry Commission.

The committee discussed these mission statements during the Department briefing. Our "reality check" review finds that the Department basically follows the core missions laid out in the legislation. We do not have any suggested changes to the core mission of the department. However, many subcommittee members expressed concerns over the department's ability to effectively carry out its core mission in the face of significant declines in state general fund dollars.

6. Number of Employees and Specialized Expertise Needed

ADF&G has 820 permanent full time employees, 914 permanent part-time employees, and 68 non-permanent employees in the FY 2000 authorization.

In order to fulfill its mission, the Department of Fish and Game requires professional staff with college degrees in the biological sciences, mathematics, statistics, and computer sciences. Some positions may require advanced degrees in the above fields or a related specialty, like genetics, limnology, or pathology.

While not as numerous as the biologists, professional economists, sociologists, and anthropologists are also necessary to fulfill the department's mission.

The department depends heavily on technical staff to implement field monitoring and data collection projects. In addition to any educational requirements, these individuals must have the ability to operate in remote and difficult conditions. Field project supervisors must be resourceful and adept at improvising solutions to unforeseen problems.

The department operates a small number of large research vessels. These vessels require trained and experienced captains and crews to operate. The senior boat officer positions require a U.S. Coast Guard Master's License.

7. Technology Needed to Perform Mission

We discussed technology needed to perform the department's mission in several areas.

They include:

- Employees experience and expertise;
- Computer/web based equipment and processes to automate data collection, licensing, and to make the process of licensing and submitting fish tickets more user-friendly;
- Boats and gear to collect data inshore, in streams, and offshore;
- Wildlife data collection gear.

Other institutions in the state also use this equipment and expertise. These include federal fish and wildlife agencies (USFWS and NOAA/NMFS), Universities, research institutions, and the private sector. Some resource sharing is in place now, and the committee believes additional sharing may be developed through collaboration and partnerships.

8. Existing Agency Contracts

The department provided the committee with a list of existing agency contracts. They are forwarded to the full commission in Appendix B.

9. Existing Privatization Practices

Notable privatization initiatives already underway at the department include:

- Privatization of state-owned hatcheries;
- Retail sales of fishing and hunting licenses;
- Contracting with private boat owners and processors for test fisheries. For example, contracting with industry to conduct dive fishery reconnaissance surveys, and salmon, crab, herring and groundfish stock assessments;
- Contracting with private or other institutional boat owners for research platforms;
- Contracting with local native and fishing organizations to conduct salmon stock assessment programs;
- Contracting for aircraft.

We discussed additional contracting out or privatization initiatives that would:

- Encourage software developers to automate fish tickets and data reporting;
- Use more private boats for research platforms;
- Work with artists to expand revenues from "collector" fish and duck stamps;
- Work with other agencies, institutes, universities and private industry to collect and analyze data;
- Develop new financing options for development of new fishing opportunities;
- Utilize private financing of new fisheries management and research;
- Use more volunteers for Fish and Wildlife Safeguard;



- Work with private firms or non-profit entities to manage special wildlife protected areas with high-tourism interest, including Pack Creek, McNeil River, and Round Island.

10. Recommendations

Committee members authored several background papers (Appendix A) on ideas for privatization, improving department efficiency and effectiveness, or partnerships contemplated by SB 33. The committee did not endorse the ideas or concepts contained in the background papers as recommendations. A summary of our actual committee recommendations in nine areas is included below:

A: Other State and National Privatization Efforts Offer Suggestions

The committee reviewed experiences in privatizing fisheries research and sport fishing and commercial fishing management in New Zealand, the Great Lakes, and New England. These efforts revealed difficulties in maintaining a good scientific method of stock assessment during the transition. Private streams, common in Europe, restrict sport fishermen or require individual permits or licensing fees for each stream. A long-term scientific research plan (3 to 5 years) was essential to coordinated research. The use of task order agreements to bundle similar activities under a single contract vehicle for administrative and less technical tasks could make the contracting process more efficient. These experiences made us cautious about recommending any privatization of stock assessment work in Alaska.

B: Research Plans and Partnerships

The subcommittee discussed the way the department administers scientific research and data collection to provide advice to decision-making bodies on hunting and fishing. We discussed ways additional collaboration with other scientists and research institutions could improve the management process. We looked at the expertise of a class of employees at the department who provide statistical grounding to data collection and research. We also discussed ways the department uses internal and external peer review to focus research. For example, results of department research are routinely presented to various State (Boards of Fish and Game) and Federal (Pacific Salmon Commission, North Pacific Fishery Management Council) boards and commissions, other agencies, and fishing organizations. The Division of Commercial Fisheries also publishes a peer-reviewed journal (Alaska Fishery Bulletin). The committee encourages the department to expand upon these efforts where practical.

Close to \$300 million in short- and long-term funds may become available from the Dinkum Sands settlement (\$160 million), the *Exxon Valdez* Research Trust, the Prince William Sound Oil Spill Recovery Institute (\$23 million), Bristol Bay and Norton Sound Disaster Funds, and other funds to study the Bering Sea. The committee recommends that the department work with the other individuals and entities governing this research to

help ensure that 1) processes are established with these new funds to provide now-casting (real-time stock assessment) and forecasting of fisheries populations, 2) greater local participation is involved in the scientific work leading to management decisions, and 3) fisheries management advances to include new technologies.

C: Funding for New Fishery Development Opportunities

The committee considered the difficulties of opening new fisheries while faced with declining budgets. The department's progress to date in the formulation of a State policy for a new developing fisheries program was reviewed. The project has been on going for a little over one year and a draft will soon be presented for public review.

One method of private funding for such projects that may warrant more consideration is contained in the recently enacted HB 198. This law provides a self-taxing mechanism to fund the development of dive fisheries based on the value of the product harvested. However, this program is still in its infancy and its success must be determined before expansion of this concept should occur. Other sources of funding and data collection for management purposes may include; bidding out development rights to a specific species in a given area, industry collection of data under agency supervision (e.g., sea urchin and geoduck assessment surveys), and industry contracting with the department to conduct stock assessment and survey work.

Whatever the means of securing private industry dollars for the purpose of stock assessment and management, it is imperative that the legislature upon receipt of this funding, earmark these funds for their intended purpose.

D: Electronic Data Collection and Reporting

The committee reviewed a number of software packages being developed in the private sector to allow electronic fish ticket submission. The Committee received a letter from the department about their plans to incorporate electronic data handling in their reporting process. Extensive efforts by the National Marine Fisheries Service were also reported. We recommend the department move quickly to resolve legal issues and work to implement open standards that will allow several vendors to provide reporting software to the market.

E: License Sales

The committee believes that privatization of fishing license sales has worked well. The Department now offers license sales online, but the customer must wait for a paper license to be mailed to them before they can hunt or fish. We see value to upgrading this process to allow immediate issuance of a license. We also examined revenues raised by the department from "collector" duck stamps and urge the department to consider extending this program to include king salmon stamps for their art value.

F: Stream Watch Programs

The Committee urges the department to work with the Department of Public Safety to enhance the existing private non-profit fish and wildlife protection program (Wildlife Safeguard) that now works through an 800-number to a centralized source. Many streams used by large numbers of fishermen are now accessible to cellular phones. We urge a program whereby a stream watch volunteer would notify a department representative when he or she is on site (near a stream) and that those volunteers are able to be called out to supplement or advance an enforcement effort by the department.

G: Further Use of Private Vessels/Chartering Out of Department Research Vessels

The committee looked at this issue and recommends that current policies, of using private vessels where possible to save money, be followed so long as scientific integrity is maintained. We see many opportunities for cooperation if requirements for research in any geographic area are shared between the department and outside entities. It is quite likely, once long-term research and monitoring efforts are identified for specific areas, that more cost-saving cooperation and platform sharing can take place.

H: Improve Enforcement by Use of Retired Officers/Better Fine and Settlement Policies

The committee examined the potential use of retired enforcement officers to supplement existing enforcement dollars. Although this is a Department of Public Safety issue and does not directly affect ADF&G, the committee recommends to the Commission that any legal impediments to allowing retired officers to assist in enforcement be reviewed and modified to allow this budget savings. The committee further recommends that the department work with the Department of Law to ensure that all civil fines and forfeitures from fish and game violations be dedicated back to fish and game research and management or habitat protection.

I: Contract Out Management of Protected Areas Where Economic Savings Would Be Achieved

The committee recommends that the department issue a request for proposals from private and non-profit entities, which might help manage state wildlife watching facilities at places, like Pack Creek, Round Island, and McNeil River. This program may further enhance the capability of the department to provide watchable wildlife opportunities for Alaska tourists. It may be that partnerships in management of these areas will reduce costs, increase revenues, and serve to increase both enjoyment and wildlife protection.

Conclusion and Acknowledgements

The Committee would like to thank the staff of the departments, the committee members themselves, and other individuals who provided support to our deliberations.

We believe maintaining strong and viable fish and wildlife populations are essential to the long-term, well being of the state and are an obligation of Alaska as an owner. A large part of the department's budget is spent on science, and we look to stronger partnerships to see that science is strengthened and improved. The department can use technology and volunteer help from Alaskans to more closely involve Alaskans in fish and wildlife management.

Committee members included the following. Participation among committee members varied with some never attending a meeting, others attending one or two meetings, and others attending most meetings.

Mead Treadwell
Amy Daugherty
Stephanie Madsen
Sue Aspelund
Patrick Simpson
Kris Norosz
John Burke
Dale Kelley
Duncan Fields
Bruce Knowles
Bill Blessington
Rod Arno
Cliff Judkins
Steve Kemper
Jeff Patterson
Representative Tom Brice
Geron Bruce – ADFG contact
Mary McDowell – CFEC contact



STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

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December 3, 1999

Honorable John Cowdery
Co-Chair, Commission on Privatization
Alaska State Legislature
716 West Fourth Avenue, Suite 320
Anchorage, AK 99501-2133

Dear Representative Cowdery:

You requested comments from the Department of Fish and Game on the recommendations on privatization and the delivery of government services prepared for the Commission on Privatization by the Department of Fish and Game subcommittee. Commission staff also invited the department to comment on the issue papers. Since the issue papers provide background to the discussions of specific recommendations, we will include any comments we have on the issue papers within our comments on the respective recommendations.

The department enjoyed a good working relationship with the members of the subcommittee. The subcommittee members were widely dispersed geographically, with members participating telephonically from Ketchikan, Petersburg, Juneau, Cordova, Kodiak, and Anchorage.

The department especially appreciates the effort of those members who volunteered to research specific issues and prepare background papers on their findings. In addition to preparing background papers, the subcommittee chairman also prepared the initial draft of the subcommittee report. After review by subcommittee members, the department formatted the report and submitted it to the commission.

The department would also like to express its appreciation to Representative Tom Brice for his participation in the subcommittee deliberations.

Department Response to Recommendations:

In reviewing the recommendations and the issue papers, it is important to remember that only the recommendations represent the views of the subcommittee. The issue papers were the products of individuals and presented to the subcommittee for its deliberation. The subcommittee discussed the issue papers, but did not always endorse the proposals as presented in the issue papers.

A: Other State and National Privatization Efforts Offer Suggestions

The recommendations in this item resulted from the research done by Patrick Simpson and presented by him in the first issue paper. His investigations revealed reservations among those with whom he spoke about the wholesale privatizing of stock assessment and related research. The department has similar reservations.

The department does contract some stock assessment work, and will continue to do so where it is appropriate and cost effective. However, stock assessment activities and actual management of fisheries, for example, need to be closely coordinated. It is also important that stock assessment work be conducted in a consistent manner from year to year. The individuals with whom Mr. Simpson spoke expressed similar concerns.

The department is unable to comment on the use of task order contracts, because more information is required to properly evaluate their costs and benefits. We are also uncertain as to whether the current state procurement code would permit the use of task order contracts.

The suggestion for a long-range research plan was a frequent subject of discussion within the subcommittee. This item is also addressed in recommendation B and in two other issue papers.

The department agrees that planning is an important ingredient in conducting successful and useful research, and department research is guided by planning on a project-by-project basis. However, stable funding is necessary to develop and carry out a long-term research plan. Stable funding is something the department, especially the Division of Commercial Fisheries, has lacked for many years. The funding for developing and implementing such a plan would have to be taken from ongoing fisheries management and stock assessment programs. This is something the subcommittee adamantly opposed. The department also objects to this.

B: Research Plans and Partnerships

This recommendation was partially addressed in our comments on the previous recommendation. The proposal described in the issue paper entitled, "Cooperation with Other Research Institutions for Improved Stock Assessment, Modeling, Biological/Ecological Knowledge, and Management" generated a lot of discussion during

several subcommittee meetings. It was the most controversial idea the subcommittee considered and a majority of the subcommittee opposed it. The department was also opposed.

This issue paper describes an alternative process for coordinating, prioritizing, planning, and conducting marine research. The department has no disagreement about the need to coordinate, plan, and involve the public in the development of marine research proposals. But in the department's view, existing processes are adequate, or can be improved, and there is no real need to invent a new process.

The department is also concerned, as were many of the subcommittee members, that in a time of budget reductions for fisheries management, this proposal is likely to divert money from management to research planning and ecosystem modeling. While ecosystem modeling may be an appealing idea, it is also a task that is complex, difficult, and therefore expensive. The marine environment is complex and dynamic. It is entirely possible to spend large sums of money, like the amount estimated in the issue paper, and still be unable to accurately model the marine environment.

The recommendation approved by the subcommittee urges increased communication, coordination, and planning between various entities that will be performing marine research in Alaska with the increased funding coming from the Federal government and the EVOS endowment. The department supports this recommendation. The department also supports the recommendations to utilize new technologies in fisheries management and forecasting and to provide opportunities for local involvement in the scientific work leading to decisions in fisheries management.

C: Funding for New Fishery Development Opportunities

The department concurs with the subcommittee recommendation that the legislature earmark funds provided by industry for fishery research and management to the purposes intended by the industry. This new funding should be supplemental to existing budgets and should not be viewed as an opportunity to reduce state general fund support for existing fishery management and research.

D: Electronic Data Collection and Reporting

The department concurs with these subcommittee recommendations.

E: License Sales

In the department's view, the opportunities to raise revenues from the sale of "collector edition art prints" of duck stamps or king salmon stamps are limited and problematic. Existing art collector duck stamp sales are declining in many states, including Alaska. We know of no successful fish stamp art print collector program. The market for these products is limited and has been saturated by the many states producing art prints. While

the department will continue to look at any opportunity to generate program receipts like the art print program, we do not believe this is a viable option.

F: Stream Watch Programs

The department has no comment on this recommendation other than to note that it is really more of an issue for consideration by the Department of Public Safety than for ADF&G.

G: Further Use of Private Vessels/Chartering Out of Department Research Vessels

The department is interested in the most cost-effective use of its research vessels. The department already contracts extensively with private vessels for conducting research as well as making its own vessels available for contract by other agencies. Potential enhancements to existing efforts will be welcomed and carefully evaluated.

H: Improve Enforcement by Use of Retired Officers/Better Fine and Settlement Policies

No comment. Defer to Department of Public Safety.

I: Contract Out Management of Protected Areas Where Economic Savings Would Be Achieved

The department does not support the privatization of developed wildlife viewing facilities on state wildlife sanctuaries or refuges. There are only 3 programs where the department charges the public to participate in wildlife viewing programs and little state money is spent on these programs. They are: Round Island (walrus viewing), McNeil River (bear viewing), and Pack Creek (bear viewing). Access to Creamers Field in Fairbanks and Potter Marsh in Anchorage is free. The later programs are primarily for education, not wildlife viewing.

Refuges, critical habitat areas, and sanctuaries are open to the public at minimal or no cost. Fees, where they exist, are set at levels to recoup operating expenses for specific facilities. McNeil River and Pack Creek are essentially self-supporting. The Division of Wildlife Conservation subsidizes the program at Round Island, because personnel at Round Island also collect valuable research data.

The benefit of this approach is that it provides the maximum public access. To interest a private operator, fees would have to be increased, probably substantially. High fees will discourage public use.

Many private businesses are already making money from state refuges and sanctuaries. Business like air taxi operators, charter boats, and eco-tours bring clients to these special areas. Secondary businesses like hotels, restaurants, retail stores and outfitters also benefit.

It is the department's view that the management of these public resources should be conducted by a public agency to insure that the viewing programs are conducted consistently with the purposes for which the areas were established. There may be opportunities to lease or permit private facilities in some portions of these areas as long as it can be done in a manner that is consistent with the purposes for which the areas were established.

This concludes the department's comments. We appreciate the opportunity to comment and hope our comments are useful. Please contact my office if you have any questions.

Sincerely,

Frank Rue
Commissioner



APPENDICES

- A. 1. - 8. Background Papers Submitted by Alaska Department of Fish and Game Subcommittee Members On Privatization and Delivery of Government Services**

Note: Appendix A contains background papers on ideas for privatization, improving department efficiency and effectiveness, or partnerships contemplated by SB 33. Authors of these background papers are noted. The ideas and concepts summarized in the background papers are not recommendations that were endorsed by the committee. Rather they represent research by the indicated members on issues that were discussed during the committee meetings.

- B. ADF&G Listing of Cooperative Agreements, Revenue Cooperative Agreements and Contracts**





Conversations With Other Agencies About Privatization

Submitted by Patrick K. Simpson

Scientific Fishery Systems, Inc.

September 30, 1999

The Alaska Department of Fish and Game has been very thorough in its discussion of potential areas for privatization. I have attempted to review other fisheries management groups both U.S. and abroad, that have dealt with, or are dealing with, privatization issues.

In my discussions with various management groups, I have asked these individuals where privatization might prove beneficial and where it could create potential problems. I have talked with a fisheries biologist with the USGS Great Lakes Science Center, an economist from the NOAA/NMFS New England Fisheries Science Center, and a fisheries biologist from New Zealand's National Institute of Water & Atmospheric Research Ltd (NIWA). Below are my notes and summary comments from these discussions. I will reduce these to a set of recommendations once I have received the comments from the rest of the committee.

USGS GLSC Fisheries Biologist

Research needs to be driven by an overall fisheries research plan that outlines what the key research questions are over a horizon of at least five years. These research areas are then prioritized and these priorities are used to define budgets. Research needs to be well defined. This fisheries biologist saw at least three different types of research: basic research, applied research, and monitoring. Basic research tends to be best performed by universities. Applied research tends to be done best through cooperative partnerships between universities, the cognizant management agency (be it state or federal), and industry. Applied research should be lead by the management agency. Monitoring activities, such as stock assessment, needs to be by the agency's internal scientists and the performance evaluation of those scientists needs to be heavily based upon successfully gathering the highest quality data over a long duration (i.e., more than 10 years).

Research done by universities should not be long-term research, but rather short-term basic research answering a specific question or addressing a key concern. Universities tend not to be set up for longer term research because most of the work is done by graduate students, and graduate students have a finite life within the university. Longer term research projects also tend to lose the interest of the university scientists. University scientists tend to be those that like to get an answer within a year or two, and then move on to something else.

Vessel management is always difficult. Currently the USGS GLSC has three research vessels and they are refitting a fourth. Each of these vessels plays a critical role during a portion of the year for stock assessments. For the best data to be collected for understanding and managing the fisheries for long-term sustainability, it is necessary to collect the data in as similar a way as possible each time. If a different vessel is used each time, say through contracting vessels instead of owning and operating them from within the agency, there are tremendous variations seen in the data that are created by different skippers fishing slightly differently, or by the vessel itself towing at different speeds because of different power. It is very difficult to decouple the vessel management from the long-term stock assessment and monitoring. In fact, this biologist was recommending that the vessel be made available outside the agency for charter opportunities as a way to derive more value from the vessel.

Task order contracts are used by the USGS to get contractor (who often has several subcontracts immediately available to them) support for administration and reoccurring support needs. Technicians that assist scientists, receptionists, librarians and folks of this nature tend to be acquired through highly competitive task order contracts. Once a task order is in place, it is relatively easy to get support for new activities (i.e., people), as long as those activities fall within the umbrella of the task order agreement.

To summarize the discussion with the USGS GLSC fisheries biologist, it is critical that the stock assessment and monitoring activities be handled by agency scientists, it will always result in the best data.

Basic research is best left to the universities and should be bid out on a contract by contract basis. Applied research requires cooperation amongst many individual groups to be successful. Although vessels are a burden, they are also a necessity to quality data collection. But, when the vessels are not used, they could be chartered out for other research functions outside the agency. Finally, it is essential to have a long-term roadmap for research activities. As with all roadmaps, the roads will change or even disappear, but at least there is a guide.

NMFS NEFSC Economist

The economist from NEFSC began by framing his comments with the question that drives much of their work at the NEFSC: "What is in the best benefit of the nation?" The economist went on to say that competition is often in the best benefit, so are sound business rules.

The economist was familiar with the privatization that was being implemented in New Zealand. This privatization has been successful because it followed the creation of property rights within the fisheries (i.e., Individual Fishing Quotas). Once the resource is reduced to property, then the industry (i.e. the property owners) do their own research to ensure its long term sustainability. This linkage between property rights and industry-funded research was seen to be very important. If this linkage does not exist, this puts the system on shakier ground when asking the industry to fund its own research.

Like the GLSC Fisheries Biologist, the NEFSC Economist felt that stock assessment must be left within the agency and it must remain funded for long durations.

Long-term research plans are also seen as being important, but it is equally as important that the review of these research plans includes, and whenever possible, is led by the agency. In the same fashion, the review of the research must stand up to the toughest scientific scrutiny from outside the agency as well. This requires a strong review process and dialogue that includes academia and industry.

I had asked about Task Order Agreements, and the NEFSC scientist said that these are used, but felt that tasks funded under these agreements should be those that are redundant and don't require a great deal of subjective analysis. As an example, otolith processing could be sent out to bid, as well as data entry. These are tasks that tend to not have a cost-benefit when conducted internal to the agency. Again, the economist cited the need for oversight by the agency.

In summary, the NEFSC economist further enforced the need for stock monitoring to be done within the agency by its scientists. If you ask industry to fund the research for improving sustainability, it will require the resource to be allocated amongst its fishers first, or it is not as reliable. Any tasks that are redundant and menial should be contracted out whenever possible. All research requires a strong agency presence, but requires all parties to be involved in the development of the long-term research plan to gain the greatest commitment from those outside the agency.

NIWA Fisheries Biologist

I talked with one of the leading fisheries biologists with NIWA. This biologist is heavily involved in stock assessments and fisheries research with NIWA. The fisheries biologist began with a bit of history. Ten years ago NZ put a quota management system in place based on a percentage of Total Allowable Catch (TAC). The TAC is set by the Ministry of Fisheries. Over the course of the last ten years, research functions have slowly been privatized, with the research functions being privatized about three years ago. The last group to be privatized was the Fisheries Research department (Department of Science and Environmental Research). With this last group's transition complete, the Ministry of Fisheries (MFISH) now only sets policy and administers research, but it does not carry out any research, it is done entirely through a bidding process. All research is procured through a series of tenders (RFP's) and all research is funded by a levy on the TAC (i.e., the industry funds all the research).

Throughout this privatization process, the issue of stock assessment continuity was recognized as a very key element in a sustainable fisheries management plan. As such, MFISH requires that their privatized research vessel (which is placed into a separate company) and its gear must be used for stock assessments. However, the stock assessment itself is put out for tender. To date, the winning organization for the stock

assessments continues to be NIWA, but there is increased competition from NZ's USGS (called GNS) and Australia's NMFS (called CSIRO). It is not a foregone conclusion that NIWA will always be the organization selected to conduct these stock assessments.

NIWA also has its own research vessel that was privatized from MFISH. This vessel is available to the highest bidder for research at any time. If the vessel is needed for stock assessment and for some other type of research at the same time, it will go to the highest bidder. Another interesting aspect of this vessel is that it could (but has not) apply for a quota of its own. The research vessel, which is a 40-meter factor trawler that has been converted over to do research, could easily be a part-time commercial fishing vessel as well. This was seen as a possible way to keep the vessel busy more of the year and keep its overhead costs to a minimum on the research. To date, the vessel has been kept busy with additional geological and oceanographic contract work that it has not had to pursue this line of funding.

One of the advantages of having NIWA being privatized is that the organization is now longer having to respond to artificial and conflicting political decrees. It is able to do the science in the most expedient manner without concern for one's own personal career. On the other hand, the tender process is slow and it is done annually, making it more difficult to respond quickly if necessary.

The fishing industry pays for all of the research costs. These costs are monitored quite heavily by the industry to ensure that the greatest return is gained for each dollar spent. As such, the research tends to be more focused on the commercially relevant species and very little research is done on the peripheral species. One aspect of this levy that has drawn attention is the use for enforcement. Until only recently, the fishing industry's levy was also used to fund enforcement. The industry has recently been able to move these costs back to MFISH, arguing that they are the only industry that is burdened in such a way.

Aquaculture is handled in much the same way as the deepwater marine fisheries that the fisheries biologist was specifically involved. Each aquaculture operation must perform an impact assessment, request and purchase the necessary licenses, and fund its own research.

When asked about the NEFSC economist's view that it is vital to create property rights to the resource through some form of ITQ to make the privatization effort sound, the NIWA fisheries biologist agreed. Once you produce an individual TAC, the business model becomes much more predictable, the management of the resource receives more attention toward sustainability, and there are tremendous economic advantages to both the fisher and the nation as the industry become focused on efficiency. Improvements in fishing practice will not improve without this linkage.

Finally, when asked if NZ had a long-term research plan in place, the fisheries biologist said there was not a plan, but it was recognized as being important and there was a significant effort in place to produce this plan. Long-term, in the opinion of the NZ fisheries biologist, was five years. With a long-term plan in place, it would then be possible to have multi-year contracts. Currently all contracts are renewed annually. A 2-3 year contract for stock assessment makes fiscal and scientific sense, but it requires a long-term plan to be in place.

In closing, the NZ fisheries biologist suggested a paper published in 1998 describing several case studies on contested stock assessment (assessments done by the industry because they feel the agency is not accurately assessing the stock) that might offer some additional viewpoints on how privatization has impacted this aspect of fisheries management. I have attached a copy of this paper. In summary, the NZ fisheries biologist agreed that the stock assessment function was vital, but in NZ MFISH has devised a way of privatizing this function without jeopardizing the continuity of the assessments by requiring the use of the same vessel and gear, but contracting the personnel. By privatizing, the NZ fisheries biologist believes that the science is better because it is not encumbered by political pressures that are ubiquitous to the fisheries. All fisheries research is funded by the industry, and that research is heavily focused toward commercially relevant species. The managing agency, MFISH, only sets policy and administers research, all other fisheries functions have been privatized. A long-term research plan is needed to ensure greater continuity in recurring functions and to provide a focal point for new activities. Finally, the industry must be under an individual quota program of some sort to make the privatization process successful.



Cooperation with Other Research Institutions for Improved Stock Assessment, Modeling, Biological/Ecological Knowledge, and Management

Submitted by Mead Treadwell

Idea:

Convene Alaska's publicly supported marine research, oceanographic and monitoring institutions, private institutions, and federal and state agencies to cooperate in joint research and monitoring programs in geographic regions of the state.

1. Teams of scientists and managers from ADF&G and other marine and oceanographic research agencies and institutions would, for each of several appropriate geographic areas of the state, identify research and monitoring and modeling programs necessary to
 - a. maintain sustained yield management for key species
 - b. provide ecological models that use physical and biological monitoring to provide real-time ("nowcast") and forecast stock assessments
 - c. improve basic biological and ecological knowledge
1. The monitoring and research plans would identify capital and operating needs and potential funding sources from the Department's current activities and from outside sources. Major endowments exist or are pending for marine research, totaling at least \$300 million, in the following areas:
 - a. Southeast Alaska, as part of recent Salmon Treaty negotiations
 - b. The Gulf of Alaska, Cook Inlet and Prince William Sound, as a result of Congressional creation of the Prince William Sound Oil Spill Recovery Institute and the *Exxon Valdez* Trustee Council's creation of a research endowment
 - c. The North Pacific in general and the Bering Sea in particular, as part of the dedication of Dinkum Sands funds in an endowment to be managed by a North Pacific Board. In addition, several interagency funds exist to study the Bering Sea or to respond to fisheries failures in Bristol Bay and Norton Sound.
1. The Alaska Department of Fish and Game plays a role in the governance of each of the research programs identified above. The Committee is concerned that funds provided for basic stock assessment and fisheries management are inadequate today, and it suggests this approach as one way to practically define both capital and operating needs on a geographic basis, and to identify means of bringing new funding and efficiency to the process. We do not believe funds should be redirected from existing management while these plans are constructed and funded. Currently, the Committee finds ADF&G scientists collaborate between divisions of the department and, less frequently, collaborate with scientists outside the department. The Committee believes that the process of developing research and monitoring programs to support both research goals and management goals has the potential to provide:
 - a. More effective research and improved management information
 - b. Greater cost sharing between programs
 - c. Greater public involvement in and understanding of the science behind management
 - d. Easier integration of new technologies and techniques into fisheries management
 - e. Longer-term, stable funding for the department's basic mission, as modeling would help identify both capital and operating needs more clearly for the legislature
 - f. Protection of our resources by measuring and managing them in relation to each other, not just on a species-by-species approach.
 - g. Better definition of Alaska's research agenda.
 - h. Development of a remote sensing industry, and bring up Alaska expertise in nowcast-forecast modeling for export to other areas of the world
1. The cooperation envisioned by the Committee does not have to be mandated or authorized, but it could be supported by resolution and oversight. Cooperation may be accelerated if the legislature and the department were to authorize, fund and undertake the planning necessary to define a program in each geographic area, and to establish a policy that ADF&G and other state appointees would pursue funding to support these programs with the various sources now available. The legislature should also encourage the University of Alaska and ASTF to participate.



Overview of Department's Developing Fisheries Program

Submitted by Amy Daugherty

New fisheries were historically developed in the following manner:

1. Industry saw an opportunity to develop a new fishery on an unused species or stock and then applied for an exploratory permit from the commissioner or petitioned the Board of Fisheries to open a fishery.
2. Agency biological assessment of the target stock typically did not occur until after the fishery had commenced.
3. Stock assessment and inseason management efforts played catch up to the fishery.

The public, industry, and the department agree that this approach does not foster wise fishery management. Declining funding for fisheries management magnifies the inherent weakness of playing catch-up. The only way to play catch-up in a time of declining funding for managing new and developing fisheries is to take funds from existing and developed fisheries.

Assuming that public funding for fisheries management will continue to decline, an alternative to developing new fisheries, that doesn't depend on state operating funds, needs to be developed. This is something people in industry have been discussing for a couple of years. Industry recognizes that it will require those industry parties interested in developing a new fishery to shoulder more of the burden for stock assessment and management. It will also require more thought and planning in the start-up of new fisheries.

While people recognize the need and have ideas about what potential solutions might be, there is yet no agreement on what a new developing fisheries policy might look like. Some of the approaches that may be appropriate include: bidding out development rights to a specific species in a specific area, industry collection of data under agency supervision, industry contracting with the department to conduct stock assessment and management, a special assessment on the value of product harvested in a new fishery, or a combination of measures.

Recommendations

The subcommittee supports the proposition that stock assessment and management capability must be in place at the beginning of a new fishery. Achieving this is going to require increasing private sector involvement.

The department is working with industry and the broader public at this time on a specific proposal for developing new fisheries. In the near future a draft policy will be presented to the public for review and comments. The subcommittee recommends that this process continue to go forward.



Electronic Data Collection and Reporting

Submitted by

Patrick K. Simpson Stephanie Madsen
Scientific Fishery Systems, Inc. Pacific Seafood Processors Assoc
November 11, 1999

Opportunity:

There has been a great deal of work done by fisheries management agencies in the U.S. and abroad that are attempting to use technology to collect fisheries data more efficiently, more rapidly, and at a lower cost.

There are several opportunities afforded by electronic collection and reporting of fisheries information:

1. the reduction of paperwork required by individuals will reduce the cost of management,
2. the increased accuracy of the data collected will allow ADF&G to manage with the best information possible,
3. the improved speed of the data collection process will allow ADF&G to respond quickly using the best information available, and
4. the improved utilization of the collected data will allow ADF&G to maximize the use of all the available information when making its management decisions.

Recommendation:

The ADF&G Privatization Subcommittee recommends that ADF&G do the following:

1. continue to identify the information and data needs that it requires to manage in accordance with regulations,
2. continue to work with other agencies, inside and outside Alaska, to accelerate the development of electronic reporting,
3. publish specifications describing the information that must be collected and transferred, the format for the data being transferred, and the protocols under which this transfer must occur,
4. require all entities to electronically submit their information in the required format,
5. utilize the private sector for the development and maintenance of the software and associated communications infrastructure, and
6. facilitate an open process for providing electronic reporting solutions through the implementation of a certification program that would allow any software vendor to produce a software solution that met the department's specifications.

Justification:

After reviewing several of the electronic data collection and reporting programs currently underway in Alaska, the United States, and internationally, there are some guiding principles that have emerged that justify this recommendation:

1. Electronic reporting presents a cost savings opportunity in many areas, but there needs to be a cost-benefit analysis done across all data collection and reporting functions to be able to properly determine what the actual cost savings. As an example, it could be possible to incorporate data reporting and vessel monitoring in one onboard application and it could be possible to utilize the same web portal for selling fishing licenses and providing data reporting.
2. There are current electronic data collection and reporting programs underway in several forms both in Alaska, in the Lower 48, and abroad. A great deal of effort has already taken place in the design of electronic data collection and reporting systems. It would be possible to bootstrap an electronic reporting system design by starting with this body of work. An example of one of these systems is found in the attachment (Electronic Fish Catch Logbook System Design, Northwest Fisheries Science Center, National Marine Fisheries Service, 20 April 1999).
3. There are business models currently in place that shift the development costs of the electronic collection and reporting systems entirely to the developers in return for cost savings in their operations or access to the market. The following are examples of this business models being invoked today:

- Sitka Sound Seafoods is working toward an electronic reporting system that would replace the paper fish tickets with electronic tickets. Sitka Sound is doing all of the development at their cost because the amount of cost savings more than justifies their investment. Furthermore, when the program is completed, they are willing to give the software to ADF&G to freely distribute to other buyers across Alaska.¹
- NMFS Alaska Region Office and Alaska Dept of Fish and Game have agreed to pursue the development of a single reporting system for Groundfish deliveries that will further simplify reporting and greatly reduce reporting burden on the industry. The system would be developed during 2000 for implementation in 2001.²
- The Alaska Science and Technology Foundation has funded an electronic fish ticket program developed by Bill Wiebe. This project is utilizing computer technology to capture and report salmon harvest information between the tender fleet and the processors. It will develop software to relay catch data compiled by the fish ticket printer system to the processor's office for interface with their existing accounting software.³
- Ocean Logic, L.L.C is an Alaskan company developing software that facilitates the electronic collection, transfer, dissemination and use of harvest and production data from commercial fishing operations, primarily Federal fisheries at this time.⁴
- NMFS Northwest Fisheries Science Center has an Electronic Fish Catch Logbook program under development. In this program, the onboard data collection portion of the system is being developed by Scientific Fishery Systems, Inc. in return for exclusive access to the market.⁵
- The Atlantic Coastal Cooperative Statistics Program is a cooperative state-federal marine and coastal fisheries data collection program. The goal of the program is to cooperatively collect, manage, and disseminate fishery statistical data and information for the conservation and management of fishery resources of the Atlantic coast and to support the development and operation of a national data collection and data management program.⁶

¹ John Sevier, Sitka Sound Seafoods, Sitka AK, jsevier@ssssitka.com.

² Letter to Richard B. Lauber, Chairman of the NPFMC, from David Benton, Deputy Commissioner, ADF&G, and Steven Pennoyer, NMFS/ARO, dated October 6, 1999.

³ Alaska Science and Technology Foundation, www.astf.org, select the "Grants and Proposals" link, and search by keyword "Wiebe."

⁴ Ocean Logic, LLC, Ocean Logic, LLC 234 Gold Street Juneau AK 99801.

⁵ Electronic Fish Catch Logbook Program, <http://research.nwfsc.noaa.gov/logbook/index.html>, Carol Murray, Program Manager, NMFS/NWFSC, Carol.A.Murray@noaa.gov, Private Sector Partner, Scientific Fishery Systems, Inc, www.scifish.com.

⁶ Atlantic Coastal Cooperative Statistics Program, 1444 Eye Street, N.W. Washington, DC 20005, www.accsp.org.



**Department of Fish and Game
Division of Administration
Completed and Future Licensing Technological Enhancements**

Enhancements Already Completed:

- Professional License (Taxidermy, Fur Dealer, Game Farm, etc.): License is now a certificate that can be displayed at the place of business. Licensee keeps same number for each renewal. Licensee also receives automatic renewal notices informing them that it is time to renew their license. Date: April 1997.
- Permanent Identification Card: residents who meet disabled veteran requirements receive a computerized form and permanent card. (Requirement changed in 1998. Veterans were previously required to renew each year.) Date: November 1997.
- Internet inquiry of license file for Department of Public Safety. Date: December 1998.
- Computerization of licenses/forms issued by ADF&G (headquarters): Date: January 1998.
- Sport Fishing/Hunting/Trapping License(s): computerized license is perforated at bottom of page. Top of form can be changed at any time to reflect any changes in statutes, emergency orders, etc. that we may want to send to the licensee.
- Crewmember License: computerized license similar to sport license above.
- Big Game Tag Record: two part perforated form. Hunter keeps top part and sends bottom part back to the department. Form clearly identifies what types of big game tags were purchased by the hunter.
- Sport license application is available on the internet. Date: January 1998.
- Licensees purchase licenses from ADF&G (headquarters) Licensing Section using their credit card. Date: April 1998.
- Licensees purchase licenses/tags in Fairbanks regional office (can also use their credit card). Date: May 1999.
- Licensees purchase licenses/tags in Anchorage regional office (can also use their credit card). Date: July 1999.
- Harvest Information Program (HIP): Federal mandate to identify migratory bird hunters. Hunters able to register for this program through a 1-800 system beginning August 1, 1998.
- Internet Sales - Licensees purchase crewmember and sport licenses/tags over the Internet beginning October 1, 1999

Enhancements In Progress:

⇒ 1-800 sales - Licensees will be able to purchase sport licenses/tags by telephoning a 1-800 service. Licenses/tag will then be sent via mail to the licensee.

- Time Frame: To be completed by December 31, 1999.

Future Enhancements:

⇒ Computerize Fairbanks and Anchorage offices selling of licenses and tags similar to ADF&G headquarters.

- Time frame: To be completed by March 1, 2000.

⇒ Hunters will be able to apply for permit drawings on the Internet.

- Time frame: to be completed by April 1, 2000

⇒ Vendors sell computerized licenses: As a pilot, offer the opportunity for the top 20 stores in Alaska to automate their sales, by installing a computer onsite.

- Free up their staff time in manually processing licenses.
- Automates calculation of sale amount.
- Automates Collection Report.

- Possibly implement electronic transfer of sales revenues to the state.
- Feed the license into our data base keeping the data base more current.
- Time frame: To be completed by January 1, 2001.

⇒ Paperless Licensing:

- Proposed change in Statute, HB 164, to allow electronic number processing. Electronic number enables licensees to purchase a license or stamp anywhere in the world at any time of the day without worrying whether a vendor will have the stock they wish to purchase in the location they are flying into upon arrival.
- Department of Fish and Game programs that need to be reviewed as part of transition to paperless licensing:
 - SF harvest records
 - WC harvest tickets
 - King salmon stamp
 - Waterfowl stamp
- Need to work with Public Safety, Fish and Wildlife Protection to insure that all enforcement concerns related to paperless licensing are addressed.



ADF&G Research Vessel Program

Submitted by Amy Daugherty, 10/26/99

The question is not "should the department contract out to the private sector to conduct stock assessment research" but rather "should ADF&G contract out *all* or significantly more of their stock assessment research needs."

Overall, the department has a much larger need for vessels than their current fleet of five large manned research vessels can accommodate. Presently they already frequently contract with the private sector for vessels, skippers and crew. The department supplied the following information on the amount paid out to private contractors for vessel and aircraft charters over the past four fiscal years:

ADF&G payments to private vessel and aircraft contractors

Year	Vessels	Aircraft
FY99	773.6	2,241.4
FY98	679.2	1,736.8
FY97	932.3	1,857.0
FY96	1,123.4	1,935.0

The total amount of state funds expended on the statewide vessels program is approximately \$1.2 million. This includes funding for professional vessels personnel and operational expenses. The five research vessels are the *R/V Resolution* based in Kodiak, the *R/V Montague* (Cordova) and *R/V Pandalus* (Homer), the *R/V Medeia* (Juneau), and the *R/V Sundance* (Petersburg). The *R/V Resolution* and *R/V Medeia* operate with a three-person crew while the other vessels are operated by two-person crews.

Utilization of state vessels enables efficient scheduling of sea time to make for the most cost effective use of the state's resources. Freight hauls to remote field camps, fishery marker maintenance, field crew pick ups/drop offs, are often dovetailed into existing stock assessment surveys, eliminating the necessity for additional charters. The current vessel program works cooperatively with a number of industry and agency projects. For example, the PWS herring and pollock surveys are completed with cooperation of local processors who pay for costs of a commercial fishing vessel, the PWS Science Center who provides acoustic expertise and the state vessel which provides a research platform for collecting acoustic data and housing scientific staff.

Further cost savings are achieved through utilization of the same equipment and crews for repetitive surveys. Scheduling is more precise, set up time is minimized, and experienced skippers know the most efficient ways to complete the survey and collect reliable data. If private sector vessels are utilized, deck equipment is not standardized, and, as a result, setup takes longer and unanticipated delays are more likely to occur. State employee time is less efficient in these situations. Lacking the continuity of vessel and crew, surveys often take longer to complete, and data is less reliable.

The main impediment to full-scale contracting is cost. Vessels of the kind the department needs for stock assessment activities are owned by people who participate in fisheries and the timing of stock assessment activities often conflicts with ongoing fisheries. The department therefore is "buying a boat out of the fishery" in order to secure its services which can be prohibitively expensive.

Availability is also an issue. Uncertainty of actual time at sea and the need for flexibility of scheduling of mission are factors which do not easily lend themselves to contracting. In many cases, the department must juggle vessels schedules in order to be responsive to program needs.

State vessels are immediately available in an emergency, i.e., *Exxon Valdez* oil spill or search and rescue efforts, while a chartered vessel is not.

Research and stock assessment operations are becoming more mathematically sophisticated, and are tending toward more use of sophisticated electronics which are not "off the shelf" devices. Supporting these types of operations requires both platform modifications and a willingness and ability of ship's crews to understand specialized technology.

Utilizing state vessels also provides for consistency in vessel characteristics and crew needed for stock assessment/indexing surveys. All vessels possess different fishing characteristics, even if have they have the same dimensions, specifications, and gear. The primary value of consistent survey methods is reliable data and credible results.

The costs for state versus operation of a private vessel are similar except for:

- 1) Debt servicing for purchase of the vessel often exists for a private vessel;
- 2) The owner of the vessels must earn a profit, the state does not;
- 3) State self-insurance is substantially cheaper.

Agencies that do a substantial amount of chartering (U of A, UNOLS, NURPS, NOAA) have found it necessary to employ full time personnel to handle charter contracts, for reasons of safety and effectiveness. While the department is able to "get by" at present amounts of chartering, substantial increases could mandate additional personnel.

Using private vessels could threaten the confidentiality required in AS 16.05.815 regarding crab survey information.

Sometimes the cost of vessel operations is not fully funded. For example at UAF, a significant portion of the cost of the Alpha Helix is born by research grants. In Southeast, the costs of operating the Media and Sundance are not fully funded. When another agency wants to use another agency's vessel, they must pay a daily charter rate. In fact, it has been through this kind of cooperation with outside agencies and through federally funded research programs that the department has partially covered the annual operating cost for some of their vessels.

Recommendations

The subcommittee feels that department has developed a cost-effective mix of state and private vessels in their program. State vessels provide core, season-long services that are often cheaper than private vessels while private vessels provide the variable, mission-specific platforms that the core fleet cannot undertake or that are provided at a lower cost or more efficiently.

The subcommittee acknowledges and supports the department's efforts to develop cooperative relationships with industry and other state and federal agencies to conduct stock assessment and research activities using department research vessels.

The department is encouraged to charter private vessels to conduct research and fishery monitoring activities when:

- a) The project to be chartered can be precisely delineated in the contract with respect to length of time, precise tasks to be performed, locations, work times, equipment manifests, and personnel (both shipboard and scientific).
- b) The project does not require specialized scientific equipment.
- c) A vessel can be located to fulfill project requirements at the time it is needed.



Test Fisheries and Test Fish Funds

ADF&G Privatization Sub-Committee

Submitted by Sue Aspelund

9/30/99

Purpose of Test Fish Funds Receipts: This funding source within the Division of Commercial Fisheries is a Designated Program Receipts account which funds a variety of vital fisheries resource monitoring and assessment projects (salmon run strength, migratory timing, stock I.D. catch sampling, escapement enumeration projects, crab pot surveys, groundfish longline surveys, and herring and pollock hydro-acoustic surveys). Fish and shellfish taken during test fisheries or harvested under direct contracts are sold, as authorized by AS 16.05.050(15), and the receipts deposited in the Test Fish Fund. The revenues generated from the sale of these fish and shellfish are then used to pay for the costs of these projects.

Background: The Test Fish Fund was first established in the early 1960s as a way to both prevent waste of fish taken for ADF&G resource assessment programs and to establish a funding mechanism to pay for the necessary programs. The legislature instituted a program receipts mechanism to finance the test fish program. As part of the department's budget, the legislature and the governor (with the legislature setting the limits on expenditures) must authorize program receipts. They may also place other limitations on the fund by expressing intent as to its use, limiting expenditure by line item, or specifying sources of income for the fund. So far the legislature has only set an expenditure limit on the fund, and no other intent relative to use of the fund.

Through the 1970s and early 1980s the Fund was used primarily to offset the cost of test fishing operations. Beginning in FY 88, the legislature decided to expand use of the Test Fish Funds to pay for fishery management and research. The legislature shifted GF projects over to Test Fish Funds in order to prevent cuts due to seriously declining oil revenues. At that time, the focus of Test Fish Funds changed, and projects that did not involve actually catching fish as a means of stock assessment were transferred to the Fund. These projects have been judged by the department as sufficiently important to justify the harvest and sale of fish in order to assure their continuation (stock I.D., catch sampling, salmon smolt enumeration, and hydro-acoustic and aerial surveys).

Total Test Fish Fund receipts between FY 95 and 99 have ranged from a low of \$1.6 million to a high of \$2.2 million. The Total Receipt Authority for the same years has ranged from \$1.9 million to \$2.8 million. FY 99 Receipts equaled \$2.2 million, and the FY 99 Receipt Authority was \$2.8 million. FY 98 Expenditures were \$1.87 million (FY 99 figures were not uniformly available.)

There appear to be at least four factors limiting the utilization of and/or expanded use of test fish funds: (1) legislative receipt authority; (2) high demand for subsistence salmon harvests in some areas; (3) poor market conditions; and (4) support issues by the public for the projects (i.e., the commercial fisheries from whose common property harvests the fish are taken). Many fishermen are totally opposed to any Test Fish Funds program. They believe that it is the state's responsibility to adequately fund basic research and management functions since the commercial fisheries of the state provide more revenue into state coffers than is expended to manage the fisheries.

Policies/Procedures/SOPs (Standard Operating Procedures): Absent legislative intent, the department has developed its own policies on the operation of the Test Fish Funds. The policy recognizes that the fish being harvested could otherwise be taken in common property fisheries, and therefore, must be operated as efficiently as possible. When there is a project for which no revenue can be generated, the policy allows for generation of revenue by selling fish for the purpose of funding projects that would not otherwise be funded. For this type of project, public input as to the value of the project is solicited, public support measured, and the results presented to the director for approval of the project. If, in spite of legislative and gubernatorial support, there is substantial industry opposition to a project it will be taken by the department to the Board of Fisheries for discussion. Test fish harvests will be reviewed relative to stock levels to ensure that such harvests do not significantly impact the reproductive potential, sustainability or recovery of a stock. For this reason, some projects may not operate every year, or may not generate

revenue every year. Some projects cannot generate sufficient revenue to pay for themselves without compromising their scientific purposes. Due to this, some projects are required to generate more revenue in order to pay for those that cannot.

The department is required to acquire a Test Fish Funds permit card from CFEC, record harvests on fish tickets, and sell only to licensed buyers. Receipts are credited to the fiscal year in which the fish are harvested. As a general rule, Test Fish Funds revenues are to be kept within the fishery that generates the revenues. The director may, however, authorize the use of excess revenues from one project to offset expenditures for other projects within the management area or region that generated those revenues. Test fish revenues in excess of those needed to offset test fish expenditures within a management region will normally lapse into the General Fund, unless the director determines that those revenues are needed to address other resource assessment needs within the region or division. The Alaska Board of Fisheries mandates some projects.

Conclusions: After review of each region's FY 99 Test Fish Funds and Test Fisheries projects, it appears that most provide information which enable the department to optimize its ability to make responsive real-time management decisions. Should the department not have the information made available by these projects one could reasonably expect far less utilization of stocks due to more conservative management, poorer quality harvests, and potentially, greater harvest impacts on wild stocks. Without access to some of these project funds, some fisheries might have to be closed altogether.

Since a majority of Test Fish Funds Fisheries already utilize charter vessels via bid, it appears that there is little likelihood of further privatization available to the program.

Contacts:

Geron Bruce, ADF&G Legislative Liaison
Kevin Duffy, ADF&G Deputy Director of Commercial Fisheries
Doug Mecum, ADF&G Director of Commercial Fisheries

References: (all are available electronically by request from Sue Aspelund)

"Test Fish Receipts Policy"
"Test Fish SOP"
"FY 99 Test Fisheries and Test Fish Funds – Southeast Alaska Region"
"FY 99 Test Fisheries and Test Fish Funds – Central Region"
"FY 99 Test Fisheries and Test Fish Funds – AYK Region"
"FY 99 Test Fisheries and Test Fish Funds – Westward Region"
"CF Division Test Fish Receipts, FY 95-99"



Non-Streamwatch Enforcement Issues

ADF&G Privatization Sub-Committee

Submitted by Sue Aspelund, September 27, 1999

Use of Volunteers for Enforcement: Fish & Wildlife Protection has, in the past, utilized volunteered assistance. However, due to liability issues for both the volunteers and the citizens with which they deal, use of volunteers will likely be used on a very limited basis.

Use of Retired Protection Officers for Seasonal Enforcement: This concept was explored a couple of years ago, but due to concerns raised by the Alaska Police Standards Council and labor issues raised by the employees association, was not pursued.

Disposition of Criminal Fines: Initially, all money from criminal fines, penalties, and forfeitures go into the State's General Fund. Of that amount, the Legislature appropriates those that are related to fish and wildlife cases to the Fish & Game Fund. Then, the Departments of Public Safety and Law receive appropriations from the Fish & Game Fund as determined by? Department of Law uses its share of the funds to pay for a special fish & wildlife criminal prosecutor, and Public Safety uses its share as a portion of its base budget. Legislatively-appropriated General Funds, plus the share of the Fish & Game Fund comprise the core of the Public Safety budget.

Disposition of Civil Fines: The funds from civil cases come from one of two categories: (1) cases arising out of violations or actions that threaten or damage fishery resources; or (2) cases arising out of violations that do not threaten damage to fishery resources.

Money from the first category is deposited into the constitutionally-dedicated Fish & Game Fund. According to statute, these funds are to be used by the state to carry out the goals of Title 16. Public Safety used to receive a portion of these funds, but no longer does so. However, the patrol vessel Stimson was funded by this fund from the settlement of a huge case against Tyson Seafood.

Money from the second category of cases is deposited into the General Fund, some of which is occasionally legislatively-appropriated to Department of Public Safety. The Department of Fish & Game has been the primary recipient of this funding source for various types of projects. ADF&G has RSA'd (Reimbursable Service Agreement) out of this fund to the Department of Law for civil litigation support.

Are Fish & Game Cases Treated Seriously Enough by the Court System? Some courts (judges and magistrates) treat these cases very seriously. Others, however, do not. Courts consistently make calendar and judicial time available for these cases, though. The big differences are in the penalty phase of the cases. The most serious issue is the lack of criminal prosecution time available to pursue the cases. Since the appointment of a special criminal prosecutor, this problem has eased somewhat, but many cases are minimized due to the constraints of prosecutor time. It becomes an issue of priorities: a homicide or sex abuse case is more serious than a fish or game case, and requires a prosecutor to focus their efforts on that.

There is no formal settlement policy. The district attorneys will often settle out the cases with an opposing attorney. Sometimes they contact the trooper whose case it is, but more often than not they don't. Sometimes Fish & Wildlife has direct input in larger settlements, and normally Lance Nelson is used for those discussions.

Public Safety Privatization Sub-Committee: To date the only Fish & Wildlife Protection issues to be discussed is the exploration of further privatization of aircraft and major vehicle maintenance.

RECOMMENDATION: Increase enforcement presence in sport and commercial fishing areas.

Contacts: Delbert Smith, Deputy Commissioner of Public Safety
Colonel John Glass, Director of Division of Fish & Wildlife Protection
Major Joe Damico, Deputy Director of Division of Fish & Wildlife Protection



Appendix B. ADF&G listing of cooperative agreements, revenue cooperative agreements and contracts.

AMOUNT	CONTRACT #	CONTRACT TYPE	CONTRACTOR	SUBJECT
1,218	COOP-00-001	Cooperative Agreement	Port Graham Village Council	monitor subsistence salmon harvests
3,500,000	COOP-00-002	Cooperative Agreement	DIPAC	Juneau Chinook
988	COOP-00-003	Cooperative Agreement	Nanwalek Village Council	monitor subsistence salmon harvests
-	COOP-00-004	Cooperative Agreement	NSRAA	Chilkat River Sockeye Assessment
4,000,000	COOP-00-005	Cooperative Agreement	DIPAC	Transboundary Rivers Sockeye Enhancement
25,000	COOP-00-006	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	Subsistence Migratory Bird harvest Info
-	COOP-00-007	Cooperative Agreement	State Parks	management of access sites
25,000	COOP-00-009	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	Migratory bird subsistence harvest data
317,400	COOP-00-010	Revenue Coop. Agreement	National Park Service	Glacier Bay Fisheries Compensation
-	COOP-00-011	Cooperative Agreement	Boy Scouts of America Troop 3011	Excess eggs
2,800	COOP-00-012	Cooperative Agreement	Edzeno Native Council	Ethnographic Assessment
2,800	COOP-00-013	Cooperative Agreement	Cantwell Native Village Council	Ethnographic Assessment
2,800	COOP-00-014	Cooperative Agreement	Tanana Tribal Council	Ethnographic Assessment
2,800	COOP-00-015	Cooperative Agreement	Telida Tribal Council	Ethnographic Assessment
61,800	COOP-00-016	Cooperative Agreement	Chugach Regional Resources Comm.	Kodiak Island Youth Area Watch
32,900	COOP-00-017	Cooperative Agreement	Great Land Trust	Open Spaces project
40,000	COOP-00-018	Revenue Coop. Agreement	National Park Service	Wildlife Surveys
150,000	COOP-00-019	Revenue Coop. Agreement	National Park Service	Land use
20,000	COOP-00-020	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	NAPCH Caribou Herd
15,000	COOP-99-001	Revenue Coop. Agreement	Pilot Point City Council	Ugashik River smolt—99
15,000	COOP-99-002	Revenue Coop. Agreement	Lake and Peninsula Borough	Ugashik River Smolt—99
70,000	COOP-99-003	Cooperative Agreement	Matanuska-Susitna Borough	Christiansen Lake Boat Launch
39,000	COOP-99-004	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	Subsistence Migratory Bird Harvest Info
6,664	COOP-99-005	Revenue Coop. Agreement	SSRAA	Hugh Smith Lake Sockeye Fry Planting
22,673	COOP-99-006	Revenue Coop. Agreement	SSRAA	McDonald Lake Fertilization & Sockeye Enhanc
14,913	COOP-99-007	Revenue Coop. Agreement	SSRAA	Salmon Lake Sockeye Planting Evaluation
200,000	COOP-99-008	Cooperative Agreement	SSRAA	Green Lake Chinook Enhancement
-	COOP-99-009	Cooperative Agreement	U.S. Dept of Interior	INAD

10,000	COOP-99-010	Revenue Coop. Agreement	Placer Dome U.S. Inc.	Donlin Creek
100,000	COOP-99-011	Cooperative Agreement	City of Whittier	Whittier Boat Ramp Planning
	- COOP-99-012	Cooperative Agreement	U.S. Fish & Wildlife Service	Earth Quest Wildlife & Wildlands Camp
5,000	COOP-99-013	Cooperative Agreement	USGS	Situk River Gauging station
24,000	COOP-99-014	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	Caribou tracking
9,500	COOP-99-015	Cooperative Agreement	USGS	Gauging station on Cottonwood Creek
60,000	COOP-99-016	Cooperative Agreement	US Geological Survey	Data collection at Pogo Mine
40,000	COOP-99-017	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	Caribou calf survival study
5,500	COOP-99-018	Revenue Coop. Agreement	U. S. Geological Survey	Physiological ecology of walrus
	- COOP-99-019	Cooperative Agreement	Bering Sea Fisherman's Association	Trawl survey
73,000	COOP-99-019A	Cooperative Agreement	Alaska Pacific University	Sharptail Grouse Study
5,000	COOP-99-020	Cooperative Agreement	US Geological Survey	Peterson Creek Stream-gauge
25,000	COOP-99-021	Cooperative Agreement	City of Wrangell	Shoemaker Harbor Restroom
350,000	COOP-99-022	Cooperative Agreement	City of Craig	False Island Boat Ramp
9,732	COOP-99-023	Revenue Coop. Agreement	Kenai Watershed Forum	Kenai River Water Quality
8,762	COOP-99-024	Revenue Coop. Agreement	US Forest Service	Cooper Lake Limnology
	- COOP-99-025	Cooperative Agreement	U.S. Fish and Wildlife Service	Spirit and Unity Camp
4,600	COOP-99-026	Cooperative Agreement	U.S. Forest Service	Salmon Lake Dock and Walkway
7,000	COOP-99-027	Cooperative Agreement	US Geological Survey	Streamgauge on Mendenhall River
	- COOP-99-028	Revenue Coop. Agreement	Rocky Mountain Elk Foundation	brown bear permit auction/raffle
	- COOP-99-029	Revenue Coop. Agreement	Foundation for North Am. Wild Sheep	sheep & bear permit auction/raffle
	- COOP-99-030	Cooperative Agreement	Alaska Fish & Wildlife Safeguard	bison permit auction/raffle
	- COOP-99-031	Cooperative Agreement	Petersburg Rod & Gun Club	elk permit auction/raffle
	- COOP-99-032	Revenue Coop. Agreement	The Alaskan Bowhunters Association	bison & moose permit auction/raffle
	- COOP-99-033	Cooperative Agreement	KTOO-TV	Wolves of Alaska Video
	- COOP-99-034	Cooperative Agreement	Federal Aviation Administration	McGrath Office Space
	- COOP-99-035	Cooperative Agreement	Manilauq, Inc.	Cooperative Subsistence Data Collection
1,400	COOP-99-036	Cooperative Agreement	St. George Traditional Council	Sea Lion and Harbor Seal Research
2,285	COOP-99-037	Cooperative Agreement	Aleut Community of St. Paul	Sea Lion and Harbor Seal Research
	- COOP-99-038	Cooperative Agreement	Norton Sound/Bering Sea Regional	Incubation Facility on Hobson Creek
			Aquaculture Association	
12,000	COOP-99-039	Revenue Coop. Agreement	Colorado Division of Wildlife	Live Lynx Capture
342,100	COOP99039A	Revenue Coop. Agreement	USF&WS/CANCELLED	Subsistence Management Program
8,000	COOP-99-040	Cooperative Agreement	Kawerak, Inc	Cooperative Subsistence Data Collection

- COOP-99-041	Cooperative Agreement	U.S. Fish and Wildlife Service	Salmon in the Classroom Project
342,100 COOP-99-042	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	Subsistence Management
30,000 COOP-99-043	Revenue Coop. Agreement	Natural Res. Cons. Service	Wildlife Habitat Incentives Program
3,578 COOP-99-044	Cooperative Agreement	USDA	lice on coyotes
10,000 COOP-99-046	Cooperative Agreement	AK Native Harbor Seal Commission	Harbor Seal Research
20,200 COOP-99-047	Cooperative Agreement	AK Native Harbor seal Commission	Harbor Seal Research, Information develop
4,400 COOP-99-048	Cooperative Agreement	U.S. Forest Service	Neck Creek Access Trail
3,869 COOP-99-049	Cooperative Agreement	U.S. Forest Service	deer pellet transects
260,000 COOP-99-050	Cooperative Agreement	AK DOT/PF	Dalton Hwy Yukon River Boat Launch
5,000 COOP-99-051	Cooperative Agreement	KTOO-TV	EVOS 10th Anniversary Video
5,000 COOP-99-052	Cooperative Agreement	USGS	Kenai River Boat Wake
35,580 COOP-99-053	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	White Wing Scoters
40,000 COOP-99-054	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	Steel Shot Training
128,843 COOP-99-055	Revenue Coop. Agreement	U.S. Geological Survey	Sockeye Growth Data
- COOP-99-056	Cooperative Agreement	So. SE Regional Aquaculture	Hugh Smith Lake Stocking
20,000 COOP-99-057	Revenue Coop. Agreement	U.S. Fish and Wildlife Service	Goodnews River Weir
- COOP-99-058	Cooperative Agreement	Chitina Native Corporation	Dipnet Fishery Access
- COOP-99-059	Cooperative Agreement	Ahtna Native Corporation	Dipnet Fishery Access
238,000 COOP-99-060	Cooperative Agreement	University of Alaska	Sea Grant Program
20,000 COOP-99-061	Cooperative Agreement	City and Borough of Sitka	Fish Cleaning Station
54,600 COOP-99-062	Revenue Coop. Agreement	Chignik Reg. Aquaculture Assoc.	Sockeye Smolt Studies
- COOP-99-063	Cooperative Agreement	SSRAA	McDonald Lake Equipment Use
19,700 COOP-99-064	Revenue Coop. Agreement	National Park service	Walrus Islands Boardwalks
- COOP-99-065	Cooperative Agreement	U.S. Fish and Wildlife Service	Western Alaska Natural Science Camp
10,000 COOP-99-066	Cooperative Agreement	U.S. Fish and Wildlife Service	Russian Walrus Harvest Study
- COOP-99-083	Cooperative Agreement	Orutsararmuit Native Council	sonar project & gillnet testfish on Kuskokwim
9,900 IHP-00-001	Revenue Contract	Pacific salmon Commission	Sockeye Philonema Prevalance Data
20,670 IHP-00-002	Professional Service	San Jose State University	Rockfish Stock Assessment
20 IHP-00-003	Revenue Contract	Wild North Productions	Video distribution and sales
5,000 IHP-00-003	Professional Service	Aquacoustics	Bendix Data Analysis and Consultation
2,500 IHP-00-004	Professional Service	Expressions	Brown Bear Survey
2,500 IHP-00-005	Professional Service	Dittman Research	Brown Bear Survey
15,000 IHP-00-006	Professional Service	Cpt Black Bart's Charters	Sea Urchin Survey

15,000 IHP-00-007	Professional Service	Al's Alaskan Diving and Services	Sea Urchin Survey
16,500 IHP-00-008	Revenue Contract	U.S. Fish and Wildlife Service	M/V <i>Curlew</i>
- IHP-00-009	Professional Service	VOID	FBX Rangemaster
3,000 IHP-00-010	Professional Service	HTI	Elliptical vs. Circular
40,000 IHP-00-011	Professional Service	Arktos & Associates	Brown Bear Planning Facilitator
- IHP-00-012	Revenue Contract	Ocean Olympic Fisheries, LLC	Onboard Observer
64,600 IHP-00-013	Revenue Contract	Delta Oceanographics	R/V <i>Medeia</i>
6,500 IHP-00-014	Professional Service	Herron and Associates	Strategic Planning training
5,000 IHP-00-015	Professional Service	Out to Bid	Fbx Shooting Range Lead Level Testing
4,000 IHP-00-016	Professional Service	Classic Design & Typography	AWC Layout
5,000 IHP-00-017	Professional Service	Expression, Inc.	AWC editing
2,400 IHP-00-018	Professional Service	Dan and Heidi Chae	Stakeholder Group Scribe
50,000 IHP-99-001	Professional Service	Nextlink, Inc.	Migratory Game Bird Harvest Information Prog
160,000 IHP-99-002	Professional Service	Kenmore Air Harbor	De Havilland Beaver Exchange
21,174 IHP-99-003	Professional Service	San Jose State Univ-Moss Landing	Rockfish Stock Assessment
9,900 IHP-99-004	Revenue Contract	Pacific Salmon Commission	Sockeye <i>Philonema</i> Prevalence data
11,702 IHP-99-005	Revenue Contract	North Slope Borough	Aerial Survey of Beluga Whales
12,000 IHP-99-006	Professional Service	U.S. Fish and Wildlife Service	M/V <i>Curlew</i>
1,000 IHP-99-007	Professional Service	C. Deming Cowles	Follow-up report
10,000 IHP-99-008	Professional Service	Resource Data, Inc.	Herring Spawn GIS Extension
- IHP-99-009	Revenue Contract	Steiner Prints	Alaska Waterfowl Stamp Print Program
650 IHP-99-010	Professional Service	Jennifer Coggins	AK Wildlife Curriculum Revision
5,000 IHP-99-011	Professional Service	Arktos Associates	Meeting facilitator
10,000 IHP-99-012	Professional Service	Microage	Year 2000 migration
- IHP-99-013	Professional Service	Grubstake Auction	Hide/antler disposal
246,200 IHP-99-014	Professional Service	Texas A&M University	Harbor Seal Lipid Metabolism Testing
2,000 IHP-99-015	Professional Service	Nate Mantua	Alaska Salmon Workshop Speaker
2,000 IHP-99-016	Professional Service	Alan Springer	Alaska Salmon Workshop Speaker
2,500 IHP-99-017	Professional Service	Dick Beamish	Alaska Salmon Workshop Speaker
2,500 IHP-99-018	Professional Service	Randall Peterman - CANCELLED	Alaska Salmon Workshop Speaker
58,663 IHP-99-019	Revenue Contract	Yukon Territorial Government	John Hechtol Salary
30,000 IHP-99-020	Revenue Contract	Cordova Electric Cooperative	Power Creek Environmental Comp. Monitor
25,000 IHP-99-021	Professional Service	Computer Matrix	EVOS Transcribing

2,000 IHP-99-022	Professional Service	Terry Quinn	Alaska Salmon Workshop
2,000 IHP-99-023	Professional Service	Bill Smoker - Cancelled	Alaska Salmon Workshop
2,000 IHP-99-024	Professional Service	Milo Akinson	Alaska Salmon Workshop
3,000 IHP-99-025	Professional Service	Tom Royer	Alaska Salmon Workshop
27,000 IHP-99-026	Revenue Contract	SE AK Regional Dive Fisheries Ass.	Geoduck Study
3,500 IHP-99-028	Professional Service	Doug Whittaker	Facilitator
10,000 IHP-99-029	Professional Service	E-3 Consulting	Economic changes in commercial fishing
- IHP-99-031	Professional Service	Ron's RiverBoat	concessionaire contract
1,291,313 IHP-99-032	Revenue Contract	Pacific States Marine Fish Comm.	AKFIN
- IHP-99-033	Revenue Contract	Exotic Alaskan Seafoods	onboard shellfish observer
25,000 IHP-99-034	Professional Service	Bioeconomics	Burbot, Pike sport fisheries study
9,950 IHP-99-035	Professional Service	Three Rivers Research	Workgroup facilitator
14,267 IHP-99-036	Revenue Contract	Ketchikan Gateway Borough	Red Sea Urchin Fishery
3,000 IHP-99-037	Professional Service	Bill Christie	Hunter Education
3,200 IHP-99-038	Professional Service	Randy Dorn	Hunter Education
1,500 IHP-99-039	Professional Service	Coastwise Engineering	Vessel Stability Training
1,500 IHP-99-040	Professional Service	Accuval-Resco	Land Appraisal
7,500 IHP-99-041	Revenue Contract	Project WILD	Environmental Education and Training
5,000 IHP-99-044	Professional Service	David Welch	Alaska Salmon Workshop
2,000 IHP-99-045	Professional Service	Kate Myers	Alaska Salmon Workshop
2,000 IHP-99-046	Professional Service	Mike Bradford	Alaska Salmon Workshop
2,000 IHP-99-050	Professional Service	Ted Cooney	Alaska Salmon Workshop
2,500 IHP-99-051	Professional Service	Jim Schumacher	Alaska Salmon Workshop
25,000 IHP-99-053	Professional Service	Livingston Stone	Kachemak Bay Consultant
3,850 IHP-99-054	Professional Service	Jennifer Coggins	Project WILD
74,000 IHP-99-055	Revenue Contract	Gronholdt & Associates	Spawn on Kelp Test Fishery
18,000 IHP-99-056	Professional Service	Prince William Sound Science Center	PWS Herring Acoustic Study
4,500 IHP-99-057	Professional Service	Herron and Associates	Strategic planning training
20,738 IHP-99-058	Revenue Contract	Pacific Fishery Management Council	Participation in Council Process
25,000 IHP-99-059	Revenue Contract	North Pacific Fish. Mgmt. Council	Council Liaison Support
3,000 IHP-99-059A	Professional Service	Bruce Finney	Alaska Salmon Workshop
150,000 IHP-99-060	Professional Service	US West	Telephonic license system
70,000 IHP-99-061	Revenue Contract	Cordova Electric Cooperative	Power Creek

5,000 IHP-99-062	Professional Service	Oceanus Alaska	kelp research
49,500 IHP-99-063	Revenue Contract	Kodiak Salmon Packers	Pink Salmon emergent fry sampling
10,500 IHP-99-064	Professional Service	Classic Design and Typography	Alaska Wildlife Curriculum Revisions
46,300 IHP-99-065	Revenue Contract	Pacific States Marine Fish. Comm.	Black Rockfish off SE Alaska
6,762 IHP-99-066	Revenue Contract	U.S. Forest Service	Limnology sampling
4,849 IHP-99-067	Revenue Contract	U.S. Forest Service	Lab Analysis
50,000 IHP-99-068	Professional Service	Alaska Bird Observatory	Banding Station
4,508 IHP-99-069	Revenue Contract	NOAA/NMFS/Auke Bay lab	Otolith Examination
21,260 IHP-99-070	Revenue Contract	NOAA/NMFS/Auke Bay lab	Otolith Exam
5,000 IHP-99-071	Professional Service	Mark Rowland	Workgroup Facilitator
5,000 IHP-99-072	Professional Service	Expression	Alaska Wildlife Curriculum Editing
5,000 IHP-99-073	Professional Service	Marine Consultants Associated	Marine Consultant
14,000 IHP-99-074	Professional Service	Arktos Associates	Kenai Brown Bear Planning Facilitator
10,000 IHP-99-075	Professional Service	Kachemak Country Publications	Kachemak Bay Historical Use
2,000 IHP-99-076	Professional Service	Technical Problem Solvers	Configure workstation
5,000 IHP-99-077	Professional Service	Natalia Varnavskaya	Walleye Pollock Analysis
9,000 IHP-99-078	Professional Service	Dittman and Associates	Brown Bear Information Survey
63,237 IHP-99-079	Revenue Contract	Cordova Electric Cooperative	Environmental Compliance Monitor
35,530 IHP-99-080	Professional Service	NOAA	Satellite radio Tracking
5,000 IHP-99-081	Professional Service	Don Cornelius	State Land Use Planning
5,000 IHP-99-082	Professional Service	SE AK Regional Dive Fishery Ass.	SE AK Dive Fishery Management Plan
5,000 IHP-99-084	Professional Service	ABR	Peregrine falcon study
10,000 IHP-99-085	Professional Service	National Sporting Clays Association	Shotgun instructor certification
3,900 IHP-99-086	Professional Service	Cheryl Scott	Harbor Seal data analysis
46,070 IHP-99-087	Revenue Contract	North Slope Borough	Arial Surveys of Beluga Whales
15,000 IHP-99-088	Professional Service	US Fish and Wildlife Service	M/V Curlew
1,864 IHP-99-089	Revenue Contract	National Park Service	Bear Training
15,000 IHP-99-090	Professional Service	University of Iowa	Scallop shell analysis
6,000 IHP-99-091	Revenue Contract	NSRAA	entry of fish tickets

GOVERNOR

**COMMISSION ON PRIVATIZATION
AND
DELIVERY OF GOVERNMENT SERVICES**

**SUBCOMMITTEE REPORT

ON THE

OFFICE OF THE GOVERNOR**

November 18, 1999

**Subcommittee Members: Wayne Anthony Ross, Chair; Bill Allen, Tom Anderson,
Matthew Fagnani, Cheryl Frasca, Jack Frost, Gregory Hall, Spence Hochstein,
Pauline Martens, Terry Martin, Paul Woerner, Andree McCloud**



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Senator Jerry Ward
Representative John Cowdery

REPORT OF THE SUBCOMMITTEE ASSIGNED TO THE OFFICE OF THE GOVERNOR

Mission Statement: The Commission on Privatization was created to investigate privatization alternatives and to study methods of improvement of State services. A number of subcommittees were appointed to study various departments of State government. The subcommittees were given instructions to review the departments assigned to them and make recommendations regarding possible privatization of some of those department functions and/or other methods to improve State services. The subcommittees were directed to have recommendations, in the form of written reports, prepared by the end of October 1999. It was generally recognized (and the sub-committees were so advised) that, because of this legislative-directed deadline, the work of the subcommittees would of necessity be limited to only a few immediate suggestions involving the assigned departments, and it would not be possible for such reports to be all-encompassing regarding all aspects of the assigned departments. Instead, the sub-committees were directed to choose one or two aspects of their assigned departments for immediate consideration for privatization and/or improvement. The sub-committees were informed that other aspects of their assigned departments could be left to future consideration, if the life of the subcommittees are extended into future years.

The Subcommittee furnishing this report was assigned to the study the Governor's Office. While all aspects of the Governor's Office were, initially, reviewed via an overview of that office's functions, the Subcommittee chose to focus on what it perceived to be the most immediate problem that emerged from this Subcommittee's overview.

The Office of Management and Budget (OMB) is a part of the Governor's Office. OMB prepares the annual budget for the governor and monitors department and administrative financial policies. The State of Alaska utilizes a budgetary process that is complex, ambiguous and cumbersome for the general public to understand. The Subcommittee believes that one of the first steps towards improving State services is to simplify the budgetary process by improving the accounting and reporting of expenditures and revenue, specifically within OMB.

This Subcommittee report makes the following five suggestions (paragraphs 1-5) regarding preparation, presentation and evaluation of the State budget:

- 1) The budget should be complete, yet comprehensible to Alaskans;
- 2) To accomplish this, professionals from the private sector should be utilized;
- 3) Once a complete but comprehensible budget has been completed, further privatization studies should be undertaken to reduce the cost of government;
- 4) General fund parameters should be established in the budget process; and
- 5) A firm schedule and procedures for development and reporting of the budget should be established.

This Subcommittee also makes a separate recommendation (paragraph 6) to improve the methods utilized to encourage State employees, and other Alaskans, to furnish their input in the streamlining of State Government, in reducing the cost of government, and in improving the budget process.

Background: The Office of the Governor, though not an actual "department" in terms of budget reporting, is the smallest agency within the State's Operating Budget. Also considered a branch of government, in association with the executive and judiciary, the Office of the Governor houses the Office of Management and Budget, Division of Elections, and Human Rights Commission. In FY2000, the total Operating budget for the Office of the Governor was \$18,775,800.¹

1) THE BUDGET SHOULD BE COMPLETE, YET COMPREHENSIBLE TO ALASKANS

The budget process is very detailed and intricate, but it need not be written so complexly that analysts and the public alike cannot adequately understand or interpret its contents. Full disclosure of the costs for all sections of this budget, including "front sections" of both the operating and capital budget, will afford a more accurate and comprehensible report for the bureaucracy and the legislature to disseminate to the public. Clarity in the presentation of financial principles, concepts and terminology surrounding the budget should be emphasized to prevent deceptive reporting, as well as to encourage public trust. To this end, the Alaska Constitution and mandates by the voters should be an integral part of each budget cycle and the compilation of the annual budget must have safeguards to prevent improper activity.

Through a simplified presentation, perhaps adopting corporate and/or business-style reporting practices, the entire process could be easier to scrutinize, less costly and burdensome to produce, and ultimately beneficial to the State in terms of a cost effective

¹ Source: Conference Committee total - found in State of Alaska, Legislative Finance Division, FY2000 Operating Budget Summary.

operating and capital budget. An entire State financial accounting "package" could be combined as an all-encompassing unit, rather than in increments that delay the legislature and the public from receiving the full proposal. Anticipated/forecasted spending and revenue sources would avoid delays and cumulative committee review if provided in a thorough and understandable format. The upcoming legislature would benefit by receiving the budget at least 72 hours after released by the Free Conference Committee and before any full consideration of the budget by the Legislature.

2) TO ACCOMPLISH THIS, PROFESSIONALS FROM THE PRIVATE SECTOR SHOULD BE UTILIZED

When the State budget is compared to the budgets of corporations and other business forms whose budgets follow conventional "accounting" format, it is clear that such private sector presentations require less assistance to review and understand.

While it may be argued that the complexity of the State budget is a result of the checks and balances of government imposed through legislative scrutiny and executive veto power, in actuality, no technical difference exists between governmental and private sector accounting methods. The calculations are the same, the mathematics do not change and the general accounting principles are identical. In fact, the major national and regional accounting firms have qualified staff who are often contracted to perform compilation reviews and government audits for various divisions. As a result, a complete transfer of an agency's budgeting process to the private sector might be less costly in training and educational expense considering the absence of the necessity of a learning curve by participants from the private sector.

There are numerous types and techniques of privatization. *Outsourcing* allows the state government to contract with a private organization, for-profit or non-profit, to provide a service or part of a service. The Human Rights Commission, housed under the Governor's Office, is a good candidate to be outsourced to a non-profit entity for cost reduction and to ensure neutrality (provided, of course, that Federal laws and regulations allow such a procedure). *Management contracts* allow for the operation of a facility to be contracted to a private company. *Public-Private competition* (also referred to as "managed competition" and "market testing") open public services to competition and in-house public organizations are allowed to participate in the bidding process. *Franchises* afford a private firm exclusive rights to provide a service within a geographical area. *Internal markets* allow departments to purchase support services such as printing, maintenance, computer repair and training from in-house providers or outside suppliers. Market forces are "brought to bear" within the organization and internal customers can decline internal service providers should the quality be unacceptable or costs too high. Obviously, the remaining options are *commercialization*, *corporatization* (the state currently has

5 state-owned corporations) and *vouchers* (private school choice).²

3) ONCE A COMPLETE BUT COMPREHENSIBLE BUDGET HAS BEEN COMPLETED, FURTHER PRIVATIZATION STUDIES SHOULD BE UNDERTAKEN TO REDUCE THE COST OF GOVERNMENT

A lengthy and intricate privatization study is not conducive to solving the problem.³ Results matter, rather than "studying something to death." Even a report that assesses two or three budgetary schemes, recommended by private sector institutions, would be of use in improving the efficiency and clarity of the reporting process. If the OMB was to provide an alternative budget, coupled with recommendations from chief fiscal analysts in the Department of Revenue and Department of Administration, the selectivity and range of alternatives (public and private sector) would be comprehensive and such a presentation would allow thorough comparisons.

The Subcommittee believes that time is of the essence in adopting this budget revision. There should not be a lengthy delay in adopting prudent and comprehensive budgetary strategies. A schedule encompassing no more than one (1) year should be given to a salaried committee to pursue a privatization study. The sunset of the salaried committee would be immediately prior to the convening of the Twenty-Second Legislature, with a full report provided to the legislative and executive branches and accessible to the public by hard copy and Internet. The committee tasked with performing this study should contain individuals with both private and public backgrounds. It should be well-funded to aid in research and to allow it to remain autonomous from any governmental entity. The study would have specific duties sent forth in the legislation establishing that committee.

4) GENERAL FUND PARAMETERS SHOULD BE ESTABLISHED IN THE BUDGET PROCESS

Whereas this Subcommittee is specifically addressing the Office of the Governor, revisions to the foundation of the budget will assist all departments. To that end, it is submitted that the "general fund" should be defined as the fund in the state treasury consisting of all funds and accounts and all monies, revenues, and proceeds of a tax or license, except: the Permanent Fund established by Art. IX, Sec. 15 of the Alaska Constitution; the Budget Reserve Fund established by Art. IX, Sec. 17 of the Alaska Constitution; proceeds of any tax or license dedicated under Art. IX, Sec. 7 of the Alaska Constitution; federal funds; trust assets held by the state as trustee of an expressed trust; and funds held by public corporation except as otherwise

² Source: Privatization Database (Sep. 1999).

³ Neither, of course, is the current (possibly short-lived) Commission on Privatization, although the Commission is a good first step.

provided by law.

The "statutory treasury" should include all money, assets, and property and interests in property, whether real or personal, tangible or intangible, owned, held, or otherwise subject to use or disposition by the State of Alaska. As for "program receipts," the reference in the budget to "the amount available for appropriation" and "funds available for appropriation" should mean: the unrestricted revenue accruing to the general fund during the fiscal year; general fund program receipts as defined above; the unreserved, undesignated general fund balance carried forward from the preceding fiscal year that is not subject to repayment obligation imposed by Art. IX. Sec. 17(d) of the Alaska Constitution; and the balance in the Statutory Budget Reserve Fund.

5) A FIRM SCHEDULE AND PROCEDURES FOR DEVELOPMENT AND REPORTING OF THE BUDGET SHOULD BE ESTABLISHED

Timely reporting of the budget is the lifeline to its existence. It is also one of the primary concerns of the Subcommittee. If reasonable dates are established for recommendations, compilation, overview and presentation - the State budgetary process would be far more efficient.

The OMB is essentially in charge of this process, yet it resides under the Office of the Governor. Such gubernatorial purview should not be so extensive. Further, all State operating items and grants to non-profit or profit organizations and business should be in the annual operating budget. They should be visible, discernible and not hidden in the capital budget in the final days of legislative debate through conference committee interaction.

The total budget must be presented to the governor no later than December 31st of each year. All state expenditures, toward any purpose, should be fully disclosed (as in private enterprise) annually, as well as orally presented and in writing. All other recommendations should be completed no later than the end of the fiscal year.

A unified procedural system will allow for better government and public review. It will put state officials and our legislators on notice that the budget can no longer be fast-tracked without accountability. Time constraints and reporting requirements will ensure the budget can be accessed, reviewed and ultimately revised if necessary. The end result will be more efficient fiscal planning for the State, with private and public sector forces working in unison.

6) IMPROVE THE METHODS UTILIZED TO ENCOURAGE STATE EMPLOYEES, AND OTHER ALASKANS, TO FURNISH INPUT IN THE STREAMLINING OF STATE GOVERNMENT, IN REDUCING THE COST OF GOVERNMENT, AND IN IMPROVING THE BUDGET PROCESS.

An analysis of the State's limited adoption of an "employee suggestion program" revealed this process is not utilized to its fullest capacity. State employees are seldom encouraged to recommend cost-reduction ideas in their respective offices, nor do these agencies solicit substantive input from their staff. Yet, employee contributions to public-sector management's attempt at cost-savings has been proven to increase productivity and reduce overall costs. It is further noted that certain State employee fear reprisals from superiors for making such recommendations. Protection under "whistle blower" laws do not diminish the apprehension of employees who fear adverse consequences from questioning current State procedures, when the employees have suggestions and ideas that, if utilized, could improve governmental services and reduce costs.

One recommendation to improve this situation is to implement a program evaluation system whereby State employees have a forum to generate ideas and suggestions regarding time savings, productivity, profitability, service quality, safety, and customer service. A procedure should be established to compensate and/or otherwise recognize employees who suggest cost reductions, while maintaining anonymity if requested. Regular publication, distribution and commentary by staff would be encouraged, through routine reassessment and recognition.

SUMMARY

During the course of meetings of the Subcommittee assigned to the Governor's Office (and the resulting and necessary perusal of the State budget), it became apparent that comprehension of budget documents was difficult, at best. When compared with the budgets of corporations or other entities whose budgets all seem to follow a more conventional and familiar format, it was discovered that greater need for assistance and explanation was required for comprehension of even the smallest portions of the State budget.

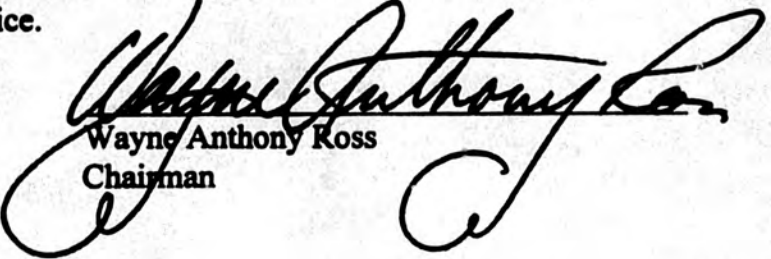
Similarly, in contacting other members of other subcommittees assigned to other State departments, members of the Subcommittee ascertained that they, too, were having similar difficulties in reading and understanding budgetary documents.

It is the collective opinion of the membership of this Subcommittee that the budget of the State should be simplified, and should more closely follow standard accounting format, in order to allow the State budget to be easily read and understood by the citizenry. The above report makes suggestions on how to accomplish that goal.

Finally, as stated above, there should be improvements made in the methods and procedures utilized to encourage State employees, as well as other Alaskans, to furnish their input in the streamlining of State Government and in reducing the cost of such government.

Respectfully submitted this 19th day of October, 1999,

For the Subcommittee on Privatization and Improvement of State Services,
assigned to the Governor's Office.



Wayne Anthony Ross
Chairman

**Subcommittee on the
GOVERNOR'S OFFICE/OMB
Supplemental Recommendation**

The Governor's Office of Management and Budget is responsible for writing the state operating budget in coordination with all other state departments. Its location within the Office of the Governor gives it supremacy over the departments whose budgets they write.

There is universal declamation about the state's operating budget. No one understands it. There are a few bureaucrats who write it and whose job it is to understand it. But even they are often stumped about its finer points. OMB gives the legislature one or more 3-ring binders for each cabinet level department. They are filled with forms and jargon. The legislature extracts numbers from the binders, condenses them into a "short form" booklet devoid of narrative and, behold, the State of Alaska Operating Budget.

Essentially, the people of Alaska want to know what state employees do, how many of them exist, how many dollars are spent to do the job; and, how well is it being done.

No where in the state budget is there a picture of employee activities, costs and results in the context of an agency mission. There are mission statements. Sometimes, goals and objectives are stated with highly questionable accuracy. But, seldom are they integrated into "cost per goal," or "cost per objective." Never are they stated in cost per result. Performance Measurement Indicators are just being discovered by state government. They are largely resisted. If the legislature doesn't understand and refine relevant Performance Measures for each agency then they will never happen. We shouldn't expect an employee union or a governor's administration to willingly harness themselves in a yoke of accountability. External pressure is the only way it will ever happen.

The current method of budget presentation is to break it down into eight spending categories and three organizational levels. The eight spending categories are:

- Personnel
- Travel & per diem
- Contractual Services
- Supplies
- Equipment
- Lands/Buildings
- Grants/Claims
- Miscellaneous

The three organizational levels are:

- Departmental,
- Budget Request Unit, and,
- Component Program

This is a two dimensional matrix. One dimension is "spending category." The other is "organizational unit." Analysis is limited to the amount spent in each one of the eight spending categories across a department, a BRU or a component.

This approach focuses on organizational structure, and spending categories. Both are subjective, somewhat artificial creations. Half the budget is spent in one category, i.e. personnel. Less than ten percent is spent in four smallest categories. So, the categories are so broad that they reveal scant intelligence about how money is spent. Neither does organizational structure provide a clue about work that takes place. Nor is the structure usually presented correctly. Organizational charts are notoriously subjective and sometimes used as a subterfuge. The Administration has no set of rules or standards for how its departments present themselves organizationally. A budget based on organizational structure makes it difficult to relate the work being done to the cost of doing the work. And, it is devoid of any qualitative assessment.

Alternatively, if the budget were laid out in the manner of a list of tasks performed, and the cost for accomplishing the tasks, then a clearer picture would result about what employees do and how much it costs to do it. The following is an example of a budget based on task description for a hypothetical road maintenance station.

SAMPLE TASK BASED BUDGET

TASK	LABOR COST	EQPMT COST	MATERIAL COST	OTHER	TOTAL
1. SEAL COAT	3 man crew \$120 per hr x 1000 hours = \$120,000	Loader: \$45 hr DumpTrk: \$42 hr. X 1000 hrs = \$87,000	Tar drums 100 @ \$23 ea. = \$2300	Fuel:400 gal @\$.87 = \$ 448	\$209,748
2. ELECTRIFY CULVERTS	2 man crew \$80 per hr. x 200 hours = \$16,000	Pickup: \$30 hr. x 200 hours = \$6,000	Copper Wire 300 ft @ \$1 per = \$300	Fuel: 100 gal @ .90 = \$ 90 Rubber Boots: \$300	\$22,690
3. HIWAY SNOW REMOVAL	5 man crew @ \$300 per hr = \$1500 x 8 crews = \$12,000 x 4000 hrs = \$48,000,000	Pickup: \$30 hr. 2 Nose Plows: \$90hr. Grader: \$100 hr. = \$310 hr. x 4000 hrs. = \$1,240,000	none	Chains: \$3000 Fuel: 9000 gal @ .90 = \$8100	\$49,251,100
4. PAYROLL	23 people @ avg. \$27 per hr = \$621 x 2200 hrs per yr. = \$1,371,168	DP rental: \$75,000	Supplies: \$10,000	Courier: \$12,000	\$1,468,168
5. MANG'MENT	1 Director: \$80,000 1 Suprtdnt: \$70,000 1 Secretary \$50,000	2 PC's: \$10,000 1 Pickup: \$18,000 2 cell phones: \$3000	Supplies: \$5,000 Fuel: \$2,000	Travel: \$6,000 Overhead Multiplier 1.15	\$281,750

This kind of a budget, a **TASK BASED BUDGET (TBB)**, lays bare the work and its associated costs. It leads those with oversight responsibility to the facts about spending, i.e.; it gives insight to those with oversight. When compared to the current budget structure, the TBB yields more information and leads to more probative, relevant questions about state spending.

If we convert the same TASK BASED BUDGET above to the format currently in use, it looks like this:

• Personnel	\$49,707,168
• Travel & per diem	\$ 6,000
• Contractual Services	\$ 87,000
• Supplies	\$ 14,000
• Equipment	\$ 1,439,000
• Lands/Buildings	\$ 0
• Grants/Claim	\$ 0
• Miscellaneous	\$ 0

Ask yourself which budget is more useful; which one yields more understanding; which one leads to accountability. It may be useful to have summary information about the amount spent in each category and in each organizational unit. But, the current format simply doesn't go far enough; it doesn't associate costs to work performed.

The current format is devised and is driven by government accountants. As war is too important to be left to the generals, so too is budgeting too important to be left to the accountants. Accounting is a function of financial management needed to produce financial statements in accordance with generally accepted accounting principles. Accounting data is not sufficient for budgeting and operational analyses.

But when accountants drive the planning/budget process they steer the forms and data toward fulfilling their accounting needs. Program Managers, legislators, and others with oversight responsibility, need more than financial accounting data. They need "operating data". Operating data is the quantification of work activities, i.e., the number of cases filed, dismissed, settled, or adjudicated. A budget should attach a cost to each step in the work process, like the "work papers" that back up a CPA's audit.

By default, management cedes budgeting to accountants because a lot of the budget data comes from data under their control. Consequently, their budget process mimics the accounting process, replete with debits, credits, cross-balances, ledgers, rows and columns that all add up very neatly. But, they don't tell a story. And with public spending the public deserves to know what is the story.

The problem is not unique to government. The Private Sector has had the same kind of problems and they solved them. Recognizing the difference between data needed for financial statements vis a vis data needed for operational planning and budgeting, the private sector devised **MANAGEMENT INFORMATION SYSTEMS (MIS)**. An MIS is tailored to an individual organization. It contains regular reports about productivity and

costs. An MIS for a manufacturing plant will be markedly different than one for a stock brokerage firm. But they both match information about productivity with information about costs. A budget is one part of an MIS. It takes savvy managers to keep accountants from turning budgets and MIS reports into accounting statements. The two should not be confused.

None of the above information is new. Government is usually slow to adopt progressive management practices. The state's budgeting system is 25 years out of date with modern management practices. It's time to improve and catch up.

Recommendation: The Legislature shall devise a Task Based Budget format and require, by statute, that the governor's budget be submitted in that format.

Respectfully submitted,



ALASKA STATE COMMISSION FOR HUMAN RIGHTS
RESPONSE TO THE
COMMISSION ON PRIVATIZATION
OFFICE OF THE GOVERNOR SUBCOMMITTEE
REPORT OF THE SUBCOMMITTEE ASSIGNED TO THE
OFFICE OF THE GOVERNOR

Subcommittee Recommendation: "The Human Rights Commission, housed under the Governor's office is a good candidate to be outsourced to a non-profit entity for cost reduction and to ensure neutrality (provided, of course, that Federal laws and regulations allow such a procedure)."

In 1963, the Alaska legislature passed Alaska's Human Rights law, Alaska Statute 18.80 et.seq. Alaska Statute 18.80.200(a) declares:

"It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety, and general welfare of the state and its inhabitants."

The legislature created the Commission to provide an informal avenue of redress of human rights violations for Alaskans. It also conferred the Commission with quasi-judicial authority to hold hearings and provide relief when informal efforts to eliminate discrimination failed. To help insure neutrality, the Commission was created in a manner to allow for it to be uniquely independent. Final policy and case-related decisions are vested in seven Commissioners who serve for staggered terms of five years and are confirmed by the Legislature after appointment by the Governor.

As the Commission's testimony to the Subcommittee on September 3, 1999 indicated, the Commission is an agency that has proceeded in the past against the State of Alaska and would in the future. The structure of the Commission allows the staff to be free from

political pressure as staff reports to the Commission, not the Governor or other executive branch employees. This year, the State of Alaska was the respondent in five of the 31 public hearing cases in the agency's hearing unit. Two of these cases settled prior to public hearing for substantially full relief and amounted to significant monetary damages, some of the highest in the Commission's recent history. These examples may help allay concerns of the Subcommittee that the agency's neutrality is compromised by its location in government.

The Commission is a member of the International Association of Official Human Rights Agencies (IAOHRA). IAOHRA consists of approximately 160 human rights agencies in the United States and Canada. Neither the Commission nor IAOHRA knows of any other civil rights enforcement agency housed in a non-profit agency. The Commission believes that, as an enforcement agency with the mandate to protect the public from unlawful discrimination, it is appropriately housed as are other police and regulatory agencies within state government.

Title VII of the Civil Rights Act of 1964 authorizes the Equal Employment Opportunity Commission (EEOC) to contract with state and local agencies charged with the administration of state fair employment practices laws. The Commission, as a State agency, currently has a contract with the EEOC which avoids the need for duplicate investigations. EEOC staff has informed the Commission that if the agency's functions are privatized, EEOC will recommend that its contractual relationship with Alaska be discontinued.

Commission representatives will be present at the Subcommittee's meeting on Wednesday, November 24, 1999 to answer any questions that Subcommittee members may have.

HESS
HEALTH +
SOCIAL
SERVICES

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

**SUBCOMMITTEE REPORT
ON THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

NOVEMBER 24, 1999

**Subcommittee Members: Kathy Andress, Co-Chair; Mike Taurianan, Co-Chair;
Mark Andrews, Lynn Caswell, Laraine Derr, Barry Eldridge, Paul Foutz,
Rosemary Hagevig, Michael Harper, Wes Keller, Richard Kibbey, Clyde Lorenz,
Marie Majewske, David Maltman, Rynniva Moss, Gloria O'Neil, Mike Price,
Sarah Short, Scott Trafford Calder, Sylvia Villamides, Vincent Vitale**

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
SUBCOMMITTEE REPORT**

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COMMISSION ON PRIVATIZATION

Subcommittee on the Department of Health & Social Services

November 24, 1999

Senator Ward and Representative Cowdery:
Privatization Commission Members:

The task of the Subcommittee on the Department of Health & Social Services was daunting - both huge and complex - and this report represents our concerted effort under the constraints of time, resources, communications, and personal commitments that necessarily limited participation. The amount of data and information available from the Department, the Internet, other states, private organizations, literature, and personal experience is virtually limitless and was barely tapped. In spite of these limitations, subcommittee members invested a great deal of time and energy to identify several areas of improvement or potential benefit that we trust will be of use to the Commission and the Legislature. Our work benefitted from subcommittee members' broad spectrum of experience, backgrounds and philosophies.

The Subcommittee deliberations generated the following premises.

1. Poor Alaskans are generally able to, and do, provide for their own basic needs.
2. People in general, and Alaskans in particular, are willing and able to help others in need. They can and do step in to help when needs arise.
3. A myriad of private organizations - churches, charities, fraternal organizations, etc. are involved in helping those who for one reason or another are unable to secure basic necessities.
4. The State improperly competes with private organizations for funds and "clients".
5. The State sometimes has improperly stepped in to try to right "wrongs".
6. The State should not be involved in any area that is being reasonably served by private endeavor.
7. State involvement should be a last resort and certainly not the first source of care.

Significant concerns which this subcommittee has not had time to adequately research and address, and which might alter or add to our recommendations, include:

1. What percentage of DHSS funds is actually delivered to individuals/families? What percentage is overhead/administration?
2. What State services:
 - meet an essential need that otherwise would not be met,
 - enable or encourage people to leave the system and become self-supporting?
3. What State services:
 - encourage people to stay in the welfare system,
 - promote single parent families, teen pregnancies, etc.,
 - go to those not really in need (fraud, lazy, double dipping),
 - are used for non-essentials or allows other resources to be used for tobacco, alcohol, drugs, or other irresponsible behavior?

We offer the following "PRIVATIZATION HIERARCHY" where the most complete privatization is given the highest rank and the least privatization is given the lowest rank.

- 4 private, no longer any state involvement
- 3 State competitive contract with private organization
- 2 State contract with quasi-public/private agency
- 1 State contract with local or federal government
- 0 State performs or contracts with other state agency
- 1 State takes over from private sector

However, we did not have time to research or rank various DHSS activities according to the foregoing .

Department representatives, Janet Clark and Elmer Lindstrom, were particularly helpful, and were good-natured and very professional during our sometimes-pointed and often-times-stumbling deliberations. The time and efforts of all subcommittee members is very much appreciated.

We are available to answer questions you may have concerning this draft report. Considerable information is available as backup to the recommendations presented. Thank you for this opportunity to participate in the privatization process.

Sincerely,

Mike Tauriainen, Co-Chairman Kathy Andress, Co-Chairman

Report for the Privatization Task Force
December 8, 1999

- I. Department of Health and Social Services**
- II. List of BRU / Component – Appendix A.**
- III. FY2000 Authorized Budget by Funding Sources**

Federal Receipts	481,750.5
General Fund Match	159,114.2
General Fund	140,474.6
General Fund / Program Receipts	4,468.7
Interagency Receipts	53,021.5
Alcohol & Drug	2.0
General Fund / Mental Health	105,280.8
Title 20 (Federal)	4,474.5
PFD Fund	18,688.9
CIP Receipts	865.6
MHTAAR	4,156.7
Child Trust Earnings	345.7
Statutory Designated Receipts	4,531.1
Tobacco Settlement Fund	29,337.5
Total Funding	1,006,512.3

- V. Constitution and Statutory**
- Constitutional - Public Welfare, Public Health**
- Statutory Authority**

Program	Statute	Description
Medicaid	AS 47.07.010-080	It is declared as a matter of public concern that the needy persons of this state receive uniform and high quality medical care, regardless of race, age, national origin, or economic standing. Accordingly, this chapter authorizes the Department of Health and Social Services to apply for participation in the national medical assistance program as provided for under 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act).

Report for the Privatization Task Force
December 8, 1999

Program	Statute	Description
Chronic Acute Medical Assistance (CAMA)	AS 47.08.150	Under the provisions of this section, the Department of Health and Social Services may pay providers of medical care for services that are provided to needy persons suffering from a chronic or acute medical condition who qualify for assistance under AS 47.25.120 and are not eligible for the medical assistance program under AS 47.07.
Alaska Temporary Assistance Program (ATAP)	AS 47.27.005	The Temporary Assistance Program provides temporary financial assistance to eligible needy families when the parents or caretaker relatives are temporarily unemployed, currently underemployed, or facing significant barriers to gainful employment.
Child Care Services	AS 47.27.635	The Child Care Development Fund is a federal and state funded block grant which provides child care assistance on a sliding scale based on family size and income. This grant is available for families in welfare-to-work activities; families moving off of welfare due to increased earnings; and working families whose low income places them at risk of needing assistance.
Work Services	AS 47.27.005	The array of services intended to help recipients into the workforce is referred to as "Work Services". Recognizing that many welfare recipients must overcome substantial challenges in order to find employment, Alaska's welfare to work services include assistance in job readiness and job search, case management, job retention and advancement, basic education, training and transportation to work.
Adult Public Assistance (APA)	AS 47.25.430	Adult Public Assistance (APA) is a state funded program that provides cash assistance to needy aged, blind, and disabled persons who meet certain income and resource requirements.
Food Stamp Program	AS 47.25.975	The Food Stamp Program helps low-income households maintain adequate nutrition.

Report for the Privatization Task Force
December 8, 1999

Program	Statute	Description
Energy Assistance Program (EAP)	AS 47.05.010	The Energy Assistance Program (EAP) is 100 percent federally funded by the Low-Income Home Energy Assistance Program (LIPEAP) Block Grant. The program provides seasonal help with home heating costs to low-income households.
General Relief Assistance (GRA)	AS 47.25.120	Alaska's General Relief Assistance (GRA) program provides for the most basic needs of many Alaskans who haven't the personal resources to meet an emergent need and who are not eligible for assistance through other assistance programs offered by the state.
Medicaid and DPA Service Delivery	AS 47.07.010	Medicaid, an entitlement program created by the federal government, is the primary public program financing basic health and long-term care services for low-income Alaskans. The Division of Public Assistance (DPA) is responsible for determining the eligibility of individuals and families in need of Medicaid benefits.
Licensure/Practice	AS 08.65-95	Provides standards for licensure and practice of various health-related occupations.
State Management of Programs	AS 44.29.020	Establishes the Department of Health and Social Services as the Administrator of Public Health and Social Services programs including Mental Health and Developmental Disabilities Programs.
Community Mental Health Centers Act	AS 47.30.520-620	Provides the granting authority and sets standards for Community Mental Health grantees.
Hospitalization of Clients	AS 47.30.655-915	Establishes the conditions under which persons may be voluntarily or involuntarily admitted to mental health inpatient facilities.
Use of Mental Health Trust Funds	AS 47.30.056	Defines mental health beneficiaries and the services to be provided to them through the use of Mental Health Trust Funds.
Persons with Handicaps	AS 47.80.010-900	Provides the granting authority and sets standards for Community Developmental Disabilities grantees.

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Program	Statute	Description
Community Based Treatment Services	AS 47.30.475 AS 47.37	Community Based Treatment Services include emergency care, residential treatment services, outpatient services, and methadone treatment (Anchorage only).
Community Action Against Substance Abuse (CAASA) Prevention Grants	AS 47.37.045	CAASA grants provide funding for: youth assessment and referral programs for minors required to participate in alcoholism or drug education; programs and projects that the division determines are effective in preventing or treating substance abuse; and technical assistance for neighborhood based substance abuse prevention and treatment.
Medical Examiner	AS 12.65	Establishes the criteria for deaths to be investigated by the state and provides for medical examiners to perform these investigations.
Public Health	AS 18.05	Gives authority to the Department of Health and Social Services relating to the protection of the public's health.
Emergency Medical Services	AS 18.08	Provides for the establishment of an emergency medical services system.
Disease Control	AS 18.15	Provides for disease control.
Aid to Communities	AS 18.25	Provides for the state to assist non-profit hospitals and facilities in the purchase, construction, renovation or establishment of hospitals, health centers or clinics.
Vital Statistics Act	AS 18.50	Provides for the recording of the vital records for the residents and visitors of the state.
Radiological Health	AS 18.60.475-545	Provides for the monitoring of radiation sources.
Medical Care	AS 47.07	Provides for the health care of the needy.
Confidentiality	AS 09.25 AS 25.23	Establishes the confidentiality of adoption proceedings and records, and the circumstances under which such records can be made available to specified individuals.
Children in Need of Aid	AS 47.10	Subject to AS 47.10.019, the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence.

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Program	Statute	Description
Child Abuse and Neglect Reporting Law	AS 47.17	In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the department. Reports must be made when there is a reasonable cause to suspect child abuse or neglect in order to make state investigative and social services available in a wider range of cases at an earlier point in time, to make sure that investigations regarding child abuse and neglect are conducted by trained investigators, and to avoid subjecting a child to multiple interviews about the abuse or neglect.
Adoptions	AS 25.23 AS 18.50	Chapter 25 shall be liberally construed to the end that the best interests of adopted children are promoted. Due regard shall be given to the rights of all persons affected by a child's adoption.
Uniform Child Custody Jurisdiction Act	AS 25.30	Establishes the state's jurisdiction with regard to child custody proceedings.
Interstate Compact on the Placement of Children	AS 47.70	It is the purpose and policy of the states of the compact to cooperate with each other in the interstate placement of children.
Guardians of Minors	AS 13.26	The guardianship program provides permanent homes, through adoption and guardianship, for children in the custody of the Department who cannot return to their biological parents.
Youth Services - Field Probation and Youth Correctional Facilities	AS 47.12.010	Passed during the 1998 legislative session, the statute codifies the principles of restorative and balanced justice. This enabling statute recognizes that effective public safety is found in a vision where juvenile offenders have an immediate consequence, perform community service and, where possible, reconnect to their community.

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Program	Statute	Description
Financial Management	AS 37.10	Statutory responsibilities include sound financial management and revenue collection of state, federal and other funds.
Budget Section	AS 37.07	Responsible for the preparation, coordination, analysis and enactment of a budget that is organized to focus on the services provided by state agencies and on the cost of those services and that provides for implementation of policies and plans, in the succeeding budget period.
Procurement Section	AS 36.30	Defines the requirements which government agencies must adhere to in procuring goods and services for the State of Alaska.
Capital Projects	AS 37.07.062	Responsible for preparation and submission of annual capital budget requests. Once funding is obtained, responsible for competent management of capital projects and funds.
Personnel and Payroll Section	AS 39.25	It is the purpose of this statute to manage and administer all personnel administration including payroll, labor relations, safety, and personnel actions.

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VI. Agency Mission Statement

The mission of the Department of Health and Social Services is to promote and protect the health and well-being of Alaska citizens with a focus on prevention and early intervention.

OFFICE OF THE COMMISSIONER

The mission of the Office of the Commissioner is to promote and protect the well-being of every Alaskan by investing in families and communities.

DIVISION OF PUBLIC ASSISTANCE

The mission of the Division of Public Assistance is to provide basic living expenses and self-sufficiency services to Alaskans in need.

DIVISION OF MEDICAL ASSISTANCE

The mission of the Division of Medical Assistance is to maintain access to quality health care for all Alaskans and to provide health coverage for Alaskans in need.

DIVISION OF FAMILY & YOUTH SERVICES

The mission of the Division of Family and Youth Services is to

- 1) Protect children who are abused and neglected or at risk of abuse and neglect;
- 2) Protect and restore communities and victims; and (*DJJ)
- 3) Rehabilitate juvenile offenders. (*DJJ)

DIVISION OF JUVENILE JUSTICE (* New Division effective 7/1/99)

The mission of the Division of Juvenile Justice is to hold juvenile offenders accountable for their behavior, promote the safety and restoration of victims and communities, and assist offenders and their families in developing skills to prevent crime.

DIVISION OF PUBLIC HEALTH

The mission of the Division of Public Health is to preserve and promote the state's public health.

DIVISION OF ALCOHOL & DRUG ABUSE

The mission of the Division of Alcoholism and Drug Abuse is to promote the health and well-being of Alaskans by preventing and treating the abuse of alcohol, other drugs and inhalant.

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DIVISION OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES

The mission of the Division of Mental Health and Developmental Disabilities is to plan with and provide appropriate prevention, treatment, and support for consumers and their families affected by mental disorders or developmental disabilities, while maximizing their self-determination.

DIVISION OF ADMINISTRATIVE SERVICES

The mission of the Division of Administrative Services is to provide quality administrative services that supports the department's programs.

VII. Number of Employees

Privatization Task Force-Positions by Category

<i>Categories</i>	<i>Number of Positions</i>
Eligibility Technicians & Workforce Development	359
Social Workers	298
Youth Corrections (Counselors & Probation Officers)	274
Clerical	249
Nursing (Public Health & Psychiatric)	188
Health Professionals	161
Administrative Staff	160
Mental Health Specialists	143
Accounting & Budget Staff	111
Other	86
Analyst/Programmers	79
Facilities Maintenance	59
Medical Specialists	48
Research & Planning	28
Grants & Procurement	18
Total Number of Positions	2,261

FY2000 Authorized Budget-Position Count			
Full Time	Part Time	Non-Permanent	Total
2,192	57	12	2,261

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VIII. Technology Used to Perform Mission

A) Data Systems

Medical Assistance	MMIS -Medicaid Management Information System (this is run by a private firm-First Health) STARS -Service Tracking, Analysis and Reporting System-Decision Support
Public Assistance	EIS -Eligibility Information System-Determines the eligibility of individuals and families for a variety of Public Assistance programs and the eligibility for Medicaid
Mental Health and Developmental Disabilities	ARORA -Supports the management of clients receiving services from grantees DDMIS -Information system supporting the management of services provided to clients with developmental disabilities
Public Health	Vital Statistics -Registers Births, Deaths, Marriages, Adoptions RPMS -Nursing-Information Systems reporting on the Public Health Nursing services be provided to clients WIC -Women, Infants, Children EPI -Disease Reporting and Rapid Telephonic Reporting Trauma Registry EPSDT -Early Periodic Screening Diagnosis and Treatment
Family Services	PROBER -Recording and reporting Reports of Harm, Harm Investigations, Placements, Youth Supervision and Youth Corrections PROVIDER -Provider billing Subsidized Adoptions
Alcoholism and Drug Abuse	ADAMIS -Centralized recording and reporting based on data received from Private Treatment Vendors

B) Equipment

Lab Equipment, Medical Equipment - Nursing, Electronic Monitoring Equipment

C) Electronic Benefit Transfer (Food Stamp Program)

IX. List Contracts and Grants – Appendix B

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X. Existing Privatization Practices

- ✧ Harborview - Total closure and deinstitutionalization in 1998, approximately 125 State jobs eliminated, services provided by private non-profit agencies.
- ✧ Audiology - The Division of Public Health has privatized audiology services across the state. Six community-based private providers residing in Anchorage, Barrow, Homer, Kenai, and Juneau now provide services in regions previously served by three regional offices. Additionally, Bristol Bay Native Association has developed an audiology program to serve residents of Dillingham and surrounding communities. With privatization, services are available on a continual basis in communities previously served on an itinerant basis, communities never served before by State audiologists are receiving services, and the State has realized considerable cost savings.
- ✧ Medical Assistance - The Division of Medical Assistance utilizes a contractor, First Health, to process Medicaid claim payments to providers.
- ✧ Grants and Contracts to non-profits for service delivery - Grants or contracts are a regular method to deliver services in DHSS
- ✧ Community Equipment Closet - The Division of Mental Health and Developmental Disabilities has developed a program to recycle durable medical goods. The Community Equipment Closet is a collaborative project with the DMH&DD, Geneva Woods HealthCare Services, Hope Cottages, the Arc of Anchorage, Mat-Su Services and other community members. Used adaptive equipment and medical supplies are reconditioned and distributed to consumers with special health care needs by the private sector under contract. The cost of the reconditioned equipment is always less (often substantially) than the cost of new equipment. The savings in equipment and medical supply costs increase availability of resources for other individuals in need.
- ✧ Electronic Benefit Transfer - In June of 1998 the Division of Public Assistance completed statewide implementation of Electronic Benefit Transfer (EBT) system. EBT is a method of efficiently distributing public assistance benefits. With EBT, a plastic Alaska Quest debit card has replaced paper food stamps and some cash warrants. A design strength of EBT is its use of existing financial networks to support the system. EBT has improved client service, program management, and public support through increased program integrity. The Department of Health and Social Services has joined an alliance of six western states to gain better EBT pricing. Alaska has contracted with Citibank and Deluxe Electronic Payment Systems for Alaska Quest development and operation. Through the use of the Alaska Quest card, EBT has helped:

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- 1) Provide a safe, secure, and convenient way to receive food stamp and temporary assistance benefits.
 - 2) Eliminate paper food stamps and the stigma associated with redeeming them in public.
 - 3) Speed delivery of benefits by eliminating the delays for packaging and mailing coupons and warrants.
 - 4) Reduce client and food retailer fraud.
 - 5) Eliminate theft of mailed food stamps and the associated state penalty payments.
 - 6) Move welfare recipients toward greater familiarity with modern financial transactions.
 - 7) Improve the process for food retailers redeeming food stamp transactions.
 - 8) Promote other business improvements such as direct deposit of cash payments for those with bank accounts wanting this service.
- ✿ **Consolidations** - In preparation for the new laboratory facility, the Division of Public Health has consolidated the functions of the Juneau Lab, the Lab Chief's Office, and the Anchorage Lab into one Anchorage location. The sections of Community Health and Emergency Medical Services were combined and consolidated from three different locations into one Juneau location.
- ✿ The Division of Public Health Nursing section was consolidated from five regions into four.
- ✿ **Medicaid Cost Containment** - Division of Medical Assistance, in partnership with Division of Mental Health and Developmental Disabilities, has developed new regulations for community mental health services that limit the amount scope and duration of services. A study is underway to recommend a model for managed care in Alaska. A comprehensive program of Quality Assurance has been instituted which will help to assure that the quality of service is not degraded as cost containment efforts move forward.
- ✿ **Computer and Information Technology** - The Department of Health and Social Services web site was established and now provides the public with information about the department as well as access to forms electronically (e.g., Energy Assistance Application Form and Vital Statistics Information request forms). Travel authorizations are prepared, distributed and authorized electronically. The Department is partnering with other agencies to automate timesheet processing. A Computerized Maintenance Management System (CMMS) has been established, which assures timely repair and maintenance, maximizing the return on maintenance dollars. The Department has developed and is in the initial stages of implementing a Data Warehouse. The Data Warehouse is a Decision Support System, which

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integrates data from the Department's administrative and program operation data systems.

- **Roof Audits** - The Facilities and Planning Section developed in-house expertise in diagnosing aging condition and deficiencies in building roofs, which will result in reducing the cost of hiring outside contractors to conduct the same analysis. Performing the analysis in-house will result in savings that can be applied toward roof repairs at a later date.



RECOMMENDATIONS

The problems with DFYS aren't going to be "fixed" by our recommendations, since the problems are systemic and we haven't had sufficient time, nor do we believe we are a broad and knowledgeable enough group. Our recommendations are general and do not tie neatly with BRU's. The primary reason for this non-compliance is because our recommendations would affect virtually all of the BRU's and suggest an overhaul of the structure. The addendum following contains research and rationale for the respective recommendations not just for privatization but for ways to increase overall quality with minimal spending. Some specific pages are referenced in the recommendations only to supply support for recommendations. We find areas where privatization may not be the answer but rather elimination of services and responsibilities or areas of services being transferred to other divisions for improved quality. This conclusion is drawn from the data provided by the office of John Cowdery, our own requests, independent research and information directly from the related agencies.

Recommendation #1: Fully fund and reinstate the Citizen's Review Panel for Permanency Planning Act (1990) in accordance with AS 47.10.400 etseq chapter 117 (SLA 1990). Ensure that the department fully supports this action through legislation if necessary. Ensure equal state and community representation.

sub vote 11 yes 0 no 1 abstaining

Recommendation #2: Create an independent oversight board for DFYS and Juvenile Justice (functionally similar to the State Board of Education) The board would be tasked with the following primary oversight responsibilities;

- (1) review of policies and procedures of DFYS,**
- (2) case review to ensure quality control.**
- (3) Set up a statewide task force to study practices of other states (what successes and failures other states have experienced see page 12) so that we can develop a model for this state.**
- (4) be responsible for foster home licensing operations to include training, hiring, discipline, oversight.**
- (5) adoption procedures of relinquished children or assist DHHS in establishing a framework for the privatization of the adoption of relinquished children**
- (6) review reports of harm and grievances.**

We need to understand that any system involving the often highly subjective issue of caring for and protecting children will create situations that are not easily seen as black and white. There will be mistakes on both sides. How DFYS handles the very trauma that their intervention creates regardless of validity of a report is critical.

The perspective of a board would tend to be more global and would include the private sector perspective that is needed. Because the agency prospers financially as the caseload increases, the unintentional result may now be for the agencies to enable people to become chronically or more dependent on government- as opposed to standing folks on their feet. This is not to suggest that all caseworkers are greedy or motivated by self-interest, but that they cannot, by job description, represent the interests of the taxpayers. A case worker may be too close or compassionately involved with the person/s involved to wean them effectively from State support at such a time when it is safe and beneficial to everyone. Perspectives of individual caseworkers contribute largely to miscommunications and actions that are not in the best interest of the children in care of the state.

sub vote 11 yes, 0 no 1 abstaining

Recommendation#3: Support the concept of "Single Point of Entry" for services to children and families through a private agency or non-profit designated for such a point of contact.

This single point of entry will allow those seeking help to have adequate referrals to appropriate community resources while assisting those families at risk whose current reports of harm are going uninvestigated. (This was discussed by the Children's Cabinet Report 1998)

sub vote 7 yes, 2 no 1 abstaining

Recommendation #4: Support DHSS in contracting some of API services to private hospitals and practitioners.

(information can be found in the 24 page handout to the sub-committee on September 14, 99)

sub vote 8 yes, 0 no 2 abstaining

Recommendation #5: Amend the Administrative Procedures Act and allow for external monitoring and implementation of regulations by the legislative branch.

Rational: There are three types of law in Alaska: (1) Statute voted on and passed by the legislature; (2) Regulations imposed by the administrative branch of government to carry out the requirements of statutes; (3) Precedent of the Courts

We are allowing the government employees who carry out statutes to write their own laws through the Administrative Procedures Act with no comprehensive review. We suggest either repealing the Administrative Procedures Act so that all laws are enacted by the elected branch of government, or a system by which the legislature is required to review and approve any regulations imposed (perhaps another standing legislative committee).

sub vote 7 yes, 2 no 1 abstaining

Recommendation #6: Increase the ability of tribal organizations to contract with DFYS by providing child welfare services and assist in educating caseworkers about cultural differences.

They could do home studies, assist in placements, and monitor placement of ICWA children and Interstate Compact children who are native. This would free DFYS staff of perhaps several thousand cases per year while including native cultural expertise that is needed to understand the complex issues that encompass ICWA cases. There is an over representation of Alaska Native children involved in the DFYS system opposed to the percentage of the general population. Protect the ethical standards by having native tribal entities work with non- native counsels (to protect against non-action or allegations of non-action in the instances of close tribal or relative connections¹).

sub vote 6 yes, 2 no

Recommendation #7: *Pass a law that would entitle the state to establish a lien to recoup money spent in Medicaid payments if an insurance company or other third party makes a subsequent settlement for the same expenses.*

Federal statutes allow for social security to recoup medical expenses and the state should have a reciprocal law for state medical payments. This could result in a reduction of medical expenses or an increase in revenues through reimbursements.

sub vote 9 yes, 0 no

Recommendation #8: *Considerations should be given to extending all contracts with providers to multi-year or continuing contracts or grants, with changes handled as minor amendments thereto.*

This is useful where the consumer or group of consumers have a chronic condition that continues year after year, with only minor changes. This will save much preparation and review time annually which is not an added value, rather it is needless waste.

sub vote 7 yes, 0 no

Recommendation #9: *We recommend giving consideration to entering annual approved budgets of contracted agencies, receiving electronic billings periodically charging against those budgets and electronically sending payments to contracted agencies.*

Billings would be reviewed on a sample basis after this process and any adjustments made. This would decrease paperwork and administrative waste, speed up processing time, eliminate interest expense payments by the state.

sub vote 7 yes, 0 no

Recommendation #10: *Cut the budget of the Alaska Mental Health Trust Authority in half or more, as a non value-added function of the state government.*

¹ Browers vs. State of Alaska was a case where upon a relative later found to be know as a molester was protected due to relationship with the town mayor.

The land assets are managed by the Dept. of Natural Resources, and the monetary assets are managed by the Permanent Fund. The only function seems to be setting policy and increasingly trying to set overall appropriations by the state. Spending over half a million dollars for this function is not an added value.

sub vote 4 yes, 2 no

Recommendation #11: *We recommend beginning the process now to work with private sector entities regarding the redesign and new delivery of services at API.*

This is to establish a concrete budget proposal that will be ready for legislative consideration, and will include cost savings.

Sub-sub vote 7 yes, 0 no

Recommendation #12: Consider efficiency that could be gained by eliminating duplicated services through possible privatization.

There's a new laboratory built in Anchorage. This facility can accommodate the staff and services that are needed to perform the lab test that are prepared in Fairbanks. Eliminating the lab in Fairbanks and maintaining just the one in Anchorage will save the State over \$250 thousand dollars per year.

sub vote 5 yes, 4 no *It is noted that Sarah Short changed her vote to "yes" after the meeting.

We would have liked to suggest review of the following revision of this recommendation. The Privatization committee should look at ways to improve the working and cost efficiency of the health labs both in Anchorage and Fairbanks, which are now performing different test at each site. Please note on the attached addendum contains supporting research done by Silvia Villamides and Kathy Andress.)

Recommendation #13: *We recommend that your department looks into finding ways to incorporate some programs that are offered, with the intent of making them into a loan programs.*

sub vote 8 yes, 2 no

Recommendation #14: *Implement a state statute giving medical providers the flexibility to decide whether or not to pursue collection of questionable debts,* *medicaid only*

Under the current system, medical facilities providing medical assistance to a Medicaid patient are required to collect the recipient's co-pay portion of the medical bill. The end result many times is that the medical facilities are losing money by being required to pursue pennies with dollars.

sub vote 11 yes, 0 no

Recommendation #15: Make the medical assistance program into a loan program for people who are physically able to support themselves and their family, but have medical needs and to not have the immediate resources to pay for that need.

This could enable the State of Alaska to turn back federal dollars with unfunded mandates attached. This would eliminate such requirements placed on doctors as the stipulation that they can not charge less to any patient than what a Medicaid patient pays. The elimination of that requirement would enable doctors to perform medical services to certain patients at no cost.

sub vote 7 yes, 4 no

Recommendation #16: All medical services provided by Health and Social Services that are based on income level tests are provided to applicants who are 100% of poverty level.

The state spends as much money on feeding, clothing, and housing Alaskans on public assistance as we do on education. Poverty is "the condition or quality of being poor."² Programs administered by Health & Social Services should be available for the poor, not the almost poor or the person who has twice as much as the poor. Poverty programs should be available to people who live in poverty, including medical assistance.

sub vote 6 yes, 3 no 2 abstaining

Recommendation #17: We recommend that the legislature conduct a legislative audit on the Medicaid Rate Advisory Commission.

The legislature needs to examine if costly audits being required of medical facilities are helpful or are being conducted to be punitive with a "gotcha" motive of trying to catch medical facilities doing something wrong.

sub vote 9 yes, no 2 abstaining

Recommendation # 18: Pass legislation similar to Rep. Jeannette James proposed that would require the legislature to review and approve proposed regulations before they are put into effect.

Rep. James currently does not have legislation to accomplish this but she did have some several years ago. Regulations are too burdensome on the medical industry and legislative review to reduce that burden.

sub vote 11 yes, 0 no

Recommendation #19: Make the ATAP program into a loan program for all public assistance for people who are physically able to support themselves and their family.

² Webster's New World Dictionary of the American Language; Second College Edition; 1982; Simon & Schuster; New York; Page 1116

The state spends as much money on feeding, clothing, and housing Alaskans on public assistance as we do on education. It is understandable that sometimes people get down on there luck. In those times, the State can provide these people with a low interest loan for up to the 60-month limit already in affect. If a person were not physically able to provide for their family, they would qualify for disability, workers compensation, or SSI.

The program would be similar to the Small Business Administration Disaster Loan Program. This program provides low interest (3%) loans to people whose homes or businesses have suffered structural damage from floods, earthquakes, etc. The loan is set up on a thirty-year repayment schedule so that the payments are smaller and do not place too big of a burden on the borrower. Borrowing the money would allow for people to provide for their family with dignity, a factor that is missing in the current system.

sub vote 7 yes 3 no

Recommendation # 20: Eliminate the hold harmless programs for the permanent fund dividend and Alaska Longevity Bonus payments.

sub vote 7 yes 3 no

Recommendation #21: Consolidate the childcare assistance and Head Start programs currently in the Department of Education into Division of Public Assistance Welfare-to-Work Services and contract regionally for administration of the consolidated program.

sub vote 9 yes 1 no

Recommendation #22: Scale down the Adult Public Assistance to include only an Interim Assistance Program.

Assistance would only be provided to Supplemental Security Income (SSI) applicants who have a medical emergency, but who have not received a determination from Social Secutiry. The assistance is terminated as soon as the applicant has been approved or disapproved for SSI benefits.

sub vote 7 yes 3 no

Recommendation #23: Eliminate the General Relief Assistance Program with the exception of the indigent burial component.

This recommendation would eliminate the current process of ATAP competing with the private sector for the delivery of these services.

sub vote 10 yes 0 no

Recommendation #24: Eliminate all exemptions to the 60 month limitation for receiving ATAP.

The purpose of welfare reform was to get people off the welfare rolls and on a road to a productive life. With decentralization of work programs and the contracting of these services

to regional contractors, the program should be working better. Medical assistance is providing in these rural areas by the Indian Health Service. Water and sewer projects are being funded by EPA and Village Safe Water. Housing is being funded by HUD and Alaska Housing Finance Corporation. . In rural areas where the unemployment is high, there should be more of an emphasis on the part of the regional profit-making corporations to develop a job market from their land holdings and resource base.

sub vote 6 yes 4 no



Department of Health and Social Services responses to Privatization Task Force Subcommittee Recommendations.

1. Fully fund and reinstate the Foster Care Review Board with more specific criteria to reunify families as well as incentive funding to do so (this will offer balance in retrospect to the federal funding offered to substantiate reports of harm and adopt children out). Ensure that the Dept. fully supports and transfers the funding. Have them report to a department not connected to the division of Family and Youth Services. Possibly add the review of juvenile justice cases and mental health to the areas of responsibility for this review agency.

The first part of this recommendation is probably meant for the Legislature. The Department has, under this administration, fully supported the Foster Care Review Board. We did not support the elimination of the Board.

2. Create a board (functionally similar to the State Board of Education) for all three departments (DFYS, JJ, and MH). These boards would be tasked with two primary responsibilities: 1) Intake, and 2) case review to ensure quality control.

The Alaska Mental Health Board (AMHB) exists currently, and, among other responsibilities, is statutorily responsible to monitor the quality of the mental health services provided in Alaska.

The Board has established a Program Evaluation and Review Committee (PERC) to specifically evaluate mental health programs and report findings to the whole Board.

In partnership with the Division of Medical Assistance, the Division of Mental Health and Developmental Disabilities (DMHDD) has developed through a private contractor an Integrated Quality Assurance review process to determine medical necessity for services and the adequacy of treatment plans and the resultant interventions.

The DMHDD has reached an agreement with PERC to include PERC in the QA process, to enable PERC to directly monitor samples of client care throughout the state.

The mental health system serves over 20,000 persons per year, with over 7,000 being served long-term.

The monitoring of samples of clients appears to be the most practical way for the AMHB to monitor quality of care. There is no practical way to review 20,000 cases per year, most of which are seen one or two times for brief crisis intervention.

The current procedure seems to essentially meet the intent of the recommendation, and the process is continuing to evolve toward even more effective oversight.

The Division of Juvenile Justice is accredited by the American Correctional Association (ACA), a national correctional organization. The accreditation process requires a thorough and rigorous review of several hundred quality standards that represent best practice in the juvenile justice field. There are separate accreditation standards for juvenile facilities (both detention and treatment) and

for field probation services. The facility accreditation process ensures that the Division utilizes good management procedures and provides appropriate care and treatment of juveniles in facilities. The field probation accreditation reviews the entire juvenile probation case process, beginning at intake and including case management contact standards through the court process. Alaska recently completed its reaccreditation review and preliminary findings from ACA are that all of our juvenile facilities and our probation offices have passed the audit process with a score of at least 95%.

DJJ has an advisory board mandated by Section 223(a)(3) of the federal Juvenile Justice and Delinquency Prevention (JJDP) Act. This board, known as the Alaska Juvenile Justice Advisory Committee (AJJAC), is comprised of Alaskans who have experience with youth and juvenile justice issues and includes parents, youth, teachers, social service workers and court and corrections employees. Primary responsibilities of the AJJAC include assisting the State in coming into compliance with the core requirements of the JJDP Act, participation in the development of the state's juvenile justice plan, review and approval of community-based grants funded through OJJDP and advising the Governor and the Division regarding improvements to the juvenile justice system. The advisory group receives designated federal funds from the JJDP appropriation to fulfill its duties in the amount of 5% of the total federal Formula grant.

DJJ is actively involved with the community on a number of levels. McLaughlin Youth Center has an active citizen advisory board and Fairbanks Youth Facility, Nome Youth Facility, Bethel Youth Facility and Johnson Youth Center are in the process of developing one. The boards will meet regularly with facility staff to provide citizen input and oversight into facility operations. Juvenile probation is in the process of developing citizen review boards as well. Additionally, field probation services is actively involved in community policing efforts, local village and tribal court initiatives and a range of other local projects and processes designed to encourage interaction between DJJ and the community.

There was a statewide Citizen Foster Care Review board until this year when its funding was eliminated. This board reported to the Legislature annually regarding the children in custody. The Department does not oppose a statewide board, but will need funding to support the board's travel, reviews, support staff, and publications.

3. Support the Governor's concept of "Single Point of Entry" for services to children and families through implementing a private agency or non-profit designated for such a point of contact.

This is on-going as part of the API 2000 project. The target population is people experiencing mental health and/or substance abuse crisis with special emphasis on people with co-occurring disorders. As noted above, the applications for this service (for Anchorage) are under way with expected start date of April 1, 2000.

NOTE: This recommendation seems to imply that Single Point of Entry pertains broadly to children and families and is not limited to mental health and substance abuse issues. If they are talking about a single point of entry for child protection issues or family problems not of a mental health/substance abuse nature, then not sure how to respond.

4. Support DHSS in contracting some of API services to private hospitals and practitioners.

This is ongoing as part of the API 2000 project for all community services (e.g. Single Point of Entry, DET, Enhance Crisis Respite and Enhanced Detox). The SPE application is currently under review and other service scopes of work are being negotiated to increase their current level of care.

5. Repeal the administrative law act and allow for external monitoring and implementation of regulations by a department by a department outside of the respective branch to which the administrative regulation applies.

The Administrative Adjudication Act (AS 44.62.330-630) applies to more than just the Department of Health and Social Services. The Department cannot respond for other agencies and entities effected by this recommendation.

The Department's experience with the Administrative Adjudication Act involves the appointment of a Hearing Officer who is outside of the Department. AS 44.62.350 states that the Governor "shall assign a qualified, unbiased, and impartial hearing officer..." The Department does not view this recommendation as needed at this time.

6. Increase the ability of Native entities to become child placement agencies in conjunction with other non-Native counsel reviews (this will decrease the chances of related family members or closely knit tribal neighbors from being accused of non-action, Reference: Browers vs. State of Alaska, a Barrow case where an abuser was protected due to relationship with mayor). They could do home studies, placements, and monitor placement of ICWA children and Interstate Compact children who are Native. This would free DFYS staff of perhaps several thousand cases per year and save money.

The Department has worked with many Tribes and Tribal organizations to increase their capacity and infrastructure to perform child protection functions. Many Tribes and Tribal organizations have ICWA workers, who work closely with DFYS workers and who DFYS workers rely on. There are ICWA workers in villages where DFYS workers are not present and where travel may be difficult, so ICWA workers in many instances take the lead in their village for child protection.

Some Tribes take children into Tribal custody without state intervention. Additionally, more Tribes are developing their own courts.

Two Tribes, the Native Village of Barrow and the Native Village of Chevak, received Exclusive Jurisdiction under the Indian Child Welfare Act (25 U.S.C.S. 1918) The Federal Department of Interior granted both Tribes' sole jurisdiction over matters concerning their Tribal children. In these two situations, the state has no authority to intervene. Currently, the Department is working on Tribal-State agreements with both Tribes.

The Department supports Tribal involvement in the placement and care of Native children. One of the major barriers has been the lack of funding available to both Tribes and the Department.

7. Pass a law that would entitle the state to establish a lien to recoup money spent in Medicaid payments if an insurance company or other third part makes a subsequent settlement for the same expenses.

This is a new recommendation to which the Department has not had an opportunity to respond.

8. Consideration should be given to extending all contracts with providers to multi-year or continuing contracts, with changes handled as minor amendments thereto. This is especially useful where a consumer or group of consumers have a chronic condition that continues year after year, with only minor changes. This will save much preparation and review time annually which is not value added.

DHSS currently establishes multi-year contracts and renews them annually via contract amendments.

Grants for Health and Social Services are solicited and awarded on a multi-year basis. Currently a two-year cycle is standard throughout the department. Grants are extended by a modified agreement through the second year that requires minimal paperwork from the grantee. This usually involves providing the new annual budget and any needed adjustments to the scope of work. Extending agreements beyond that two-year cycle is sometimes done under the authority of 7 AAC 78.095, waiving the competitive process for grants for which there is a single potential grantee with the expertise or capability to provide the necessary services.

Extending competitively awarded grants beyond the two-year cycle would not necessarily meet the needs of the clients served by the programs. Requiring proposals in response to a competitive RFP on a regular cycle provides the department and potential grantees the opportunity to review program policy and services and make adjustments necessary for the successful delivery of those services to the public. It also provides fair access to funds for agencies interested in providing services through state programs.

9. Consideration should be given to entering annual approved budgets of contracted agencies, receiving electronic billings periodically charging against those budgets and electronically sending payments to contracted agencies. Billings would be reviewed on a sample basis after this process and any adjustments made. This would save a mountain of paperwork, speed up the process by weeks, eliminate interest expense payments by the State and save considerable administrative costs.

The Department of Administration, Division of Finance, is still planning for an electronic data interface (EDI) pilot project for the disbursement of their grants to municipalities. Participation in the pilot project has been extended to interested departments. Three specific state grantees, City of Juneau, City of Anchorage, and the Fairbanks North Star Borough are intended to be in the pilot project. The Department of Health and Social Services intends to participate in this pilot project as soon as the Division of Finance gives us the approval to proceed.

10. Cut the budget of the Alaska Mental Health Trust Authority in half or more, as a non value-added function of state government.

The Alaska Mental Health Trust Authority resides in the Department of Revenue; they should be allowed to respond directly to this recommendation.

11. State should start the process now to work with private sector entities re the redesign and new delivery of services at API, so that a concrete budget proposal is ready for consideration by the legislature in the spring of 2000, including cost savings.

The Community Mental Health/API 2000 Project is well underway in developing new and enhancing existing community-based services (private, non-profit) to support the reduction of API by 25 beds. As was true last year, this year a five-year project budget employing federal grant funds for a three-year transition period is providing the basis for DHSS budget proposals to support this effort.

The Department of Health and Social Services, working with the Alaska Mental Health Trust Authority and the Alaska Mental Health Board, is developing concrete budget proposals that will compare the cost and number of people served by continuing the system as is, versus implementing API 2000. These cost comparisons will be available to the 2000 Alaska Legislature.

12. There's a new laboratory built in Anchorage. This facility can accommodate the staff and services that are needed to perform the lab test that are prepared in Fairbanks. Eliminating the lab in Fairbanks and maintaining just the one in Anchorage will save the State \$_____ per year.

The new laboratory in Anchorage will not be completed until late in calendar year 2000. Until that time there is no space for these tests to be done in Anchorage. After the new lab opens all of the personnel and operation costs related to the tests being done in Fairbanks would remain, whether the tests are performed in Fairbanks or Anchorage. Any savings that might be gained by closing the Fairbanks Lab (e.g. lease costs) would be a very small portion of the overall costs related to those services, and would likely be exceeded by additional transportation costs. There would also be additional costs in terms of less timely service.

13. In making the Medical Assistance Program into a loan program, we recommend that your department looks into finding ways to incorporate some of the programs that you are offering that requires State and Federal fund match. Example: Family Planning, MCH Evaluations and consultations.

Many of the programs delivered by the Division, such as the ones mentioned, are currently offered to the public with sliding fee schedules that require individuals to pay based on their ability to do so. Since many of these are preventive type services, (i.e. family planning services assist low income women in preventing unplanned pregnancies) turning them into loan programs which imply a long term financial obligation will likely deter the individuals who most need the services from obtaining them. The long term costs to both the individuals and society will likely be far greater than any savings gained from loan paybacks for such services.

14. Implement a statute giving medical facilities the flexibility to decide whether or not to pursue collection of questionable debts.

The Alaska statute requires that certain Medicaid recipient's be liable to pay cost-sharing charges for medical facility services and that the provider collect the allowable charge. (AS 47.07.042. Recipient cost-sharing) Federal law is permissive on whether the provider must collect any cost-sharing charge, however, the provider may not deny services because a recipient is unable to pay the charge. (Soc. Sec. Act, Sec.1916(e)) A change to the Alaska Statutes to provide medical facilities flexibility to decide whether or not to pursue collection of cost-sharing amounts is a legislative choice. Giving medical facility providers the option would allow them to collect cost-sharing from those few who may have ability to pay and yet forgive those who do not.

15. Make the medical assistance program into a loan program for people who are physically able to support themselves and their family, but have medical needs and to [do] not have the immediate resources to pay for that need.

This is not feasible under federal or State law. Every state has a Medicaid program, and no state administers it as a loan program.

Medicaid is a program based in federal law and, while the states have considerable latitude in determining amount, duration, and scope of the program, conversion to a loan program would require new congressional law or application for and approval for a waiver from the Health Care Financing Administration (HCFA). HCFA has never given waiver to a state to convert its Medicaid program to a loan program.

For the State to attempt to covert to a loan program without federal permission would jeopardize \$332,000 million in federal Medicaid funds and put health coverage at risk for 105,000 Alaskans.

Conversion to a loan program necessitates new costs for management of a loan program and loan portfolio; it would not reduce the administrative costs for the current Medicaid program. Recipient eligibility would still have to be determined, providers would still submit claims, and yet all the functions of a loan program would be added (loan eligibility, requirements for filing and recording loan papers, determination of repayment schedules, tracking loan payments, debt collection, etc.) The capital and ongoing costs of managing the loan program would be comparable to other state loan programs, however, program receipts from debt collection would be low.

It seems recommendation #1 is somewhat in conflict with this recommendation. Currently, there are cost sharing as co-payments required of individuals using Medicaid. A loan program would require aggressive cost recovery. Recommendation #1 seems to indicate a desire to not pursue collections.

The department now pursues estate recovery for those persons who have assets, are over 55 years, and have received nursing home or similar institutional services. This new effort is mandated by federal law and is authorized by state law (AS 47.07.055)

16. All services provided by Health and Social Services are [to] be provided [only] to applicants who are 100% of poverty level.

This change would have a large effect on four distinct groups in Alaska covered under Medicaid – Low-income elderly, low-income disabled, pregnant women and newborns, and children and would be in violation of federal law. Federal law requires that pregnant women and newborns be covered to at least 133% of poverty.

The impact depends on how the change in income allowance would impact each person. A breakdown of information on these groups is given below according to eligibility category.

Eligibility Category	People Served Under Current Limits	<i>People Who Would Lose Medical Coverage</i>
Aged Alaskans	6,143	<i>Not available</i>
Nursing Home Residents	587	236
Older Alaskans Wavier	661	116
Children	64,218	Over 14,000
Pregnant Women	5,270	Over 1,400
Adults Disabled and DD Waivers	735	59
Disabled Alaskans	9,139	<i>Not available</i>

17. We recommend that the legislature conduct a legislative audit on the Medicaid Rate Advisory Commission.

The Medicaid program pays approximately \$150 million in public money to participating facilities annually. The department and the Legislature are attempting to pay close attention to the cost of these services. By paying the approximate cost of these services, and to only pay our fair share of these costs.

One of the methods the state uses to make sure we are consistently paying close to the cost of services is by performing facility audits. These facility audits are attempting to ensure the prudent use of resources and are not intended to be punitive to healthcare facilities. An audit of the auditing unit's work seems redundant.

(Subsequent clarification)

During the Tuesday October 26th meeting of the Privatization Task Force members expressed confusion regarding Recommendation # 4. Recommendation #4 calls for a legislative audit of the Medicaid Rate Advisory Commission.

There seemed to be two basic areas of confusion. First, the Task Force's initial description of the recommendation identified medical facilities as the target of punitive audits. It was this recommendation and description to which the Department responded. Secondly, the Task Force's Response to the Department's Comments identified a \$500,000 audit being conducted for the Division. The audit referenced was a competitively procured contract for the auditing of non-facility medical providers. One of the Task Force members expressed ethical concerns of an audit that was issued with a goal of recovering a \$1,000,000 target expenditure amount from medical providers.

Audits of non-facility providers were initiated at Legislative direction with a \$4,300,000 cut and specific intent language written into the Medical Assistance section of the budget appropriations act for FY98. The Legislature saw non-facility provider auditing as an effective cost avoidance/cost containment activity. Shortly after the end of the Legislative session the Division began the competitive procurement process the contract for these professional services. A contract was signed and the contractor began work on October 27, 1997. The contracted dollar amount was an annual maximum of \$477,275 and included 2 one-year extensions. The current contract expires June 30, 2000.

The Request For Proposal, Scope of Work, 5.01 Introduction, Purpose and Goals, identified 10 goals for this contract. Among them was a goal to recover \$1,000,000 of overpayments made by the Medicaid program to medical providers. Problems with that language in the contract were pointed out by the Medical Association after the contractor been working on the contract for 4-5 months. The Department amended the contract with the beginning of FY99 (July 1998) extension by substituting the following language for that goal: "(8) Reducing Medicaid program payments through cost avoidance; and as proposed by the contractor in their proposal to the State of Alaska for Desk and Onsite Reviews". I want to emphasize that during the life of this contract the contractor has never been held to a recovery amount as a target, goal or otherwise.

The cost avoidance purpose for this contract has proven an effective tool in reducing the state's Medicaid program expenditures for Physician Services. This cost avoidance has translated directly into a reduction in the amount of state general fund expenditures necessary to support Alaska's Medicaid program. During the period of this contract, expenditures for physician services have decreased and remained flat, a trend we expect to continue this fiscal year as well. The following table displays the state's total Medicaid expenditures for Physician Services FY95- FY99, expressed in thousands.

<u>FY95</u>	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>
44,271.5	45,267.0	45,098.5	39,400.0	39,828.3

18. Pass legislation similar to Rep. Jeannette James proposed that would require the legislature to review and approve proposed regulations before they are put into effect.

If legislative review and approval were required of our regulations, the division would have no mechanism to act when the legislature is not in session as the court has ruled that legislative action

cannot be delegated to a committee. The state could also face significant financial penalties if it were unable to adopt regulations required under federal rules.

Cost containment is a major purpose of the regulations. Review and approval by the legislature would slow the department's ability to address new opportunities for cost containment through regulations.

19. Make the ATAP program into a loan program for all public assistance for people who are physically able to support themselves and their family.

Response:

- The Alaska Temporary Assistance Program (ATAP) currently receives a portion of its funding from the federal government. This "block grant" funding is authorized by PL 104-193, Temporary Assistance to Needy Families (TANF). Converting the Alaska Temporary Assistance Program into a loan program would put Alaska out of compliance with the provisions of TANF. The state would no longer be eligible to receive TANF block grant funds resulting in a projected loss of \$69.5 million in federal dollars for FY 2001.
- The state would also become ineligible to receive federal Department of Labor "Welfare to Work" grants, at a loss of \$2.7 to \$2.9 per year.

20. Eliminate the hold harmless programs for the Permanent Fund Dividend and Alaska Longevity Bonus payments.

Response:

- The PFD hold harmless provisions found in state law have had the effect of helping recipients of Temporary Assistance to become more, not less self-sufficient. Families living at only 66% of the poverty level have the once a year opportunity to purchase the goods or services they need to reduce their reliance on state assistance.
- Without the hold harmless program, many families would be forced to impoverish themselves in order to receive the same benefits that all Alaskans enjoy.

21. Consolidate the childcare assistance and Head Start programs currently in the Department of Education into Division of Public Assistance Welfare-to-Work Services and contract regionally for administration of the consolidated program.

Response:

- The Legislature addressed this issue during the last legislative session when they consolidated childcare programs into the Department of Education and Early Development. This legislative initiative was designed to avoid duplication and save administrative resources.

22. Scale down the Adult Public Assistance to include only an Interim Assistance Program. Assistance would only be provided to Supplemental Security Income (SSI) applicants who have a medical emergency, but who have not received a determination from Social Security. The assistance is terminated as soon as the applicant has been approved or disapproved for SSI benefits.

- To be eligible for the Adult Public Assistance Program (APA) a low-income individual must be aged, blind, or diagnosed by a physician as permanently disabled, chronically ill, or terminally ill. The applicant must also undergo a rigorous process to determine that he or she is incapable of self-support through gainful employment. APA was created by the legislature not to respond to short-term medical emergencies, but to meet the long-term needs of the most needy Alaskans.
- The maximum SSI benefit an individual may receive is \$500. Without the income supplement provided by APA, many aged or disabled people would not be able to live independently in the community. Many would be forced into high-cost institutions at state expense. Others could become homeless.

Participation in the APA program also provides access to Medicaid for many aged and disabled Alaskans. The loss of medical care will jeopardize the life and health of many without alternative resources for health care. Medical costs for these individuals will be shifted to other community resources such as hospitals, clinics and private physicians.

23. Eliminate the General Relief Assistance Program

Response:

- The General Relief Program (GR) was developed as a safety net for those very low-income individuals who are not eligible for any other state or federal assistance.
- In FY 99, 75% of GR funds were spent on burial services for indigent Alaskans. Loss of GR funding will shift the cost of this service to the mortuary industry, or, require the state to begin providing its own burial services.

24. Eliminate all exemptions to the 60-month limitation for receiving ATAP.

Response

- Exemptions to the 60-month limit specific to Alaska Native villages are found in the federal TANF statute. Eliminating them would require a change in federal law.
- All other exemptions found in state law apply to those families who through no fault of their own are temporarily or permanently unable to work and support their families.



I. Department of Health and Social Services

II. List of BRU / Component

<i>BRU_Short_Name</i>	<i>Comp_Short_Name</i>	<i>AVAp</i>	<i>Formula_Program</i>
<i>Public Assistance</i>	<i>ATAP (Formerly AFDC)</i>	<i>AP</i>	<i>Y</i>
<i>Public Assistance</i>	<i>Adult Public Assistance</i>	<i>AL</i>	<i>Y</i>
<i>Public Assistance</i>	<i>General Relief Assistance</i>	<i>AL</i>	<i>Y</i>
<i>Public Assistance</i>	<i>OAA-ALB Hold Harmless</i>	<i>AL</i>	<i>Y</i>
<i>Public Assistance</i>	<i>PFD Hold Harmless</i>	<i>AL</i>	<i>Y</i>
<i>Public Assistance</i>	<i>Energy Assistance Program</i>	<i>AL</i>	<i>N</i>
<i>Public Assistance</i>	<i>Tribal Assistance</i>	<i>AL</i>	<i>N</i>
<i>Medical Assistance</i>	<i>Medicaid Services</i>	<i>AP</i>	<i>Y</i>
<i>Medical Assistance</i>	<i>Chronic Acute Med Asst</i>	<i>AP</i>	<i>N</i>
<i>Catastrophic & Chronic Illness</i>	<i>Catastrophic & Chronic Illness</i>	<i>AP</i>	<i>Y</i>
<i>Public Assistance Admin</i>	<i>Public Assistance Admin</i>	<i>AP</i>	<i>N</i>
<i>Public Assistance Admin</i>	<i>Quality Control</i>	<i>AL</i>	<i>N</i>
<i>Public Assistance Admin</i>	<i>Public Assistance Field Svcs</i>	<i>AL</i>	<i>N</i>
<i>Public Assistance Admin</i>	<i>Fraud Investigation</i>	<i>AL</i>	<i>N</i>
<i>Public Assistance Admin</i>	<i>Public Assist Data Processing</i>	<i>AL</i>	<i>N</i>
<i>Public Assistance Admin</i>	<i>Alaska Work Programs</i>	<i>AL</i>	<i>N</i>
<i>Public Assistance Admin</i>	<i>Work Services</i>	<i>AL</i>	<i>N</i>
<i>Public Assistance Admin</i>	<i>Child Care Benefits</i>	<i>AL</i>	<i>Y</i>
<i>Medical Assistance Admin</i>	<i>Medical Assistance Admin.</i>	<i>AP</i>	<i>N</i>
<i>Medical Assistance Admin</i>	<i>Medicaid State Programs</i>	<i>AL</i>	<i>Y</i>
<i>Medical Assistance Admin</i>	<i>Health Purchasing Group</i>	<i>AL</i>	<i>N</i>
<i>Medical Assistance Admin</i>	<i>Certification and Licensing</i>	<i>AL</i>	<i>N</i>
<i>Medical Assistance Admin</i>	<i>Hearings and Appeals</i>	<i>AL</i>	<i>N</i>
<i>Medical Assistance Admin</i>	<i>Audit</i>	<i>AL</i>	<i>N</i>
<i>Medical Assistance Admin</i>	<i>Children's Health Eligibility</i>	<i>AL</i>	<i>N</i>
<i>Purchased Services</i>	<i>Delinquency Prevention</i>	<i>AP</i>	<i>N</i>
<i>Purchased Services</i>	<i>Family Preservation</i>	<i>AL</i>	<i>N</i>
<i>Purchased Services</i>	<i>Foster Care Base Rate</i>	<i>AL</i>	<i>Y</i>
<i>Purchased Services</i>	<i>Foster Care Augmented Rate</i>	<i>AL</i>	<i>Y</i>
<i>Purchased Services</i>	<i>Foster Care Special Need</i>	<i>AL</i>	<i>Y</i>
<i>Purchased Services</i>	<i>Foster Care AYI</i>	<i>AL</i>	<i>Y</i>
<i>Purchased Services</i>	<i>Subsidized Adoptions/Guardians</i>	<i>AL</i>	<i>Y</i>
<i>Purchased Services</i>	<i>Residential Child Care</i>	<i>AL</i>	<i>N</i>
<i>Front Line Social Workers</i>	<i>Front Line Social Workers</i>	<i>AP</i>	<i>N</i>
<i>FYS Management</i>	<i>FYS Management</i>	<i>AP</i>	<i>N</i>
<i>FYS Staff Training</i>	<i>FYS Staff Training</i>	<i>AP</i>	<i>N</i>
<i>Child Protection Legal Assist.</i>	<i>Office of Public Advocacy</i>	<i>AP</i>	<i>N</i>
<i>Child Protection Legal Assist.</i>	<i>Public Defender Agency</i>	<i>AL</i>	<i>N</i>
<i>Youth Corrections</i>	<i>McLaughlin Youth Center</i>	<i>AP</i>	<i>N</i>
<i>Youth Corrections</i>	<i>Fairbanks Youth Facility</i>	<i>AL</i>	<i>N</i>
<i>Youth Corrections</i>	<i>Nome Youth Facility</i>	<i>AL</i>	<i>N</i>
<i>Youth Corrections</i>	<i>Johnson Youth Center</i>	<i>AL</i>	<i>N</i>
<i>Youth Corrections</i>	<i>Bethel Youth Facility</i>	<i>AL</i>	<i>N</i>
<i>BRU_Short_Name</i>	<i>Comp_Short_Name</i>	<i>AVAp</i>	<i>Formula_Program</i>
<i>Youth Corrections</i>	<i>Mat-Su Youth Facility</i>	<i>AL</i>	<i>N</i>
<i>Youth Corrections</i>	<i>Probation Services</i>	<i>AL</i>	<i>N</i>

Human Svcs Comm Matching Grant	Human Svcs Comm Matching Grant	AP	N
Manillaq	Social Services	AP	N
Manillaq	Public Health Services	AL	N
Manillaq	Alcohol & Drug Abuse	AL	N
Manillaq	Mental Health/DD Svcs	AL	N
Norton Sound	Social Services	AP	N
Norton Sound	Public Health Services	AL	N
Norton Sound	Alcohol & Drug Abuse Svcs	AL	N
Norton Sound	Mental Health/DD Svcs	AL	N
Norton Sound	Sanitation	AL	N
SEARHC	Public Health Svcs	AP	N
SEARHC	Alcohol & Drug Abuse Svcs	AL	N
SEARHC	Mental Health Services	AL	N
Kawerak Social Services	Kawerak Social Services	AP	N
Tanana Chiefs Conference	Public Health Svcs	AP	N
Tanana Chiefs Conference	Alcohol & Drug Abuse Svcs	AL	N
Tanana Chiefs Conference	Mental Health Svcs	AL	N
Tlingit-Haida	Social Services	AP	N
Tlingit-Haida	Alcohol & Drug Abuse Svcs	AL	N
Yukon-Kuskokwim Health Corp	Public Health Svcs	AP	N
Yukon-Kuskokwim Health Corp	Alcohol & Drug Abuse Svcs	AL	N
Yukon-Kuskokwim Health Corp	Mental Health Svcs	AL	N
State Health Services	Nursing	AP	N
State Health Services	Women, Infants and Children	AL	N
State Health Services	Maternal, Child, & Family Hlth	AL	N
State Health Services	Healthy Families	AL	N
State Health Services	Public Health Admin Svcs	AL	N
State Health Services	Epidemiology	AL	N
State Health Services	Bureau of Vital Statistics	AL	N
State Health Services	Health Services/Medical	AL	N
State Health Services	Community Health/EMS Services	AL	N
State Health Services	Community Health Grants	AL	N
State Health Services	Emergency Medical Svcs Grants	AL	N
State Health Services	State Medical Examiner	AL	N
State Health Services	Infant Learning Program Grants	AL	N
State Health Services	Public Health Laboratories	AL	N
State Health Services	Radiological Health	AL	N
State Health Services	Tobacco Prevention and Control	AL	N
State Health Services	Tobacco Cessation FRONT SEC	AP	N
Alcohol & Drug Abuse Svcs	Administration	AP	N
Alcohol & Drug Abuse Svcs	Alcohol Safety Action Program	AL	N
Alcohol & Drug Abuse Svcs	Alcohol/Drug Abuse Grants	AL	N
Alcohol & Drug Abuse Svcs	Community Grants - Prevention	AL	N
Alcohol & Drug Abuse Svcs	CAASA Grants	AL	N
Alcohol & Drug Abuse Svcs	Corrections' ADA Services	AL	N
Alcohol & Drug Abuse Svcs	Rural Services Grants	AL	N
Community Mental Health Grants	General Comm Mental Hlth Grnts	AP	N
Community Mental Health Grants	Psychiatric Emergency Svcs	AP	N
Community Mental Health Grants	Svcs/Chronically Mentally Ill	AL	N
Community Mental Health Grants	Designated Eval & Treatment	AL	N
Community Mental Health Grants	Svcs/Seriously Emotion Dist Yth	AL	N
Community DD Grants	Community DD Grants	AP	N
Institutions & Administration	Mental Health/DD Admin	AP	N

<i>Institutions & Administration</i>	<i>Alaska Psychiatric Institute</i>	<i>AL</i>	<i>N</i>
<i>Institutions & Administration</i>	<i>Federal Mental Health Projects</i>	<i>AL</i>	<i>N</i>
<i>Mental Health Trust Boards</i>	<i>Alaska Mental Health Board</i>	<i>AP</i>	<i>N</i>
<i>Mental Health Trust Boards</i>	<i>Governor's Cncl/Disabilities</i>	<i>AL</i>	<i>N</i>
<i>Mental Health Trust Boards</i>	<i>Board on Alcohol. & Drug Abuse</i>	<i>AL</i>	<i>N</i>
<i>Administrative Services</i>	<i>Unallocated Reduction</i>	<i>AP</i>	<i>N</i>
<i>Administrative Services</i>	<i>Commissioner's Office</i>	<i>AL</i>	<i>N</i>
<i>Administrative Services</i>	<i>Personnel and Payroll</i>	<i>AL</i>	<i>N</i>
<i>Administrative Services</i>	<i>Administrative Support Svcs</i>	<i>AL</i>	<i>N</i>
<i>Administrative Services</i>	<i>Health Plan. & Facilities Mgmt</i>	<i>AL</i>	<i>N</i>
<i>Administrative Services</i>	<i>COMPASS Community Grants</i>	<i>AL</i>	<i>N</i>
<i>Children's Trust Programs</i>	<i>Children's Trust Programs</i>	<i>AP</i>	<i>N</i>
<i>Facilities Maintenance</i>	<i>Facilities Maintenance</i>	<i>AP</i>	<i>N</i>

III. FY2000 Authorized Budget by Funding Sources

Federal Receipts	481,750.5
General Fund Match	159,114.2
General Fund	140,474.6
General Fund / Program Receipts	4,468.7
Interagency Receipts	53,021.5
Alcohol & Drug	2.0
General Fund / Mental Health	105,280.8
Title 20 (Federal)	4,474.5
PFD Fund	18,688.9
CIP Receipts	865.6
MHTAAR	4,156.7
Child Trust Earnings	345.7
Statutory Designated Receipts	4,531.1
Tobacco Settlement Fund	29,337.5
Total Funding	1,006,512.3

Summary Explanation as related in order to the prior recommendations

Addendum to DFYS, JJ, MH Privatization report

Primary research by Sarah Musgrove Short Sub-sub Chair person

Rational and background for related recommendations

It seems apparent that funding which was intended by the legislature was not appropriately spent. Over a million dollars allocated for desperately needed social workers instead funded retirement incentive programs for DFYS and other departments within the DHSS (legislative audits contain supporting information- noted below). This raises the question of the agencies reckless disregard for the beneficiaries of those agencies³. The misdirecting of funding away from assisting the poor toward instead removing an ever-increasing number of their children is likely to continue unabated until such time as society reaches a more compassionate consensus and disassembles the child removal apparatus, establishing in its place a system, which is genuinely supportive of families and children⁴. We see efforts in many areas of the three departments that suffer from the lack of communication, consistency, enforcement, quality and lack of external review. These opportunities for improvement in all divisions are statewide. In the areas recommended for privatization or possibly for review by a continuous oversight review committee we wish to be direct and forthright in suggesting timely action by the main privatization committee.

There has been an apparent trend recorded of negative management decisions (see legislative audits 06-4586-98, 06-4595-99, and 06-4573-98). Some of these are related to untimely promotions of unqualified individuals to fill vacancies, lack of appropriate staffing and staff reviews, and problems in communication, training, lack of clerical support, and the inability to implement more two sided solutions to the current difficulties that have been practiced for so long. We find inconsistency in addressing assessment, obtaining quality services from unbiased providers, and following regulations. Opportunities for improvement exist in areas of training, communication of information within and outside the agencies, and protecting the rights of the beneficiaries to enforce their rights. We are asserting privatization in the areas most needed while recommending alternatives when privatization is not feasible or as an alternative to costly privatization.

Privatizing and separating the majority of case management; assessment for treatment services required and referrals could provide an external review. This may decrease the financial burden on the state due to lengthy unwarranted retention of children in out of home care placements. It may also decrease the current conflict of interest. This could be supplemented by an annual independent random in depth audit of a substantial cross section of the cases in the State to review the performance of DHHS. Children in immediate danger obviously can't wait for a team meeting. Those children who may not need immediate removal could fall under the jurisdiction of one of these external review teams. Allowing this team to also review grievances involving misconduct of social workers would possibly decrease the current conflicts of interest that are so widely criticized. (Refer to legislative audits August 1998, January 26, 1999). It would also protect the integrity of social workers to have a legislative requirement to abide by the National Association of Social Workers Code of Ethics (see <http://www.ssc.msu.edu/~sw/nasweth.html>) in order to be protected by immunity under the guise of the state.

Information on federal research concerning child abuse

It is quite possible that a grand jury investigation into administrative and departmental procedures parallel to the one done in California is needed here in Alaska. The 1992-93 Santa Clara County, California grand jury heard from staff members of the DFCS and others outside the department. After close examination of the funding mechanisms that drive foster care placements the jury found that the department puts too much

³ Reference legislative audit January 26, 1999 page 6 section 5

⁴ Emerich Thoma 1998

money into "back-end services," i.e., therapists and attorneys, and not enough money into "front-end" or basic services. The county does not receive as much in federal funds for "front-end" services, which could help solve the problems causing family inadequacies. The grand jury found that the best interests of the child were second to those of the agency. Through this external review a system of checks and balance is being sought. No information was available at the time of this report concerning the success of the balance system. Joseph R. Pisani, speaking on behalf of the National Conference of State Legislators explained: "You are paying us to do the wrong thing, and providing us with federal disincentives to do the right thing⁵." Doing this could possibly point out any current corruption as well as poor quality services to assist in the privatization decisions that are so difficult to make.

Foster Care, Is it Safe?

A 1986 survey conducted by the National Foster Care Education Project found that foster children were 10 times more likely to be abused than children among the general population were. A follow-up study in 1990 by the same group produced similar results (Maier, 1997). The American Civil Liberties Union's Children's Rights Project has similarly estimated that a child in the care of the state is ten times more likely to be abused than one in the care of his parents (Farber, 1993). As of 1996, class action lawsuits had been filed in 31 states, with 36 consent decrees overseeing the operations of child welfare and foster care systems. The most common complaints focused on noncompliance with family preservation requirements, while procedural safeguards, case planning, and placement quality were also frequently cited for noncompliance (Amstutz, 1996)⁶.

The questions of management or rather lack of qualified people in management positions and the fall out of such unqualified individuals being allowed to hold management positions is the basis for recommending independent training, hiring and reviews. In *LaShawn A. v. Kelly* (1993), the United States Court of Appeals for the District of Columbia found that "because of the appalling manner in which the system is managed, children remain subject to continuing abuse and neglect at the hands of heartless parents and guardians, even after the DHS has received reports of their predicaments." The court ruled that youngsters who have been taken into the custody of the District's foster-care system languish in inappropriate placements, with scarce hope of returning to their families or being adopted, and that the agency entrusted with their care had "consistently evaded numerous responsibilities placed on it by local and federal statutes⁷."

Concerns cited include "failure to provide services to families to prevent the placement of children in foster care." The agency had "consistently failed to provide services or otherwise use 'reasonable efforts' to prevent placement. The result has been an increased risk of arbitrary or inappropriate placements as well as an increased cost to the District⁸." Based on the case records of children in foster care as of December, 1989, whose goal was to return home and who had entered into care through voluntary placement, the Court found the agency "had failed to provide services in 77% of their cases." The District of Columbia child welfare system was the first such system in the nation to come under the direct control of the Court in 1995. It is a pilot program worth looking at.

The Court of Appeals for the Third Circuit in *Baby Neal v Casey* (1994) found the system run by DHS and overseen by DPW repeatedly failed to fulfill its mandates, and unfortunately has often jeopardized the welfare of the children in its care. This points to the extreme need for external review.

State officials reportedly believe that making reasonable efforts to ensure that children are not removed unnecessarily is good practice. However, they seem concerned that the proposed regulations are excessively rigid regarding the reasonable efforts requirement. In the same pretense they penalize parents through loss of visitation or parental rights for non-compliance with case plans which are often completed without their input as required by HB 375. The proven track record of preventing removal of children from their homes is questionable and inconsistent. This appears to be not "in the best interest of the child" but of the state. The

⁵ Committee on Ways and Means, 1979

⁶ IPT-forensics journal volume 10 via the internet

⁷ Information cited found on the Children's Rights, Inc. website

⁸ Gaouette, 1996

question raised here is one of accountability. This seems to be due in a large part to the lack of externally monitored services or oversight.

In the Pennsylvania suit of "Tara M." the state failed to protect and was held to a lessor standard of accountability than the birth parents. In August of 1996 Human Services Commissioner Joan Reeves guaranteed the young girl an adoptive home with specially trained parents. Due to abuse at the hands of her new foster parents nine-year-old Tara had to undergo three skin grafts and wear a protective stocking during her recovery from burns over more than half her body. Police said the foster parents punished the girl by stripping her, forcing her into the bathtub and dousing her with buckets of scalding water. This was the very best of care the city could provide for Tara, a girl who had already endured years of physical and sexual abuse in the several foster homes into which she had been placed over the years⁹. This raises the question of the value of the immunity given to the state under AS 47.10.960.

In a recent examination of the nation's foster children and the quality of forced services with respect to their health care needs, the General Accounting Office (1995c) found much room for agency improvement. Despite foster care agency regulations requiring comprehensive routine health care, an estimated 12% of young foster children receive no routine health care, 34% receive no immunizations, and 32% have some identified health needs that are not met. The mental health needs of those at risk is inconsistent throughout the United States. An estimated 78% of young foster children are at high risk for human immune deficiency virus as a result of parental drug abuse, yet only about 9% of foster children are tested for HIV. The Department of Health and Human Services has not designated any technical assistance to assist states with health-related programs for foster children and does not audit states' compliance with health-related safeguards for foster children. As for the educational needs of children in state care, the situation is equally as distressing¹⁰.

A 1991 federal study of former foster care wards found that one-fourth had been homeless, 40% were on public assistance, and half were unemployed. Connecticut officials estimate 75% of youths in the state's criminal justice system were once in foster care¹¹. According to a survey 20% of children living in runaway shelters come directly from foster care¹². Children placed in out-of-home care, regardless of the reason, are at higher risk of developing alcohol and drug problems. The survey also found that an incredible 80% of prisoners in Illinois had spent time in foster care as children (Azar, 1995). This information should be directly considered when questioning the benefits of removal from the home rather than solving the initial problems. We should also reconsider ads such as the one that appeared in the Anchorage Daily News on October 11, 1999 on page E 5. This stated that 80% of all long-term prisoners were victims of child abuse. Where was that abuse experienced (foster care)? Could some of it come from the neglect of the state to address the issues of the children in need rather remove them?

At a meeting of the Committee on Ways and Means (1995), Marcia Robinson Lowry attorney for Children's Rights stated, "Foster care systems established and funded to serve children are failing, producing only more damaged graduates who will go on to produce new generations of damaged children, who will continue to lead unspeakably tragic lives and who will increasingly tax our public resources". The above material and recommendations are supportive of this conclusion. The intent of the privatization committee must not only be to privatize but to look at other recommendations that will enable improvements or suggest viable alternatives.

A comprehensive study could answer questions both of efficiency and ethics in the areas of DFYS personnel training, policy writing, retention /retirement incentive policies. We should be certain that all Social workers already have a degree in the social worker field prior to getting a job, this should not be waived. Social workers should also be required to take *psychological evaluations at a geographical distance* to insure quality and unbiased findings. Concern: What private group other than perhaps a university would have similar qualifications to those within the state? For conflict of interest purposes all the DHHS incentives and retirement would be more properly a matter for the administration of the State.

⁹ Associated Press, 1996

¹⁰ website of Federal DHSS

¹¹ Bayles & Cohen, 1995

¹² National Association of Social Workers

Similar reviews of administrative oversight, financial policies and procedures and expenditures as required by legislative appropriations for the three entities mentioned in this report could also decrease overall financial waste and fraud. This is to prevent redirecting money for the agencies benefit while protecting the quality of the services forcibly provided. The long term effects would apparently be a higher quality of services.

Foster parents in Alaska

In Alaska, foster parents testified that the worst of the abuses endured by foster children is not the abuse and neglect allegedly suffered before the state takes them from their natural parents. Rather, the real abuse comes from the actions of the state itself. The foster parents sat with trembling hands as they told legislators of the treatment they and their young wards endured at the hands of child protective services. Fear of retaliation was reportedly a common theme throughout the meeting (Demer, 1997¹³). To make matters worse, just as state officials were beginning ambitious efforts to deal with the severe failures in the state's child protection system, a two-year-old in the care of Anchorage foster parents died (Campbell, 1997). It happened again in July 1999 with the violent unsolved death of foster child Steven Murray. To this date, although Steven was in part removed because he witnessed domestic violence, the biological child of the foster home where he was killed has not been removed. This raises more questions.

It is largely through legislative audits and case readings associated with legal actions that the actual extent of the abuses in the foster care system are exposed. Child welfare departments are rarely forthcoming with information about the actual extent of harm that comes to children in their care. The reasons are fairly simple. Child welfare officials who have managed to entrench themselves in lifetime civil service positions in the more desirable positions, which they are seldom qualified for, of the child welfare system have a vested interest to protect. It is possible that those who run public bureaucracies may have devised their own "rationalized myths" to protect their interests as well. "It's simply too risky for bureaucrats to admit that their agency may not be 'doing good.' The erosion of that myth may lead someone to investigate them or even propose cutting their budgets," says John Hagedorn (1995).

Regarding ICWA cases

Before 1978, as many as 25 to 35% of the Indian children in certain states were removed from their homes and placed in non-Indian homes by state courts, welfare agencies, and private adoption agencies. Non-Indian judges and social workers-failing to appreciate traditional Indian child-rearing practices-perceived day-to-day life in the children's Indian homes as contrary to the children's best interests decreasing quality of services¹⁴. According to data as of March 1, 1996, 54% of the children in the custody of the Alaska State Division of Family and Youth Services were Alaskan Native children. In Anchorage, Fairbanks and Sitka, roughly one-third of Child in Need of Aid cases involved Native children, the number in Bethel alone, rises to 98 percent.

CITCI, Eklutna Family Advocacy Center and Chickaloon tribal counsel not only keep statistics on this information but they are currently working on assisting native families in decreasing dysfunction and improving the lives of native families. Their efforts are having a high success rate and should not be encouraged for all members of our communities. Through shared knowledge with these entities we can possibly decrease the section of our community most at risk and save money.

¹³ Demer, L. (1997, December 18). State faulted for suffering of children: Foster parents tell their tales. Anchorage Daily News.

¹⁴ The Indian Child Welfare Act Handbook a legal manual by B.J. Jones

Juvenile Justice findings

There are provisions of Title IV-E that could be potentially problematic when applied to children in the juvenile justice system. A strict interpretation of ASFA would require that adjudicated delinquents who receive Title IV-E funded services meet a series of requirements or be ineligible for federal funding. These include a requirement for a 12-month permanency hearing and filing a petition to terminate parental rights when a child remains in care for 15 out of 22 months.

The 15 out of 22 month requirement to file for a termination of parental rights is also problematic. There may be no grounds for termination of parental rights since the child's placement in out-of-home care is based on his or her behavior, not parental abuse or neglect. Such placements offer a child an opportunity to live in a safe, therapeutic environment.

Many parents maintain contact and communication with the child. Courts will not want to terminate parental rights in these cases. If a child cannot return home because of continued behavior problems, then some form of institutional placement may be necessary, not termination of parental rights (TPR). Families and children in the child welfare system often face complex problems that require interagency solutions as well as community involvement. To combat service fragmentation, the state government should provide support for the coordination of service delivery among child welfare, juvenile justice and other community providers. Interagency collaboration including public/private partnerships should be encouraged to further integrate and coordinate services. State flexibility must be maintained in these programs to provide interagency training, budgeting, planning and conflict resolution as well as integrated data systems. Intensive staff training will be needed in order to deliver these services as well as broader training of relevant agencies and external review.

Title IV E Funding

A subsequent review (Office of Inspector General, U.S. Department of Health and Human Services, 1996) provides insight into some of the dynamics underlying these failures. In auditing a number of private child placing agencies, it was found that the agencies retained 38% of the Title IV-E maintenance payments intended to benefit foster children, diverting the funds instead to pay for such services as "costs of operations, case management, therapy, counseling, respite care, psychiatrists, training, transportation, day care assistance, medical needs not covered by Medicaid, recreation, and other administrative costs." Money intended to benefit children was routinely appropriated to other programs, auditors found, and not only did the amounts in question total into the millions, but the problems identified were pervasive, affecting the majority of children among the sample group. You will find similar questions arise when reading page 6, section 5 of the January 26, 1999 legislative audit (control # 06-4595-99). This is cited in reference to the need for external financial review in conjunction with financial policies and procedures.

Federal funding which provides for services to maintain children in foster care have historically been unlimited. Money that could have been used to provide in-home services have been appropriated at levels far below that authorized by Congress and any legislative body. Sadly those funds appropriated by the states for in-home services seem to have been diverted instead to foster care which in turn over burdens the state system.

Federal funds disbursed as "reimbursements" or "matching rates" under Title IV-E (45CFR1356.60(c)(3)) to child protection agencies which provide the primary financial incentives favoring placement over the provision of preventive services. The Federal matching rate for foster care maintenance payments for a given state is tied to the state's Medicaid matching rate, which averages about 57% nationally and can range from 50% to 83%. States may also claim open-ended Federal matching at a rate of 50% for their child placement services and administrative costs. States also may claim open-ended Federal matching at a rate of 75% to train personnel employed by the state or by local agencies administering the program and to train foster and adoptive parents¹⁵.

¹⁵ Committee on Ways and Means, 1994, 1996

In contrast, costs incurred for social services which provide treatment to the child and the child's family or foster family to remedy personal problems, behavior, or home conditions are not reimbursable under Title IV-E funding. Some examples of such non-reimbursable services would include physical or mental examinations, homemaker or housing services, and services to assist in preventing removal and reuniting families. Typically those not eligible for Title IV E funding are reunited with families much quicker than those who are eligible¹⁶ for such funding.

Types of Confirmed Maltreatment in 1997

Fifty-four percent of these children were confirmed as neglected, 22 percent were physically abused, 8 percent were sexually abused, 4 percent were emotionally abused and 12 percent were substantiated as "other."

Problems of Families Reported for Abuse

The 1997 survey further indicates that 88% of responding states named substance abuse as one of the top two problems exhibited by families reported for maltreatment. The second problem most frequently mentioned was that of poverty and economic strains (51%).

Services to Families

Survey respondents reported 316,200 confirmed cases received no services whatsoever

Federal Adoption and Safe Families Act, P.L. 105-89 (ASFA).

Clarification of Reasonable Efforts

States are not required to make reasonable efforts to preserve or reunify families if a court has determined that:

- 1.parent has subjected child to aggravated circumstances (as defined in state law, which may include abandonment, torture, chronic abuse, and sexual abuse)

- 2.parent has:

- a.committed murder of another child of the parent
 - b.committed voluntary manslaughter of another child of the parent
 - c.aided or abetted, attempted, conspired or solicited to commit such murder or manslaughter
 - d.committed felony assault resulting in serious bodily injury to child or another child of parent
- 3.the parental rights to a sibling were terminated involuntarily

Reasonable Efforts to Place Child ¹⁷

If reasonable efforts to reunify or preserve the family are not made as a result of a court finding above, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

Termination of Parental Rights

State is required to initiate or join a proceeding to terminate parental rights in the following cases:

- 1.the child has been in foster care for 15 of the most recent 22 months

- 2.a court has determined that:

- a.the child is an abandoned infant (as defined in state law)

- b.the parent has:

- i.committed murder of another child of the parent
- ii.committed voluntary manslaughter of another child of the parent
- iii.aided or abetted, attempted, conspired or solicited to commit such murder or manslaughter
- iv.committed felony assault resulting in serious bodily injury to child or another child of parent

¹⁶ University of Chicago Chapin Hall Center for Children

¹⁷ Requirement of Public Law 96-272

Exceptions to TPR Requirement

States are not required to initiate TPR proceedings in the following cases:

1. the child is being cared for by a relative
2. state agency has documented in case plan a compelling reason that TPR would not be in the child's best interest
3. state has not provided to the family, consistent with time period in the case plan, the services the state deems necessary for safe return of child, if reunification services were ordered

Permanency Hearings

Permanency hearing shall be held within 12 months after a child enters foster care and not less frequently thereafter during continuation of foster care. Child is considered to have entered foster care on the earlier of the first judicial finding of abuse or neglect, or 60 days after removal from home. If reasonable efforts to reunify the family are not made as a result of a court determination (see Clarification of Reasonable Efforts), a permanency hearing shall be held within 30 days after such determination.

At the permanency hearing, the court shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition to terminate parental rights, or referred for legal guardianship, or (in cases where the state agency has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement.

Federal Confidentiality Requirements¹⁸

Provisions governing confidentiality and sharing information in the federal Child Abuse Prevention and Treatment Act (CAPTA) guide state legislation. In order for states to receive federal funding for their child abuse programs, CAPTA requires that states maintain the confidentiality of CPS records. In 1996, CAPTA was reauthorized and the confidentiality provisions were made more specific. CAPTA requires states to enact legislation authorizing disclosure of confidential information, with provisions to protect the identities of children and families, to:

Persons who are subjects of reports, Federal, state and local government entities that need the information to carry out their work to protect and treat children, The public, in cases of a child fatality or near fatality, Child abuse citizen review panels (panels are not allowed to release identifying information, but the state has the option of deciding what types of information may be made public), Child fatality review panels, A grand jury or a court, Other entities specifically authorized by the legislature and placed in statute.

Outspoken veteran Juvenile Court Justice Judy Sheindlin in New York (1996) attributes much of the problem to confidentiality laws. "The only people being protected here are caseworkers and other officials, who regularly hide behind a wall of secrecy," she writes. She also publicly states "because of confidentiality rules, which protect inept bureaucrats and a faltering social services system," many cases where children have been maimed or murdered never reach public attention. "Every state in the country cloaks its foster care system in secrecy, prohibiting the disclosure of any information about children's experiences in foster care. Though these statutes often were enacted to protect children, they routinely are used by state officials to conceal illegal and unconscionable practices¹⁹."

Decreasing confidentiality will decrease the risk of calumny²⁰, which then protects the rights of those beneficiaries of the services being forcibly provided. It will lessen wasted court time and protect valuable family time from false allegations by allowing caseworkers to identify malicious reports between divorcing

¹⁸ I. Bussiere, Alice; Abigail English; and Catherine Teare. *Sharing Information: A Guide to Federal Laws on Confidentiality and Disclosure of Information for Child Welfare Agencies*. Washington, D.C.: The ABA Center on Children and the Law, 1997. Committee on Ways and Means, 1995

²⁰ Calumny as defined in the Webster's Seventh New Collegiate Dictionary as the malicious uttering of false charges or misrepresentations calculated to damage another's reputation.

parents or upset acquaintances and family members. This is not to say that those who report would be made known to those who are the targets of allegations. It would simply limit the increasing number of false allegations (63%) and enable the caseworkers to get a better handle on the severity of the real cases of abuse.

The federal law requires that recipients of information maintain confidentiality by not redisclosing information to others. States may, but are not required to, disclose the identity of those who report child abuse. Finally, states are required to expunge records of unsubstantiated or false reports that are accessible to the public or that are used for employment screening or background checks.

(Note: The state should ensure that all unsubstantiated or false reports are expunged whether accessible or not to prevent damaging further unity of the family and in the "best interest of the child.")

STATE ACTIONS²¹

Many states have already enacted legislation mandated by the new provisions. Legislators want to safeguard the privacy of children and their families, but are also concerned about oversight and accountability of the child protection system. Most states already authorize sharing of information among professionals and agencies involved in child abuse cases. These provisions usually allow sharing among law enforcement, attorneys, prosecutors or guardians-ad-litem, multi-disciplinary or child protection investigation teams, physicians and agencies responsible for providing treatment to abused children. Some states allow other agencies access to confidential records and reports including: coroners and medical examiners (California, Georgia, Illinois, Indiana, Kentucky, Minnesota, Montana and South Carolina); schools and departments of education (Arizona, Georgia, Illinois, Kentucky, Maine, Missouri, Montana, New Hampshire, New Mexico and Virginia); probation and parole agencies or departments of corrections (Louisiana, Illinois, New York, Rhode Island and Indiana); tribal agencies (Alaska, Maine, Montana, New Mexico, South Carolina and Wisconsin); child fatality review boards (Alaska, Kansas, Kentucky, Missouri, Montana and South Carolina); and state auditors (Colorado, Connecticut, Florida, New York, Oregon and Pennsylvania). Prospective foster and adoptive parents are granted access to records of children in Arizona, Arkansas, California, Colorado, Georgia, Maine, New Mexico, Pennsylvania, South Carolina, South Dakota, Texas and Wisconsin.

In addition to state and local agencies and officials, many states provide a variety of interested private citizens and review boards access to confidential reports and records, with provisions to protect the identity of the children and families involved.

Findings of other states attempts to reconstruct and improve²²

The Missouri legislature authorized a pilot program for experimentation with a dual-track program, in which the state CPS agency can refer abuse reports to either an investigative track or an assessment track, with the option to reassign cases from one track to the other if circumstances warrant. Assessment cases in pilot areas no longer are classified as probable cause or insufficient probable cause, nor are they placed on the central registry. CPS and law enforcement agencies jointly investigate cases of serious abuse in accordance with local protocols. Like Florida, the Missouri legislation directs CPS to collaborate with local communities to better protect children from maltreatment. Finally, the law calls for an independent evaluation of the pilot program.

Iowa began its reform initiative with an approach to abuse reports that combines elements of a family-centered assessment and an investigation. The initial legislation authorized a pilot program; legislation enacted in 1997 provides for statewide implementation of the new approach by mid-1998. Iowa also changed the central registry to exclude cases of minor physical injury that are considered isolated and unlikely to recur.

North Dakota enacted a single-track CPS system, in which all reports of child maltreatment are subject to an assessment, rather than an investigation. The legislation also eliminated classification of reports in terms of probable cause; however, assessment cases still are entered on the central registry.

2. U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect. Child Abuse and Neglect State Statute Series: Volume II, Central Registries. Washington, D.C.: U.S. Department of Health and Human Services, 1997

²² National Conference of State Legislatures information

Virginia recently enacted a pilot program similar to Missouri's, featuring a dual-track approach to abuse reports, elimination of report classification, joint investigations with law enforcement agencies, a call for the use of community resources in responding to child abuse and neglect, and an evaluation of outcomes. This is supplemented by external review by an independent commission.

Hawaii passed reform legislation authorizing the creation of two neighborhood places to serve as the base for multidisciplinary teams that could include CPS workers, health professionals and community educators and advocates. In response to reports of child maltreatment, these teams will assess the strengths and needs of families, identify desired outcomes and formulate action plans.

Many of the legislative initiatives discussed above have not yet been fully implemented or evaluated, research in Missouri and Florida indicates that the CPS reforms in those states are yielding positive results. In both states, families respond more positively to independent assessments that attempt to identify strengths, needs and resources than to traditional DFYS investigations. CPS agencies are linking families with community-based resources and including family members in the process of planning and delivering services. Particularly important is the finding that these reforms have not compromised child safety.

Alaska has yet to implement a central registry of substantiated ROH's, while the opportunity to examine other examples are abundant. Implementing a task force on a continuous basis to review and reform the state CPS system could save us substantial amounts of money through ongoing improvement efforts. This should include community involvement. Implementation of such a task force would decrease risk to those that are abused but not yet detected through risk prevention and education. Partnerships between CPS agencies, advocate groups and neighborhood-based systems of family support, such as schools, churches, community organizations and mental health providers can realistically accomplish this with minimal spending. Information is needed by legislators to make intelligent decisions about expanding, continuing or terminating new programs. Accordingly, most state legislatures that have enacted CPS reform have included an evaluation component.

It may interest you to know if you go to the DFYS homepage there is no section or indication that this 'human service agency' wants to offer help to those who actively seek it, nor is there a section on parental rights. What is a family supposed to do when looking for help? There are numerous cases where families have gone to DFYS for assistance only to have their children ripped from them. This type of tactic decreases the faith of the beneficiaries of such services and discourages any type of self-help efforts. It also over burdens the system for those who do not actively seek help but need intervention. The brochure on what to expect when your children are taken is an improvement to the past non-existent one but lacks any real substance as far as informing families of their rights. The DFYS brochure "Who will raise your children" is plain offensive and a waste of money that could be used to help educate those at risk.

Mental Health

A large portion of the mental health industry is already privatized, through delivery of services already being contracted for by non-profit agencies. As for protecting the rights of clients in conjunction with the mental health industry, the Fairbanks Community Mental Health Center found it necessary to sue the state to prevent such civil rights violations. This was connected to the client's rights to confidentiality from DHSS representative's use of a data base, which the state claims, is needed for accountability. While this may make the client responsible it does nothing to secure accountability of the agency for forced services. We find a need for "an act creating a criminal offense for those who interfere with a report of government abuse." This must be a legislative priority to protect those misfortunate enough to experience the retaliation of such a powerful entity²³. Input is needed not only from the state but also from those benefiting from the services.

²³ Information from research by Scott Calder of Fairbanks

CPS MISSION STATEMENT and RESEARCH

State child protective services (CPS) agencies are charged with protecting children from abuse and neglect. CPS is publicly viewed as a system in crisis. Many cases involve complaints that CPS is not protecting children from abuse and is not supporting families that need help. Nationwide, most resources devoted to child protection are being used in an attempt to screen, investigate and substantiate the millions of abuse reports received by states each year, leaving few resources for services to troubled families. This results in the CPS system being unable to address the conditions associated with child abuse, including poverty, single parenthood, substance abuse and social isolation. Most states respond to reports of child maltreatment with standardized but inconsistent investigations, regardless of the severity of the alleged abuse. Alaska is one of the highest for such reports. Accordingly, CPS is criticized for not being sufficiently proactive in some cases, and for being overzealous and intrusive in others.

In response to these problems, a new vision of CPS is emerging among child welfare experts and policymakers. A few states are attempting to link CPS with community-based family support systems and to give CPS agencies the flexibility to respond to less serious cases of child abuse with private assessments of family needs, rather than an investigation that focuses only on identifying perpetrators and fixing blame. Underlying this new vision of CPS is the premise that the best way to protect children is to support and nurture families and the communities in which they live. Reports of child abuse and neglect have increased significantly during the past three decades. Among these reports are growing reports of abuse in foster care or out of home placements. Most reports of child abuse concern neglect, as opposed to physical or sexual abuse. Approximately 1,000 children die each year as the result of severe abuse. Although *incidents of abuse have increased, the percentage of reports investigated by CPS agencies has declined*.

The total yearly cost of these investigations nationwide is estimated at approximately \$2.9 billion. In 1997, state and local child protective service agencies received an estimated 3.2 million reports of abuse and neglect because family members, professionals, or other citizens were concerned about the safety and well being of children²⁴. Approximately one million of these reports were substantiated (that is only one third). That is, after follow-up and investigation, officials found reason to believe that abuse and neglect had occurred and/or that the children continued to be at risk of further harm. The remainder consists mostly of anonymous reports, which were unconfirmed, false, or a result of malicious intent.

State legislatures play an important role in CPS. They define child abuse and neglect, mandate those who must report child maltreatment, structure and appropriate funds for child welfare agencies, and prescribe CPS functions. Federal funding statutes that prescribe standards for identifying, reporting and responding to child abuse influence state law regarding CPS. State legislators also have the responsibility of setting up external reviews for forced services like those offered by DFYS, Juvenile Justice and Mental Health²⁵. They set the standards to be met by the respective departments in policies and procedures.

The functions of CPS are remarkably uniform from state to state. CPS agencies accept and investigate reports of child maltreatment. Investigated cases are classified as substantiated or unsubstantiated. Substantiated reports may result in some form of coercive state action and should be placed on a central child abuse registry²⁶. CPS agencies should deliver some services to families, including intensive family preservation services designed to resolve crises and prevent out-of-home placements of children. The current CPS system is criticized for being overly rigid, crisis-oriented, fragmented, isolated and unresponsive to the needs of troubled families. These problems result partly from an increasing number of abuse reports in the wake of broadened definitions of maltreatment, expanded lists of mandatory reporters of child maltreatment, increases in poverty, a growing number of single-parent families and an increase in substance abuse. Some observers are concerned that welfare reform will lead to even higher rates of child abuse and neglect, further straining the CPS system.

There is little to no accountability with the agencies that deal with Juvenile Justice, Mental Health and DFYS (child protective services). A parent is held to a standard of accountability that is higher than that of a

²⁴ Information from The National Center on Child Abuse Prevention

²⁵ External reviews are required by the CAPTA 1996 and compliance of this is questionable for Alaska DHHS

²⁶ The state of Alaska has no central registry

employee of the state, which raises questions about the quality of services alleged to protect the best interest of the clients. Separation of some of these responsibilities will allow for protection of the state against such claims, by giving them more time to oversee agencies and enforce accountability. Contracts with the state could be made legally binding adding responsibility and a safe guard for the state in instances where providers fail to complete the agreement. What do we have now, with the state having an almost monopoly like system, to enforce the issue of protecting equal due process and protect the responsibility of providers to recognize family rights or those of the beneficiaries. Studying all sides will give us the best quality at the lowest cost. We need quality services, by accountable providers that decrease risk.

Monday September 20 in the Anchorage Daily News there was a very small article under state news. It stated DFYS workers suspended. Three of the five employees with the state Division of Family and Youth Services office in Nome have been suspended, pending the outcome of a personnel investigation. The Department would not discuss the suspension but said they were of "a serious nature." Russ Webb, deputy commissioner of Health and Social Services, said the agency hoped to wrap up its investigation quickly. Is it resolved yet? The committee received the following response: all three were suspended with full pay. A prior incident of this nature involved a caseworker in the Kenai area, who had a history of being transferred throughout the state when complaints started piling up. It causes great concern that social workers who have such power to remove children are seemingly held to a lower standard of accountability. A legislative requirement to follow the NASW code of ethics in order to be protected by immunity under AS 47.10.960 would possibly help limit the retention of inept, or unethical social workers, regardless of the union. With respect for the hard job they must do, there is also a need for balance and equal responsibility to treat clients and children with compassion, "in the best interest of the family." To implement this legislative requirement would be a two fold protection and give the workers a solid guideline to adhere to. Paying for social workers who are suspended is expensive and wasteful, just as wrongful intervention is, when it takes away from those who really need help from the agency.

Chart on Statutes for Clarification on requirements

Program	Statute	Description
Confidentiality	AS 09.25 AS 25.23	Establishes the confidentiality of adoption proceedings and records, and the circumstances under which such records can be made available to specified individuals.
Children in Need of Aid	AS 47.10	Subject to AS 47.10.019, the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence.
Child Abuse and Neglect Reporting Law	AS 47.17	In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the department. Reports must be made when there is a reasonable cause to suspect child abuse or neglect in order to make state social and investigative services available in a wider range of cases at an earlier point in time, to make sure that investigations regarding child abuse and neglect are conducted by trained investigators, and to avoid subjecting a child to multiple interviews about the abuse or neglect.
Adoptions	AS 25.23 AS 18.50	Chapter 25 shall be liberally construed to the end that the best interests of adopted children are promoted. Due regard shall be given to the rights of all persons affected by a child's adoption.

Uniform Child Custody Jurisdiction Act	AS 25.30	Establishes the state's jurisdiction with regard to child custody proceedings.
Interstate Compact on the Placement of Children	AS 47.70	It is the purpose and policy of the states of the compact to cooperate with each other in the interstate placement of children.
Guardians of Minors	AS 13.26	The guardianship program provides permanent homes, through adoption and guardianship, for children in the custody of the Department who cannot return to their biological parents.
Youth Services - Field Probation and Youth Correctional Facilities	AS 47.12.010	Passed during the 1998 legislative session, the statute codifies the principles of restorative and balanced justice. This statute recognizes that effective public safety is found in a vision where juvenile offenders have an immediate consequence, perform community service and, possibly, reconnect to their community.
Citizen's Foster Care Review panel	AS 47.14.200	Established an external review as required by the CAPTA 1996 whose duty it is to review every case in custody longer than six months.

COMMISSION ON PRIVATIZATION

Department of Health & Social Services

Subcommittee on Public Assistance

Our recommendations overlap into the Department of Education because Childcare programs in DOE overlap with child care programs in HSS.

Part of the review for the privatization report is to look at services government is providing that maybe government should not be providing. While such recommendations are philosophically based, we felt it was important to be honest in our recommendations and bring our viewpoints to the committee.

We believe that government should be give a helping hand in times of need, we feel that accountability, humility and compassionate are missing links in government providing some services it should no longer provide. We feel that government services in our Republic have become too much like those services provided in socialist nations. We have to ask ourselves if we want a society that comes to government for all the answers and all the handouts.

As President John F. Kennedy said in his inaugural address, "ask not what your country can do for you, ask what you can do for your country." Government has made it too easy for people to fail on their own. In the process, we are losing the independence, self-determination, inspiration, and competitiveness that took us from a small colony to the most powerful nation in the world.

The socialism movement of the FDR era in the late thirties and early forties has been gaining ground for sixty years. Government spending on social programs continues to increase as definitions broaden and medical excuses are made for bad social decisions on the part of our citizens. It is now time for people to once again be responsible for their actions and stop relying on government to spend the hard-earned dollars of productive citizens to pay for the social errors of a non-productive segment of our population.

Social services and medical programs should be limited to those who genuinely have medical reasons for not being able to provide for themselves. Our recommendations reflect that philosophy.

Recommendation: Make the ATAP program into a loan program for all public assistance for people who are physically able to support themselves and their family.

The state spends as much money on feeding, clothing, and housing Alaskans on public assistance as we do on education. It is understandable that sometimes people get down on there luck. In those times, the State can provide these people with a low interest loan for up to the 60-month limit already in affect. If a person were not physically able to provide for their family, they would qualify for disability, workers compensation, or SSI.

The program would be similar to the Small Business Administration Disaster Loan Program. This program provides low interest (3%) loans to people whose homes or businesses have suffered structural damage from floods, earthquakes, etc. The loan is set up on a thirty-year repayment schedule so that the payments are smaller and do not place too big of a burden on the borrower. Borrowing the money would allow for people to provide for their family with dignity, a factor that is missing in the current system.

Recommendation: Eliminate the hold harmless programs for the permanent fund dividend and Alaska Longevity Bonus payments.

The hold harmless provision of state law have been long criticized by constituents of the legislators that I have worked for. The whole premise that all Alaskans should pay for the loss of income to an individual receiving public assistance from the state because they are receiving other benefits from the State is counter-product to the goals of the Department to make people more self-sufficient. The State of Alaska currently spends \$1,907,200 on these two hold harmless grant programs.

Recommendation: Consolidate the childcare assistance and Head Start programs currently in the Department of Education into Division of Public Assistance Welfare-to-Work Services and contract regionally for administration of the consolidated program.

All childcare, including Head Start, should be placed under one umbrella. This reduces duplication and reduces administrative costs. If the services are contracted regionally, there would be additional consolidation with regional non-profits or other entities that currently provide child care services.

The Department of Education has a new division entitled Early Development. This Division is duplicative in nature with childcare in public assistance.

Recommendation: Scale down the Adult Public Assistance to include only an Interim Assistance Program. Assistance would only be provided to Supplemental Security Income (SSI) applicants who have a medical emergency, but who have not received a determination from Social Security. The assistance is terminated as soon as the applicant has been approved or disapproved for SSI benefits.

Emergency shelter, clothing and food is provided by a variety of private organizations including, the Salvation Army, Rescue Mission, Catholic Relief Services, Love Inc., and endless church organizations. If there are medical needs that are of emergency nature, those medical services should be provided under the Interim Assistance Program.

Recommendation: Eliminate the General Relief Assistance Program.

The General Relief Program was implemented before Alaska was a State and before the federal government was providing funding for assistance. The Emergency Services Division of the Division of Military and Veteran's affairs provides emergency aid for natural emergencies under a broad definition that includes large fires, floods, earthquakes and even poor fishing seasons. The Federal Emergency Services Administration augments the State program. Single-family cases of emergency services can be provided by the Salvation Army, American Red Cross, Rescue Mission, etc.

Recommendation: Eliminate all exemptions to the 60 month limitation for receiving ATAP.

The purpose of welfare reform was to get people off the welfare rolls and on a road to a productive life. With decentralization of work programs and the contracting of these services to regional contractors, the program should be working better. Medical assistance is provided in these rural areas by the Indian Health Service. Water and sewer projects are being funded by EPA and Village Safe Water. Housing is being funded by HUD and Alaska Housing Finance Corporation. . In rural areas where the unemployment is high, there should be more of an emphasis on the part of the regional profit-making corporations to develop a job market from their land holdings and resource base.

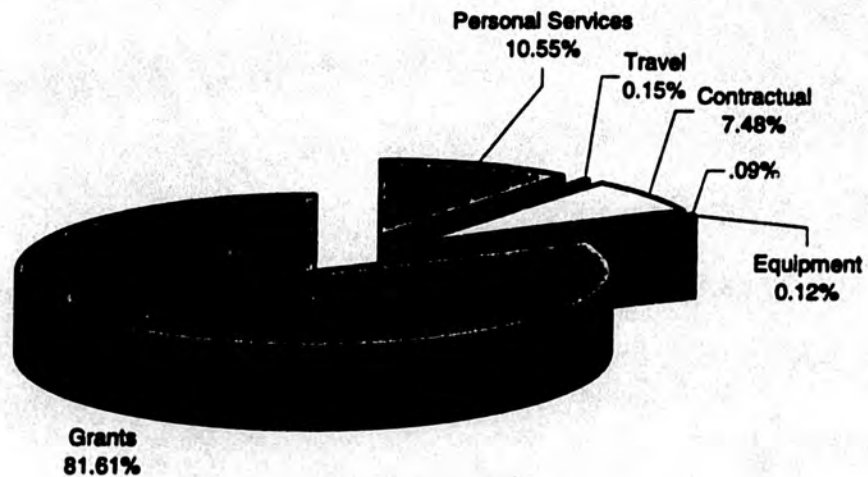
BRU and Component Names as listed in state budget

A BRU is a budget request unit that is a group of components or program activities combined to achieve a specific goal. The BRU "Public Assistance" is comprised of eleven components: Alaska Temporary Assistance Program (ATAP), Welfare-to-Work Services, Child Care Services, Food Stamp Program, Adult Public Assistance, Energy Assistance Program, General Relief Assistance, Alaska Longevity Bonus Hold Harmless (ALBHH), Permanent Fund Dividend Hold Harmless Program (APFDHHP), Quality Assessment, and Fraud Control. These components are discussed in the Overview Section of this report.

Total Budget, all funds

The total budget for Public Assistance is \$243,989,200. The division spends \$25,751,100 on personal services, \$372,400 on travel, \$18,247,200 on contractual services, \$209,100 on commodities, \$296,400 on equipment, and \$199,113,100 on grants.

DIVISION OF PUBLIC ASSISTANCE

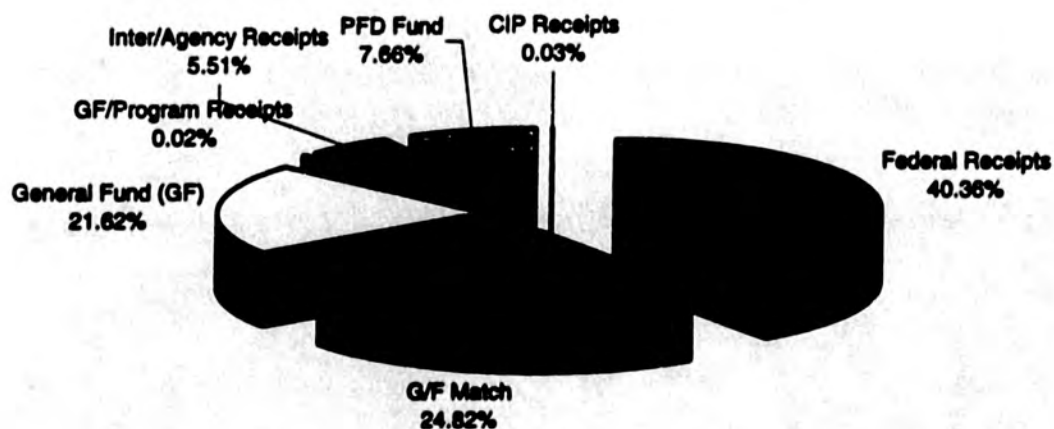


EXPENDITURES - FY'00

III. Total Revenue derived

The total revenues for the Division of Public Assistance total \$243,989,300. Federal receipts for this program total \$98,462,900 or 40.36% of the component revenues.

DIVISION OF PUBLIC ASSISTANCE



REVENUES - FY'00
\$243,989,200

IV. Total Budget, all funds

The total budget for Public Assistance is \$25,751,100. The division spends \$25,751,100 on personal services, \$372,400 on travel, \$18,247,200 on contractual services, \$209,100 on commodities, \$296,400 on equipment, and \$199,113,100 on grants. Grants include welfare checks through ATAP. ATAP provides assistance to approximately 8,500 families.

DIVISION OF PUBLIC ASSISTANCE					
Expenses			Revenues		
Personal Services	25,751,100	10.55%	Federal Receipts	98,462,900	40.36%
Travel	372,400	0.15%	G/F Match	60,551,500	24.82%
Contractual	18,247,200	7.48%	General Fund (GF)	52,747,800	21.62%
Commodities	209,100	0.09%	GF/Program Receipts	39,800	0.02%
Equipment	296,400	0.12%	Inter/Agency Receipts	13,436,900	5.51%
Grants	199,113,100	81.61%	PFD Fund	18,688,900	7.66%
TOTAL	243,989,300	100%	CIP Receipts	61,400	0.03%
			TOTAL	243,989,200	100%

State contracting policy and procedures, including competitive bidding procedures;

Decentralized contracting for provide health and social service programs should be let by competitive bid based on cost and the ability of the bidder to deliver those services. It seems that the current contracts with regional providers are done by negotiated contracts, not competitive bidding.

Barriers to Implementing.

The barriers to implementing our recommendations are the increasing numbers of citizens who rely on government assistance and the government agencies perpetuating their existence.



COMMISSION ON PRIVATIZATION

Department of Health & Social Services

Subcommittee on Medical Assistance

Recommendation: Implement a state statute giving medical facilities the flexibility to decide whether or not to pursue collection of questionable debts.

Under the current system, medical facilities providing medical assistance to a medicaid patient are required to collect the recipient's co-pay portion of the medical bill. The end result many times is that the medical facilities are losing money by being required to pursue pennies with dollars.

Recommendation: Make the medical assistance program into a loan program for people who are physically able to support themselves and their family, but have medical needs and to not have the immediate resources to pay for that need.

The rationale for supporting this recommendation is that a loan program, be it a low interest or no interest loan, would discourage abuse of the medical services available under the medicaid program because the participant would incur a debt. Medicaid currently competes with private charities. Taxes are collected from productive Alaskans to provide medical services for non-productive residents. Charitable entities provide compassion and accountability that government does not provide.

The loan program concept could eventually result in a steady income of revenues for medical services from repayment of the loans. This could enable the State of Alaska to turn back federal dollars with unfunded mandates attached. This would eliminate such requirements placed on doctors as the stipulation that they can not charge less to any patient than what a medicaid patient pays. The elimination of that requirement would enable doctors to perform medical services to certain patients at no cost.

The rationale against the recommendation is the recommendation attempts to adjust the whole system to catch the abusers. It spoils the whole barrel by trying to get one bad apple.

Recommendation: All services provided by Health and Social Services are be provided to applicants who are 100% of poverty level.

The state spends as much money on feeding, clothing, and housing Alaskans on public assistance as we do on education. Poverty is "the condition or quality of being poor."²⁷

Programs administered by Health & Social Services should be available for the poor, not the almost poor or the person who has twice as much as the poor. Poverty programs should be available to people who live in poverty, including medical assistance. These programs should address only emergency needs that are not available elsewhere and the public should be weaned of any public assistance from government sources unless individuals are actually physically unable to provide for their family. In this case, there are other sources of assistance such as workers' compensation, social supplemental income from Social Security's Disability Program, United Way, Salvation Army, March of Dimes, etc.

The current system enables people use the system on the backs of other Alaskans. We are not being responsible as a state by taking money from productive people and giving services to non-productive people.

People living in poverty should receive emergency assistance but it should be giving with compassion that will result in people moving out of a life of poverty and with accountability that would encourage a change in lifestyle.

For those people who are truly physically unable to provide for their families, public assistance is available.

Recommendation: We recommend that the legislature conduct a legislative audit on the Medicaid Rate Advisory Commission.

The legislature needs to examine if costly audits being required of medical facilities are being conducted to be helpful or are being conducted to be punitive with a "gotcha" motive of trying to catch medical facilities doing something wrong.

Recommendation: Pass legislation similar to Rep. Jeannette James proposed that would require the legislature to review and approve proposed regulations before they are put into effect.

Rep. James currently does not have legislation to accomplish this but she did have some several years ago. Regulations are too burdensome on the medical industry and legislative review to reduce that burden.

BRU and Component Names as listed in state budget

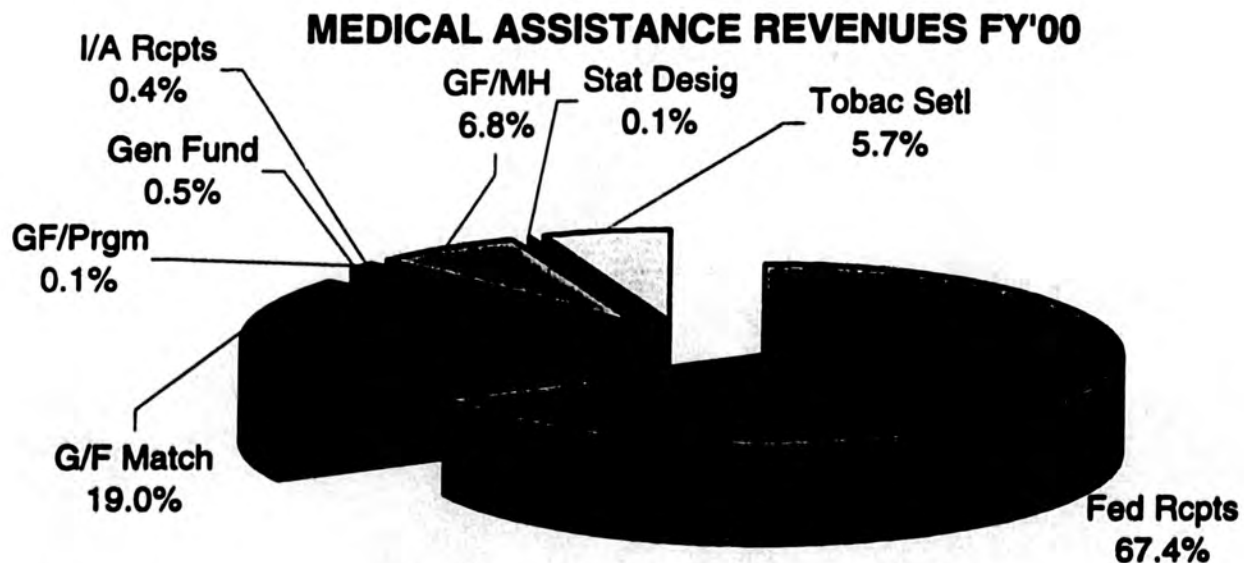
A BRU is a budget request unit that is a group of components or program activities combined to achieve a specific goal. The BRU "Medical Assistance" is comprised of eleven components: Medicaid Program, Chronic and Acute Medical Assistance, Health Baby and Healthy Kids, Home and Community Based Care, Drug Utilization

²⁷ Webster's New World Dictionary of the American Language; Second College Edition; 1982; Simon & Schuster; New York; Page 1116

Review, Medicaid Management Information System (MMIS), Surveillance and Utilization Review, Healthy Licensing and Certification (HLFC), Medical Care Advisory Committee (MCAC), Office of Hearings and Appeals, Medicaid Rate Advisory Commission (MRAC), and Audit Unit.

Total Revenues

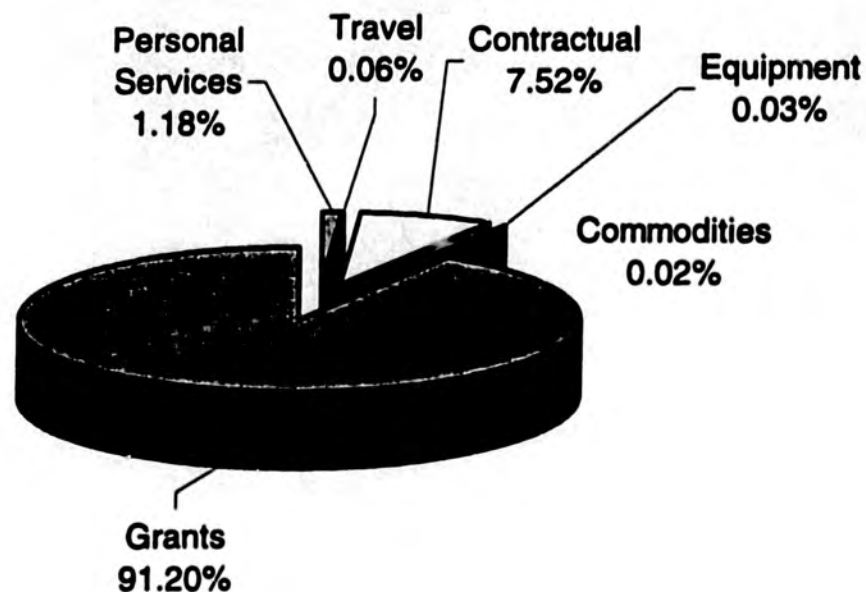
Total revenues for FY'00 ate \$464,004,600. Source of funding are federal receipts at \$312,641,200; General Fund Match at \$88,294,200; General Fund at \$2,449,400; General Fund Program Receipts at \$364,000; Inter Agency Receipts at \$1,681,300; General Fund Mental Health Funds at \$31,576,800; Statutory Designated Funds at \$405,000; and Tobacco Settlement funds totaling \$26,592,700:



Total Expenses:

Total Expenses for Assistance for FY'00 totals \$464,004,600: Personal Services at \$5,452,900; travel at \$280,700; contractual services for \$34,878,100; commodities at \$70,100; equipment totals \$127,900; and grants total \$423,194,900.

Medical Assistance Expenses FY'00



Barriers to Implementing:

The barriers to implementing our recommendations are the increasing numbers of citizens who rely on government assistance and the government agencies perpetuating their existence.

LABOR

**COMMISSION ON PRIVATIZATION
DEPARTMENT OF LABOR SUBCOMMITTEE REPORT**

OVERVIEW:

The Department of Labor Subcommittee has been meeting on a weekly basis since August 19, 1999. We have had a very active core committee who has demonstrated a strong commitment to this process through their regular attendance and review of all assimilated information. As Chair of the Department of Labor Subcommittee, Commissioner Flanagan contacted me very early on. He offered the full cooperation of his department and assigned Deputy Commissioner Perkins to work directly with our subcommittee. Mr. Perkins did, at our request attend in person, when possible, or telephonically all subsequent meetings. In response to our requests, he provided an overview of each of the Departments agencies, following the suggested outline for subcommittees. Most importantly he provided complete and expedient responses to all of the committee members questions and inquiries as we reviewed the agencies.

I would like to thank all of our committee members, Commissioner Flanagan, Representative Cowdery and his staff, for getting us off to a good start, and particularly Deputy Commissioner Perkins for all of his time, cooperation and effort to make this process a success.

FINDINGS, RECOMMENDATIONS AND SUGGESTIONS:

Following the suggested outline we have attached responses to items I through IX by each agency/division of the Department including memos from agency directors responding to questions from committee members.



The Department of Labors current budget reflects a vast percentage of there funds to be "pass through" dollars. That is to say most of the money comes from the federal government and is used to provide benefits and services consistent with federal laws, mandates or quotas. These funds in large part are used to pay unemployment benefits, provide job training, vocational rehabilitation, safety inspections, etc.... Our committees approach to exploring the feasibility of privatization was to first look at the current contracting practices, determine if federal law would need to be enacted to move forward with privatization, determine if federal funding would be reduced or eliminated by contracting. Once those questions were answered we then looked to determine if cost savings and/or better services could be obtained through contracting. At this point, we also took notice of areas where it appeared cost savings and better services might be obtained utilizing state agencies in lieu of current contracting practices. However, it was determined that such an examination was outside the scope and intended purpose of this committee and therefore not pursued.

Office of the Commissioner: No suggested changes.

Division of Administrative Services: No suggested changes. The committee does in particular recognize and appreciate the Research and Analysis section and the valuable publications they generate.

Employment Security Division: No suggested changes

Labor Standards and Safety: No suggested changes. However, the committee does have several concerns within this area. We are concerned with the backlog of mechanical inspections. It appears this problem may show some improvement by the recent change to allow plumbing inspectors to conduct some of the boiler inspections. Also potential changes to program receipts may help to fund more inspectors using the funds these inspections generate. Our committee looked very closely at mechanical inspection as a possible target for privatization. There was broad concern of the "fox guarding the hen house" as Committee member Bill Watterson phrased it. Additionally, we found the cost at which the state provides inspections to be surprisingly low and found it highly unlikely for privatization to occur without increases to Alaskan businesses for the cost of the inspections. Recruiting and maintaining state inspectors is an ongoing concern.

Industry representatives on the committee expressed concern that the states voluntary safety program be maintained. We feel it to be a wise investment to maximize federal matching dollars for a program that achieves a safe work place in a cooperative and non-penalizing fashion. This is achieved in large part through the Consultation and Training sections of this agency.

Of particular concern to all committee members is the stability of the states safety compliance program. We feel strongly that any attempt to put this vital function back into the hands of the federal OSHA program would not be in the best interest of Alaska's

workers or industry. We did invite staff from this section in to help us better understand the process and the time frame for completion of these inspections.

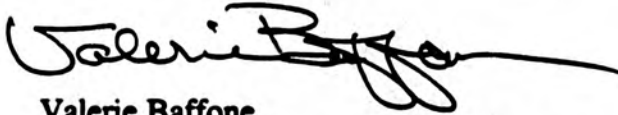
Division of Workers Compensation: No suggested changes. All committee members commented on the trend of reduced workers compensation insurance rates and felt no need to delve into this program. However, of particular concern to the Chairman, as a member of the Alaska Workers Compensation Board, is the high turn over of Hearing Officers. These are very specialized positions requiring tremendous knowledge and enforcement of what has become a very complex body of laws and regulations. It is imperative to the integrity of the system to recruit and maintain qualified legal staff in the positions of Hearing Officers.

Division of Vocational Rehabilitation: No suggested changes. This is a new division for the Department of Labor as a result of recent legislative action reorganizing DVR from the Department of Education to the Department of Labor. It appears to be a good fit. We looked closely here at the feasibility of privatizing the duties of the Vocational Rehabilitation Counselor. However, our findings indicated that the services of vocational counselors in the private sector, utilized by the workers compensation system, for comparable qualified counselors, to be much higher. The hourly rate for the state's DVR counselors is typically under \$18.00/hour. The hourly rates for workers compensation private sector rehabilitation specialist is \$90-\$140 per hour. Even factoring in "role up" payroll cost we saw no justification to pursue this further.

CONCLUSIONS:

We find that the Department of Labor is currently practicing a great deal of privatization. We feel they are doing so in a competent and efficient manner. We explored every agency for potential increases to privatization practices. Rather than including in the narrative of this report all of our weeks of inquiries to the department, for the sake of brevity, we have included several documents to this report, which illustrate the many areas we probed and reviewed for consideration. Also attached is a listing of all subcommittee members.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Valerie Baffone', with a long horizontal flourish extending to the right.

Valerie Baffone
Department of Labor Subcommittee Chair
Commission on Privatization

Subject: [Fwd: subcommittee report]

Date: Wed, 17 Nov 1999 11:25:37 -0900

From: Marco Pignalberi <Marco_Pignalberi@legis.state.ak.us>

To: Annette_Deal@legis.state.ak.us

Subject: subcommittee report

Date: Tue, 16 Nov 1999 11:54:11 -0900

From: Dwight Perkins <dwright_perkins@labor.state.ak.us>

Organization: Alaska Department of Labor and Workforce Development

To: Marco A Pignalberi <Marco_Pignalberi@legis.state.ak.us>,

Edward J Flanagan <ed_flanagan@labor.state.ak.us>

Hi Marco;

Per your request I am responding to the privatization subcommittee's report to the full committee given on November the 4th.

First I would like to thank you and the subcommittee for their efforts to work with the Department in keeping focused on what their goal was.

The approach the department took with the subcommittee was to provide information on each division within the department then go through that information about programs which included organizational charts, the total budget for each division, how they were funded, with respect to general fund dollars, federal funding, etc. The subcommittee reviewed the constitutional and statutory requirements of each program, and how the division was doing with regards to its mission in providing their service to the public. The subcommittee reviewed the number of employees in each division, looked at what technologies are used to perform the division's job, and what those employees did to serve the public. We looked at what partnerships were being done with the private sector currently, and how much dollar volume that totaled.

I must say that I feel the subcommittee was very thorough in their efforts and appreciate the opportunity to be able to show them how the Department of Labor and Workforce Development is providing a service to the public in a professional and cost effective manner.

After reviewing the subcommittee's report with Commissioner Flanagan, the department has no additional comments to the subcommittee's report.

Thank You,
Dwight Perkins



U. S. Department of Labor Employment and Training Administration 1111 Third Avenue, Suite 901 Seattle, WA 98101-3212	DATE June 24, 1999
	CLASSIFICATION One-Stop LMI
	EXPIRATION DATE June 30, 2000

DIRECTIVE : SESA BULLETIN NO. 4-99

TO : REGION X STATE EMPLOYMENT SECURITY AGENCIES

Alaska - Rebecca Gamez, Director ✓
Idaho - Roger B. Madsen, Director
Oregon - Virlena Crosley, Director
Washington - Carver Gayton, Commissioner


FROM : MICHAEL BRAUSER
Regional Administrator

SUBJECT : Allocations and Information for Program Year 1999 Cost Reimbursable Grants:
One-Stop Labor Market Information Funds

1. **Purpose.** To provide planning information for Program Year (PY) 1999 One-Stop Labor Market Information (LMI) grant funds.
2. **References.** The Wagner-Peyser Act, Section 7(d); 29 CFR Parts 93, 96, 97 and 98; SESA Bulletin No. 5-98; and OMB Circular A-87.
3. **Background.** Authorization for the cost reimbursable grant is provided in the Wagner-Peyser Act, Section 7(d). Funds are being provided to State Employment Security Agencies (SESAs) to support One-Stop LMI activities.

For PY 1999, \$37 million will be allocated for One-Stop LMI core products and services to the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. This allocation is an increase of \$9 million over last year; however, this figure includes the former JTPA State and Local Planning Grant funds that amounted to about \$5 million per year and had gone under a separate title with a separate funding code. (There will no longer be a separate code for State and Local planning funds which will now be absorbed into the annual Core Products code.)

\$27 million in administrative formula grants will be obligated to States for the development of core One-Stop LMI product and services. Another \$10 million of this funding source will be obligated as the One-Stop LMI contribution towards the continued cost of the



unscrupulous employment practices; and (4) ensure that children are not exploited in dangerous occupations.

(c) The mission of the Mechanical Inspection Section in the Division of Labor Standards and Safety is to protect employers and employees by (1) providing oversight and inspection for hazards related to boilers, pressure vessels, elevators, escalators, wheelchair lifts, recreational devices, electrical and plumbing installations statewide; (2) testing and licensing people associated with some of the activities set out in (1) of this subsection.

(d) The mission of the Occupational Safety and Health Administration in the Division of Labor Standards and Safety is to work in partnership with Alaska employers and workers toward eliminating workplace injuries, illnesses, and deaths, and to assist employers in complying with state and federal regulations relating to occupational safety and health.

(e) The mission of the Alaska State Advisory Council in the Division of Labor Standards and Safety is to work with organizations, individuals, and groups that are interested in the promotion of safety to reduce accidental death and injury.

Legislation past last year.

SB 169

DOL effected sections

*** Sec. 80. Department of Labor.**

The mission of the Department of Labor is to foster, promote, and improve working conditions and advance the opportunities for profitable employment of the wage earners of the state to the mutual benefit of employees and ~~the~~ employers.

*** Sec. 81. DOL - Office of the Commissioner.**

The mission of the Office of the Commissioner is to foster compliance with the statutes and policies that foster, promote, and improve working conditions and advance opportunities for profitable employment.

*** Sec. 82. DOL - Division of Administrative Services.**

The mission of the Division of Administrative Services is to (1) provide efficient administrative services in support of the department's programs; and (2) analyze and distribute demographic and economic information that assists Alaskans in making more informed policy and employment decisions.

*** Sec. 83. DOL - Division of Employment Security.**

The mission of the Division of Employment Security is to assist in easing the negative effects that involuntary unemployment has on Alaska's wage earners and society and to assist unemployed wage earners find employment.

*** Sec. 84. DOL - Division of Workers' Compensation.**

The mission of the Division of Workers' Compensation is to (1) ensure that eligible Alaska workers are provided adequate medical care, prompt payment of benefits, and, if needed, voluntary rehabilitative services; (2) provide protection to employers from being sued in court by employees for workplace injuries; (3) provide assistance with medical costs of injuries or illnesses due to commercial fishing activities onshore or in state water; and (4) reimburse employers for compensation paid to employees involved in a second injury.

*** Sec. 85. DOL - Division of Labor Standards and Safety.**

(a) The mission of the Division of Labor Standards and Safety is to provide assistance and oversight to both employees and employers in the state by ensuring safe and healthy working conditions, just compensation, and legal employment practices, and to provide public and consumer protection by ensuring the integrity and safety of various mechanical systems and equipment.

(b) The mission of the Wage and Hour administration in the Division of Labor Standards and Safety is to (1) assist employers by responding to their questions concerning the application of the wage and hour statutes and regulations to their unique business situations; (2) ensure that employees are justly compensated for work; (3) safeguard workers from

VII.

Specialized expertise needed for mission:

EMPLOYMENT SECURITY SPECIALIST

Employment Security Specialists perform a wide variety of functional assignments necessary to the delivery of Employment Service/Unemployment Insurance (ES/UI) programs including employability, placement and related services to applicants and employers and unemployment insurance benefits payments. This series covers field operations staff providing ES/UI services in a local office or employment center.

REQUIRED EXPERIENCE

Four years of experience where effective dealing with people was an essential part of the duties. Successful experience in occupational areas such as the following (non-inclusive) would satisfy the minimum requirement: employment agencies, labor or industrial relations, personnel or industrial management, teaching, insurance, social services, etc.

Substitution: College education from an accredited college including practical experience courses in interpersonal relationships may substitute for up to two years of the required experience on a year-for-year basis. Such courses must be fully explained at the time of application to show job relatedness and be supported by transcripts.

SPECIAL SKILLS & ABILITIES

Knowledge of principles and techniques of interviewing; principles and concepts upon which employment security programs are based; problems of culturally and economically disadvantaged individuals, groups and communities; nature, scope and availability of programs and services designed to alleviate social problems related to employment and employability processes; general economic conditions and trends affecting labor supply and demand.

Ability to meet and deal effectively with the public; gather and analyze data and reason logically and accurately, comprehend written material and interpret and apply rules and instructions; speak and write effectively; establish and maintain cooperative relations with those contacted in the work; analyze situations accurately and take effective action; gain confidence of persons and groups requiring services; interpret and apply provisions of the Alaska Unemployment Insurance code, and rules and regulations, policies and procedures of the Employment Security Division, and State and Federal legislation relating to the Department's programs; make sound decisions; record accurately the facts supporting decisions; interpret and apply the provisions of State and Federal labor and veteran laws; ask questions to elicit required information; convey information, orally or in writing, to a variety of individuals in simple, understandable, and precise terms.

Subcommittee Report

I State of Alaska, Department of Labor and Workforce Development

II Employment Security Division, Employment Services

III Total budget, all funds

All dollars in thousands

TOTAL BUDGET	FY 1999 Authorized	FY 2000 Governor
Expenditure Totals	9,906.6	11,009.2
Funding Source		
1002 Federal Receipts	9,390.7	9,570.8
1007 Inter-Agency Receipts	241.8	591.8
1049 Training and Building Fund	0.0	572.5
1108 Statutory Designated Program	274.1	274.1
Funding Totals	9,906.6	11,009.2

IV. Total revenue derived

	FY 1999 Authorized	FY 1999 Cash Estimate	FY 2000 Governor
Total Estimated Revenues	9,906.6	10,479.1	11,009.2

V. Constitutional and statutory provisions governing agency operation:

- Wagner-Peyser Act
- 20 CFR Chapter V
- AS 23.20
- 8 AAC 85
- 5 U.S.C. Sec. 8501-8525
- Trade Act of 1974

VI. Agency mission, goals and objectives:

The mission of Employment Services is to foster and promote the welfare of Alaska wage earners by operating a statewide public labor exchange. Goals include:

- Increase visibility to our customers as Alaska's primary labor exchange
- Collocate and coordinate services and resource with other agencies
- develop revenue-generating strategies by the end of the fiscal year to maintain levels of service as federal funding declines
- Meet or exceed U.S. Veterans Performance Standards

VII. Number of employees working in Employment Services: 148

- Specialized expertise needed for mission: see attached

VIII. Technology used to perform mission:

- Multi-line telephones with queue and voice-mail
- Employment System mainframe - job order control, referral activities, client information, etc.
- Local Area Networks
- Wide Area Networks
- Personal Computers
- NCD Thin Client Boxes
- Word processing, spreadsheet, database, and other software
- Internet navigation
- Interactive web page creation
- Scripting languages such as JavaScript
- Programming languages such as Natural

IX. Existing agency contracts: none

EMPLOYMENT SERVICE MANAGER

Positions allocated to this series are distinguished from the Employment Specialist III, in that the latter directs some of the program activities for which the manager is responsible, but does not have full managerial/administrative responsibility or accountability for all of the functions under the jurisdiction of the manager. A position's level in this series is determined by the complexity of the management responsibilities. Management complexity is influenced by the number of permanent staff in an office, the presence and level of subordinate supervisors, the number of programs supported, and the number of employers and diversity of occupations available in the area; all of which are related to the geographic size, and population and employer base of the area served. Positions responsible for the activities of a service delivery area plan, organize, and direct the activities of a Class III or Class IV office and oversee a minimum of two additional employment service offices.

REQUIRED EXPERIENCE

Two years of work experience in either of the following areas, or a combination thereof:
Experience at the full proficiency level (technician/specialist/counselor) providing services to the public under any government, nonprofit, or private sector social services programs, or an employment service agency; OR managerial or administrative work which included planning staff activities, supervising and evaluating subordinate staff, monitoring budgets and expenditures, and analyzing and reporting on the effectiveness and efficiency of activities.

Substitution: A baccalaureate degree with a major in public administration, business administration, human resource management, sociology, psychology or a closely related field may be substituted for one year of the required work experience.

One year of full proficiency level work experience in employment service, providing labor exchange (employment) services, vocational assessment and counseling services; or performing employment service related technical support work as an employment security analyst, or similar functions.

SPECIALIZED SKILLS & ABILITIES

- Thorough knowledge of the techniques of interviewing and of obtaining information.
- Working knowledge of the economic, social, political and business conditions of the state.
- Working knowledge of federal, state and local relationships as they impact on the work.
- Working knowledge of the operational and technical problems involved in the administration of employment security programs.
- Working knowledge of employee policies, procedures, rights, benefits and obligations. Some knowledge of public relations techniques.
- Some knowledge of the problems of culturally and economically disadvantaged individuals, groups and communities.
- Ability to read, interpret and apply state statutes, federal laws, regulations, policies and procedures related to employment security programs.
- Ability to gather, analyze and evaluate data, facts or information and draw logical conclusions and take effective action.
- Ability to settle issues, handle unusual circumstances, and make responsive, mature decisions.
- Ability to accurately record facts to support decisions and actions.
- Ability to organize, evaluate and present information effectively, both orally and in writing.
- Ability to develop and maintain an effective public relations program.
- Ability to establish and maintain effective working relationships with government and private industry officials, and a wide variety of professional civic and nonprofit groups.
- Ability to counsel individuals with social and economic problems.
- Ability to operate data terminals.
- Ability to coordinate programs with other state and local programs and agencies.

Additionally, positions in this series must possess the knowledge and/or abilities in one of the two following groups:

Group 1 -

- Considerable knowledge of the principles and techniques of administrative management including organization, planning, staffing, training and reporting.
- Ability to develop standards, procedures and methods for programs and office operations.
- Ability to plan, schedule and direct the work of an office.

Group 2 -

- Considerable knowledge of the state and federal laws related to the work.
- Considerable knowledge of the organization, subject matter, procedures, instructions and guidelines related to employment security programs.
- Considerable knowledge of the application of data processing and terminology as it applies to employment security programs and operations.

EMPLOYMENT SECURITY ANALYST

Employment Security Analysts perform, under general direction, the most complex assignments requiring a high degree of independence, judgment and a specific expertise or ability to organize and perform with no specific guidelines or procedures available. May deal with special assignments that require total development of methodology and location, organization and research of material or sources of information. Positions at this level may supervise lower level professionals. Analyzes, interprets and edits Federal and/or State directives which impact Employment Security Division operations; researches existing guidelines, manuals and policies, makes appropriate changes to ensure program conformity with Federal and State directives; manualizes program material; designs and/or modifies forms for local office use and may arrange for printing, forms control. Provides technical guidance and assistance to local office personnel as related to assigned program areas.

REQUIRED EXPERIENCE

Analyst I: One year of experience as an Employment Security Specialist IB or Unemployment Security Specialist IB with the State of Alaska; or one year of full proficiency level experience in other employment/unemployment or social service related programs with the State of Alaska or the equivalent elsewhere.

Analyst II: One year of experience as an Employment Security Analyst I, Employment Security Specialist II or Unemployment Insurance Specialist II with the State of Alaska; OR two years of full proficiency level experience in other employment or unemployment related programs with the State of Alaska or the equivalent elsewhere.

Analyst III: One year of experience as an Employment Security Analyst II with the State of Alaska; OR three years professional level experience in other employment or unemployment related programs with the State of Alaska or the equivalent elsewhere.

Experience in leading or directing the work of others is desirable.

SPECIAL SKILLS & ABILITIES

Familiarity with provisions of unemployment insurance laws, rules, regulations, policies and procedures of the Employment Security Division, and State and Federal legislation relating to employability, placement, manpower training and unemployment insurance programs.

Knowledge of nature, scope and availability of programs and services designed to alleviate social problems related to employment and employability processes, general economic conditions and trends, employment practices and manpower requirements and factors affecting labor supply and demand; interviewing techniques.

Ability to gather, analyze, and research data and reason logically and accurately; interpret and apply provisions of the Alaska Unemployment Insurance Code and rules and regulations, policies and procedures of the Employment Security Division and State and Federal legislation relating to the Department's programs; make sound decisions; comprehend written material, interpret and reorganize and/or rewrite material; analyze situations accurately and recommend effective action; interpret and apply the provisions of the State and Federal labor and veterans' laws; speak and write effectively; maintain cooperative relationships with those contacted in the work.

Ability to conduct and evaluate inservice training programs; develop standards, methods, policies and procedures for programs and operations; analyze situations accurately and take effective action; plan, organize and direct the work of others and coordinate technical aspects of multi-discipline programs.

Subcommittee Report

- I. State of Alaska, Department of Labor and Workforce Development
- II. Employment Security Division, State Training and Employment Program
- III. Total budget, all funds

All dollars in thousands

TOTAL BUDGET	FY 1999 Authorized	FY 2000 Governor
Expenditure Totals	4,046.1	4,046.1
Funding Source		
1054 State Employment & Training Program	4,046.1	4,046.1
Funding Totals	4,046.1	4,046.1

IV. Total revenue derived

	FY 1999 Authorized	FY 1999 Cash Estimate	FY 2000 Governor
Total Estimated Revenues	4,046.1	4,046.1	4,046.1

V. Constitutional and statutory provisions governing agency operation:

- CH85, SLA 98
- CH 116, SLA 96
- CH 17, SLA 93
- CH 17, SLA 91
- CH 95, SLA 89
- AS 23.20.185 - 275
- 8 AAC 87.010

VI. Agency mission, goals and objectives:

The mission of the State Employment Training and Employment Program is to turn actual or potential Unemployment Insurance (UI) claimants in UI Trust Fund contributors through training investments in the Alaskan workforce.

The goal of the program is to reduce current and future claims against unemployment benefits through the upgrading of worker's skills.

VII. Number of employees working in the STEP component: 1 Grants Administrator

- Specialized expertise needed for mission: see attached

VIII. Technology used to perform mission:

- Multi-line telephones with voice-mail
- Personal Computers
- Word processing, spreadsheet, database, and other software
- Internet

IX. Existing agency contracts: none

EMPLOYMENT COUNSELOR

An incumbent in this class performs professional level vocational assessment and counseling services at an employment service office for all difficulty levels of employment-related problems. Duties assigned require the exercise of extensive independent judgment in the choice and delivery of services to employment service clientele.

Positions may be required to exercise program supervision and provide selected training for Employment Counselor I positions and/or act as the lead counselor in an employment service office or a designated regional area.

REQUIRED EXPERIENCE	SPECIAL SKILLS & ABILITIES
Master of Arts/Science degree from an accredited college or university in the behavioral or social sciences including or supplemented by 18 semester or 27 graduate hours in at least three of the following course groups: A. Vocational guidance principles and techniques including a supervised practicum or equivalent; B. Career and personality development theory; C. Individual and group assessment and analysis; D. Occupational information and exploration systems; E. Other courses contributing directly to vocational counselor preparation. Substitution: One year of experience as an Employment Counselor I with the State of Alaska including successful completion of the Employment Counselor Competency Based training program or the equivalent elsewhere will substitute for the required Master's degree.	• Considerable knowledge of relationship skills, community relations, individual and group assessment, accountability and productivity, career development as demonstrated by completion of Employment Counseling Competency Based Modules. • Considerable knowledge of basic employment service programs, policies, and procedures. • Considerable knowledge of basic principles and techniques of individual and group vocational guidance and counseling. • Considerable knowledge of psychological testing and analysis and the application of the individual results to employment-related problems. • Considerable knowledge of occupational structure and labor market information systems. • Considerable knowledge of career development behavior and the special needs of individuals with occupational choice, career changes, or work adjustments or related employment problems. • Considerable knowledge of community service resource organizations. • Working knowledge of current development and technical literature in vocational guidance and counseling. • Working knowledge of personal computer operations, procedures, and techniques as applied to vocational counseling. • Ability to develop a therapeutic relationship with clients having employment-related problems. • Ability to develop and conduct individual and group client employment-related workshops. • Ability to recognize, analyze, and understand the significance of measurable difference among psychological test data and how it applies to client to employment situations. • Ability to interview clients to obtain personal or confidential information related to employment problems and develop and implement a course of corrective action. • Ability to maintain composure and control during stressful situations. • Ability to analyze complex issues and situations and propose viable solutions and courses of action. • Ability to write informational materials such as new releases, announcements, and brochures for promotion of local employment counseling program or special project use.

Subcommittee Report

I State of Alaska, Department of Labor and Workforce Development

II Employment Security Division, Alaska Work Programs/Work Services

Note: In FY2000, the Alaska Work Programs (AWP) component was renamed the Work Services (WS) component.

III Total budget, all funds:

All dollars in thousands

TOTAL BUDGET	FY 1999 Authorized	FY 2000 Governor
Expenditure Totals	1,873.4	1,720.1
Funding Sources:		
1003 General Fund Match	130.9	130.9
1007 Inter-Agency Receipts	1,742.5	1,589.2
Funding Totals	1,873.4	1,720.1

III Total revenue derived

	FY 1999 Authorized	FY 1999 Cash Estimate	FY 2000 Governor
Restricted Revenues	1,742.5	1,742.5	1,589.2

V Constitutional and statutory provisions governing agency operation:

- AS 47.25.421-429
- Title IV-F of the Social Security Act
- 7 U.S.C. 2011-2031
- 7 CFR 273.7

VI Agency mission, goals and objectives

Mission: To provide specialized services for Alaska Temporary Assistance Program (ATAP) and food stamp recipients to help them get full-time paid employment, end their dependency on public assistance benefits, become contributing members of their community, and end the generational cycle of families on welfare.

Goals & Strategies: Provide intensive employment services to public assistance clients in a combined effort with the Division of Public Assistance to move clients off of public assistance and into the workforce:

- Increase the number of ATAP clients who obtain paid employment.
- Increase the number of ATAP clients who retain paid employment.
- Increase the numbers of clients who leave ATAP due to increased earnings.
- Increase the number of employers listing job openings for Work Services.

VII Number of employees working in Work Services: 26

- Specialized expertise needed for mission: see attached

VIII Technology used to perform mission:

- Multi-line telephones with queue and voice-mail
- Employment System mainframe computer system - job order control, referral activities, client information, etc.
- Local Area Networks
- Wide Area Networks
- Personal Computers
- NCD Thin Client Boxes
- Word processing, spreadsheet, database, and other software
- Internet navigation

IX Existing agency contracts: none

GRANTS ADMINISTRATOR	
This is the full working level in the series. Incumbents perform grant administration functions with a minimum of direction. They serve as subject matter experts, recommending changes to grant administration policies and procedures, and may act as a working leader over lower level grant administrators.	
REQUIRED EXPERIENCE	SPECIAL SKILLS & ABILITIES
A bachelor's degree from an accredited college; AND One year of entry level experience administering grants. With the State of Alaska this experience is equivalent to Grant Administrator I. Substitution: Four years of work experience including one year of clerical experience at the level of Administrative Clerk III or Accounting Clerk II will substitute for the required college education. The required experience may be substituted with two years of technical or paraprofessional level experience in accounting, auditing or administrative functions some of which included dealing with grants. This experience is equivalent to Accounting Technician I or Administrative Assistant with the State of Alaska.	Considerable knowledge of state and federal rules, regulations, policies, procedures and reporting requirements for grants and grant recipients. Considerable knowledge of operational and technical problems involved in administering a specialized statewide or department-wide grant-in-aid program. Working knowledge of the fundamentals of budgeting and accounting as applied to public administration. Working knowledge of generally accepted accounting theories, principles, methods, practices and terminology. Some knowledge of the organization and administration of agencies. Ability to communicate effectively with others, both verbally and in writing. Ability to read, comprehends and interpret state and federal laws, rules, and regulations. Ability to establish and maintain effective relationships with government officials, private industry officials, professional personnel and others. Ability to communicate with individuals in a variety of cultures and environments. Ability to maintain favorable working relationships with a wide variety of professional and voluntary groups. Ability to negotiate contract agreements. Ability to analyze data and operations in terms of management controls, systems and procedures, to assess them critically, and to make recommendations for changes. Ability to use reference materials, manuals, and guides related to the work. Ability to identify discrepancies or inaccuracies in data and make corrections.

EMPLOYMENT COUNSELOR

An incumbent in this class performs professional level vocational assessment and counseling services at an employment service office for all difficulty levels of employment-related problems. Duties assigned require the exercise of extensive independent judgment in the choice and delivery of services to employment service clientele.

Positions may be required to exercise program supervision and provide selected training for Employment Counselor I positions and/or act as the lead counselor in an employment service office or a designated regional area.

REQUIRED EXPERIENCE

Master of Arts/Science degree from an accredited college or university in the behavioral or social sciences including or supplemented by 18 semester or 27 graduate hours in at least three of the following course groups:
A. Vocational guidance principles and techniques including a supervised practicum or equivalent;
B. Career and personality development theory;
C. Individual and group assessment and analysis;
D. Occupational information and exploration systems;
E. Other courses contributing directly to vocational counselor preparation.

Substitution: One year of experience as an Employment Counselor I with the State of Alaska including successful completion of the Employment Counselor Competency Based training program or the equivalent elsewhere will substitute for the required Master's degree.

SPECIAL SKILLS & ABILITIES

- Considerable knowledge of relationship skills, community relations, individual and group assessment, accountability and productivity, career development as demonstrated by completion of Employment Counseling Competency Based Modules.
- Considerable knowledge of basic employment service programs, policies, and procedures.
- Considerable knowledge of basic principles and techniques of individual and group vocational guidance and counseling.
- Considerable knowledge of psychological testing and analysis and the application of the individual results to employment-related problems.
- Considerable knowledge of occupational structure and labor market information systems.
- Considerable knowledge of career development behavior and the special needs of individuals with occupational choice, career changes, or work adjustments or related employment problems.
- Considerable knowledge of community service resource organizations.
- Working knowledge of current development and technical literature in vocational guidance and counseling.
- Working knowledge of personal computer operations, procedures, and techniques as applied to vocational counseling.
- Ability to develop a therapeutic relationship with clients having employment-related problems.
- Ability to develop and conduct individual and group client employment-related workshops.
- Ability to recognize, analyze, and understand the significance of measurable difference among psychological test data and how it applies to client to employment situations.
- Ability to interview clients to obtain personal or confidential information related to employment problems and develop and implement a course of corrective action.
- Ability to maintain composure and control during stressful situations.
- Ability to analyze complex issues and situations and propose viable solutions and courses of action.
- Ability to write informational materials such as new releases, announcements, and brochures for promotion of local employment counseling program or special project use.

VII. Specialized expertise needed for mission:

EMPLOYMENT SECURITY SPECIALIST

Employment Security Specialists perform a wide variety of functional assignments necessary to the delivery of Employment Service/Unemployment Insurance (ES/UI) programs including employability, placement and related services to applicants and employers and unemployment insurance benefits payments. This series covers field operations staff providing ES/UI services in a local office or employment center.

REQUIRED EXPERIENCE

Four years of experience where effective dealing with people was an essential part of the duties. Successful experience in occupational areas such as the following (non-inclusive) would satisfy the minimum requirement: employment agencies, labor or industrial relations, personnel or industrial management, teaching, insurance, social services, etc.

Substitution: College education from an accredited college including practical experience courses in interpersonal relationships may substitute for up to two years of the required experience on a year-for-year basis. Such courses must be fully explained at the time of application to show job relatedness and be supported by transcripts.

SPECIAL SKILLS & ABILITIES

Knowledge of principles and techniques of interviewing; principles and concepts upon which employment security programs are based; problems of culturally and economically disadvantaged individuals, groups and communities; nature, scope and availability of programs and services designed to alleviate social problems related to employment and employability processes; general economic conditions and trends affecting labor supply and demand.

Ability to meet and deal effectively with the public; gather and analyze data and reason logically and accurately, comprehend written material and interpret and apply rules and instructions; speak and write effectively; establish and maintain cooperative relations with those contacted in the work; analyze situations accurately and take effective action; gain confidence of persons and groups requiring services; interpret and apply provisions of the Alaska Unemployment Insurance code, and rules and regulations, policies and procedures of the Employment Security Division, and State and Federal legislation relating to the Department's programs; make sound decisions; record accurately the facts supporting decisions; interpret and apply the provisions of State and Federal labor and veteran laws; ask questions to elicit required information; convey information, orally or in writing, to a variety of individuals in simple, understandable, and precise terms.

EMPLOYMENT SERVICE MANAGER

Positions allocated to this series are distinguished from the Employment Specialist III, in that the latter directs some of the program activities for which the manager is responsible, but does not have full managerial/administrative responsibility or accountability for all of the functions under the jurisdiction of the manager. A position's level in this series is determined by the complexity of the management responsibilities. Management complexity is influenced by the number of permanent staff in an office, the presence and level of subordinate supervisors, the number of programs supported, and the number of employers and diversity of occupations available in the area; all of which are related to the geographic size, and population and employer base of the area served. Positions responsible for the activities of a service delivery area plan, organize, and direct the activities of a Class III or Class IV office and oversee a minimum of two additional employment service offices.

REQUIRED EXPERIENCE	SPECIALIZED SKILLS & ABILITIES
Two years of work experience in either of the following areas, or a combination thereof: Experience at the full proficiency level (technician/specialist/counselor) providing services to the public under any government, nonprofit, or private sector social services programs, or an employment service agency; OR managerial or administrative work which included planning staff activities, supervising and evaluating subordinate staff, monitoring budgets and expenditures, and analyzing and reporting on the effectiveness and efficiency of activities. Substitution: A baccalaureate degree with a major in public administration, business administration, human resource management, sociology, psychology or a closely related field may be substituted for one year of the required work experience. One year of full proficiency level work experience in employment service, providing labor exchange (employment) services, vocational assessment and counseling services; or performing employment service related technical support work as an employment security analyst, or similar functions.	• Thorough knowledge of the techniques of interviewing and of obtaining information. • Working knowledge of the economic, social, political and business conditions of the state. • Working knowledge of federal, state and local relationships as they impact on the work. • Working knowledge of the operational and technical problems involved in the administration of employment security programs. • Working knowledge of employee policies, procedures, rights, benefits and obligations. Some knowledge of public relations techniques. • Some knowledge of the problems of culturally and economically disadvantaged individuals, groups and communities. • Ability to read, interpret and apply state statutes, federal laws, regulations, policies and procedures related to employment security programs. • Ability to gather, analyze and evaluate data, facts or information and draw logical conclusions and take effective action. • Ability to settle issues, handle unusual circumstances, and make responsive, mature decisions. • Ability to accurately record facts to support decisions and actions. • Ability to organize, evaluate and present information effectively, both orally and in writing. • Ability to develop and maintain an effective public relations program. • Ability to establish and maintain effective working relationships with government and private industry officials, and a wide variety of professional civic and nonprofit groups. • Ability to counsel individuals with social and economic problems. • Ability to operate data terminals. • Ability to coordinate programs with other state and local programs and agencies. Additionally, positions in this series must possess the knowledge and/or abilities in one of the two following groups: Group 1 - • Considerable knowledge of the principles and techniques of administrative management including organization, planning, staffing, training and reporting. • Ability to develop standards, procedures and methods for programs and office operations. • Ability to plan, schedule and direct the work of an office. Group 2 - • Considerable knowledge of the state and federal laws related to the work. • Considerable knowledge of the organization, subject matter, procedures, instructions and guidelines related to employment security programs. • Considerable knowledge of the application of data processing and terminology as it applies to employment security programs and operations.

EMPLOYMENT SECURITY ANALYST

Employment Security Analysts perform, under general direction, the most complex assignments requiring a high degree of independence, judgment and a specific expertise or ability to organize and perform with no specific guidelines or procedures available. May deal with special assignments that require total development of methodology and location, organization and research of material or sources of information. Positions at this level may supervise lower level professionals. Analyzes, interprets and edits Federal and/or State directives which impact Employment Security Division operations; researches existing guidelines, manuals and policies, makes appropriate changes to ensure program conformity with Federal and State directives; manualizes program material; designs and/or modifies forms for local office use and may arrange for printing, forms control. Provides technical guidance and assistance to local office personnel as related to assigned program areas.

REQUIRED EXPERIENCE

Analyst I: One year of experience as an Employment Security Specialist IB or Unemployment Security Specialist IB with the State of Alaska; or one year of full proficiency level experience in other employment/unemployment or social service related programs with the State of Alaska or the equivalent elsewhere.

Analyst II: One year of experience as an Employment Security Analyst I, Employment Security Specialist II or Unemployment Insurance Specialist II with the State of Alaska; OR two years of full proficiency level experience in other employment or unemployment related programs with the State of Alaska or the equivalent elsewhere.

Analyst III: One year of experience as an Employment Security Analyst II with the State of Alaska; OR three years professional level experience in other employment or unemployment related programs with the State of Alaska or the equivalent elsewhere.

Experience in leading or directing the work of others is desirable.

SPECIAL SKILLS & ABILITIES

Familiarity with provisions of unemployment insurance laws, rules, regulations, policies and procedures of the Employment Security Division, and State and Federal legislation relating to employability, placement, manpower training and unemployment insurance programs.

Knowledge of nature, scope and availability of programs and services designed to alleviate social problems related to employment and employability processes, general economic conditions and trends, employment practices and manpower requirements and factors affecting labor supply and demand; interviewing techniques.

Ability to gather, analyze, and research data and reason logically and accurately; interpret and apply provisions of the Alaska Unemployment Insurance Code and rules and regulations, policies and procedures of the Employment Security Division and State and Federal legislation relating to the Department's programs; make sound decisions; comprehend written material, interpret and reorganize and/or rewrite material; analyze situations accurately and recommend effective action; interpret and apply the provisions of the State and Federal labor and veterans' laws; speak and write effectively; maintain cooperative relationships with those contacted in the work.

Ability to conduct and evaluate inservice training programs; develop standards, methods, policies and procedures for programs and operations; analyze situations accurately and take effective action; plan, organize and direct the work of others and coordinate technical aspects of multi-discipline programs.

VIII Technology Used: Electronic Fund Transfer
Local Area Network
Wide Area Network
Mainframe Data Base (DB-2)
Internet
Integrated Voice Response System
Personal Computers
Network Computer Devices
Automated Telephone Call Distribution System
Large Scale Print Technology
High Speed Sorting, Inserting and Mailing System
Various Software: Programming software such as Natual, Cobal,
Cool Gen, VSAM. Multi-function Software such as Word, Excel,
Access, Powerpoint

**IX Agency Contracts - \$119,915 Contract Award to Westmann & Associates for
Y2K IV&V Phases 2-4 for UI.**

Schedule of Employee Requirements follow.

III Total Budget

FY 2000 Governor - \$16,881.1

2011

Internal Revenue Code -	Title 23 Section 3303 - 3305
	Unemployment Tax Act 26 U.S.C 3305(b)
Social Security Act	Title III, Title IX, Title XI, Title XII

Trade Adjustment Act Chapter 2 of Title II of Act, PL 93 - 618
19 U.S.C 2271 - 2322

**Federal State Extended
UI Compensation Act**

Alaska Employment Security Act 23.20, Articles 1 - 9.
Alaska Administrative Code Title 8 Labor

VI. Agency Mission - To alleviate the hardships that result from loss of wages during periods of involuntary unemployment, and to stabilize local economies and workforce during periods of economic downturn.

VII. Number of Employees: 166 full-time and 60 full-time seasonal positions. *See attached Position/Skill Summary

Administrative Clerk II, III

Required Experience	Skills, Knowledge and Ability
High school graduation or the equivalent AND Two years of office clerical experience. At least one year of this experience must be at the journey level, equivalent to Administrative Clerk II with the State of Alaska. Special Requirement: Individual positions in this class may require skill in typing. Recruitment and selection may include this requirement.	Considerable knowledge of the principles and practices of clerical support procedures, including account keeping, requisitioning, stock maintenance, filing, correspondence and reporting. Considerable knowledge of correct business practices, correspondence and typing formats, including English grammar, composition, spelling and punctuation. Working knowledge of the use of computer systems and software in a business environment. Ability to read and comprehend statutes, regulations and procedures, apply them to specific situations and, explain procedures and requirements to the public and others. Ability to organize and plan record keeping and filing systems for the work area. Ability to search for, select, and compile/summarize data and information. Ability to compare data from a variety of sources for accuracy and completeness, identify discrepancies or inaccuracies and make corrections. Ability to write memoranda and correspondence related to the work. Ability to establish and maintain cooperative relations with those contacted in the course of the work. Ability to work independently and prioritize workload. Ability to lead, train and evaluate employees. Ability to perform basic arithmetic such as fractions, decimals and percentages. Ability to balance cash and maintain cash balances. Ability to use common business data processing equipment and software.

Position Title/Experience/Skills

Administrative Assistant

Required Experience	Skills, Knowledge and Ability
Graduation from high school or the equivalent. AND Four years of office clerical experience of which one year was at the advanced/supervisory level performing specialized complex clerical work and/or a wide variety of administrative clerical services requiring independence, judgment and initiative in determining office needs, in prioritizing and organizing work, and in determining the appropriate action to be taken. The one year of specific experience is equivalent to Administrative Clerk III or Accounting Clerk II with the State of Alaska. Substitution: Post-secondary education from an accredited college (credit hours completed) or vocational school (total hours completed) may substitute for the experience. Note: This class was not intended to be used when programmatic work and knowledge is paramount to the position; or when the administrative work and knowledge is focused in a specialty area such as accounting, personnel or supply.	Working knowledge of administrative processes, policies and procedures such as personnel, purchasing and inventory, accounts payable/receivable, budget preparation and financial monitoring. Working knowledge of the use of computer information systems and standard business software. Some knowledge of supervision and training principles and techniques. Ability to organize, set priorities and coordinate a variety of administrative functions. Ability to comprehend written material and interpret and apply rules and instructions. Ability to determine the need for revision to procedures and instructions and prepare instruction manuals. Ability to analyze situations accurately and take prompt, effective action. Ability to establish and maintain cooperative relationships with others. Ability to use common office equipment and standard computer software. Ability to communicate effectively, both orally and in writing.

Employment Security Specialist

Required Experience	Skills, Knowledge and Ability
Four years of experience where effective dealing with people was an essential part of the duties. Successful experience in occupational areas such as the following (non-inclusive) would satisfy the minimum requirement: employment agencies, labor or industrial relations, personnel or industrial management, teaching, insurance, social services, etc. Substitution: College education from an accredited college including practical experience courses in interpersonal relationships may substitute for up to two years of the required experience on a year-for-year basis. Such courses must be fully explained at the time of application to show job relatedness and be supported by transcripts. Note: The examination process for this class may include reference checks with previous employers.	Knowledge of principles and techniques of interviewing; principles and concepts upon which employment security programs are based; problems of culturally and economically disadvantaged individuals, groups and communities; nature, scope and availability of programs and services designed to alleviate social problems related to employment and employability processes; general economic conditions and trends affecting labor supply and demand. Ability to meet and deal effectively with the public; gather and analyze data and reason logically and accurately, comprehend written material and interpret and apply rules and instructions; speak and write effectively' establish and maintain cooperative relations with those contacted in the work; analyze situations accurately and take effective action; gain confidence of persons and groups requiring services; interpret and apply provisions of the Alaska Unemployment Insurance code, and rules and regulations, policies and procedures of the Employment Security Division, and State and Federal legislation relating to the Department's programs; make sound decisions; record accurately the facts supporting decisions; interpret and apply the provisions of State and Federal labor and veteran laws; ask questions to elicit required information; perform accurate numerical calculations; convey information, orally or in writing, to a variety of individuals in simple, understandable, and precise terms.

Appeal Referee II, III

Required Experience	Skills, Knowledge and Ability
Seven years of professional experience in the investigation and/or examination of labor related claims or in writing policies for rendering decisions on unemployment insurance claims. Substitution: College education may be substituted for the required experience on a year-to-year basis, not to exceed two years. Graduate study in law may substitute for up to an additional two years of experience.	The Appeal Referees I and II perform first level appeals from disputed unemployment insurance determinations. Level I is the training level and level II is the journeyman level. Each referee is assigned a caseload of approximately 20 cases per week on which to hold a de-novo hearing and issue a legally binding decision. Federal quality and time-lapse requirements dictate the elements to be covered in each hearing and decision, and also the time frame to issue decisions. Each referee is designated as a Tribunal with the power to take sworn testimony from parties and witnesses and to compel attendance through issuing subpoenas when necessary. The Appeal Referee III position is the supervisory position of the Appeal Tribunal, otherwise known as the Chief of Appeals. This position oversees all of the referees and staff to ensure compliance with the statutes and precedent, and to provide good customer service. In this position the referee might perform lower appeals, but most often performs second level reviews and writes proposed decisions for the Commissioner of the Department to sign. A commissioner appeal is a matter of right in most benefit cases, and also in cases involving many aspects of Tax appeals and all Labor Dispute appeals.

organizing work and coordination and integration with other functional activities. Assignments require considerable resourcefulness and judgment but do not involve radical departure from established practices and precedents. Positions in this class typically function in one of the following: (1) in a Class II office* supervises two or more functions; (2) supervises a unit of six or more performing a full-time major specialized functions such as Employer Services Representative, Minority Services, NAB/JOBS, Veterans Employment Representative, YES office, training selection and referral unit or the like in a Class III or IV office*; (3) supervises a UI adjudication unit of four or more in a Class III or IV office*.

Employment Security Specialist II, III

Required Experience	Skills, Knowledge and Ability
Level II: One year of experience as an Employment Security Specialist IB with the State of Alaska or equivalent professional level experience in counseling, interviewing, determining occupational skills, assigning occupational classification codes, and referring applicants; or processing/investigating unemployment insurance claims. Substitution: Graduate level education from an accredited college emphasizing practical experience courses in interpersonal relationships may substitute for the required experience on a year-for-year basis. Note: The courses must be fully explained at the time of application to show job relatedness and be supported by transcripts. Level III: One year of experience as an Employment Security Specialist IB with the State of Alaska or equivalent professional level experience in counseling, interviewing, determining occupational skills, assigning occupational classification codes, and referring applicants; or processing/investigating unemployment insurance claims. Note: Experience in leading or directing the work of others is desirable. Required Job Qualifications:	Knowledge of basic principles and practices of effective supervision; principles and techniques of interviewing; principles and concepts upon which employment security programs are based; labor, economics, general social and economic conditions and trends; problems of culturally and economically disadvantaged individuals, groups and communities; nature, scope and availability of programs and services designed to alleviate social problems related to employment and employability processes; general economic conditions and trends affecting labor supply and demand; labor management, and employer, employee, and governmental organizations concerned with the department's programs. Ability to plan, organize and direct the work of others; meet and deal effectively with the public; gather and analyze data and reason logically and accurately, comprehend written material and interpret and apply rules and instructions; speak and write effectively; establish and maintain cooperative relations with those contacted in the work; analyze situations accurately and take effective action; gain confidence of persons and groups requiring services; interpret and apply provisions of the Alaska Unemployment Insurance code, and rules and regulations, policies and procedures of the Employment Security Division, and State and Federal legislation relating to the department's programs; make sound decisions; record accurately the facts supporting decisions; interpret and apply the provisions of State and Federal labor and veteran laws; ask questions to elicit required information; perform accurate numerical calculations; convey information, orally or in writing, to a variety of individuals in simple, understandable and precise terms. The duties of the Employment Security Specialist III involve planning and

Employment Service Manager

Required Experience	Skills, Knowledge and Ability
Option 1: Three years of work experience in either of the following areas, or a combination thereof: Experience at the full proficiency level providing services to the public under any government, nonprofit, or private sector social services programs, or an employment service agency; OR Professional level managerial or administrative work which included planning staff activities, supervising and evaluating subordinate staff, monitoring budgets and expenditures, and analyzing and reporting on the effectiveness and efficiency of activities. Substitution: A baccalaureate degree with a major in public administration, business administration, human resource management, sociology, psychology or a closely related field may be substituted for one year of the required work experience. Option 2: Two years of full proficiency level work experience in employment service or unemployment insurance (UI) programs such as processing UI benefits claims, hearing and deciding UI appeals, providing labor exchange (employment) services, vocational assessment and counseling services; or performing employment service related technical support as an employment security analyst, or in the areas of UI quality control, UI benefit payment control, UI fraud investigations, or similar functions. Substitutions: One year of professional level managerial or administrative work which included planning staff activities, supervising and evaluating subordinate staff, monitoring budgets and expenditures, and analyzing and reporting on the effectiveness and efficiency of activities may be substituted for one year of the required work experience. A baccalaureate degree with a major in public administration, business administration, human resource management, sociology, psychology or a closely related field may be substituted for one year of the required work experience.	Thorough knowledge of the techniques of interviewing and of obtaining information. Working knowledge of the economic, social, political and business conditions of the state. Working knowledge of federal, state and local relationships as they impact on the work. Working knowledge of the operational and technical problems involved in the administration of employment security programs. Working knowledge of employee policies, procedures, rights, benefits and obligations. Some knowledge of public relations techniques. Some knowledge of the problems of culturally and economically disadvantaged individuals, groups and communities. Ability to read, interpret and apply state statutes, federal laws, regulations, policies and procedures related to employment security programs. Ability to gather, analyze and evaluate data, facts or information and draw logical conclusions and take effective action. Ability to settle issues, handle unusual circumstances, and make responsive, mature decisions. Ability to accurately record facts to support decisions and actions. Ability to accurately record facts to support decisions and actions. Ability to organize, evaluate and present information effectively, both orally and in writing. Ability to develop and maintain an effective public relations program. Ability to establish and maintain effective working relationships with government and private industry officials, and a wide variety of professional civic and nonprofit groups. Ability to counsel individuals with social and economic problems. Ability to operate data terminals. Ability to coordinate programs with other state and local programs and agencies. Additionally, positions in this series must possess the knowledge and/or abilities in one of the two following groups: Group 1- Considerable knowledge of the principles and techniques of administrative management including organization, planning, staffing, training and reporting. Ability to develop standards, procedures and methods for programs and office operations. Ability to plan, schedule and direct the work of an office.

Employment Security Analyst I, II, III

Required Experience	Skills, Knowledge and Ability
One year of experience as an Employment Security Analyst I, Employment Security Specialist II or Unemployment Insurance Specialist II with the State of Alaska; OR two years of full proficiency level experience in other employment or unemployment related programs with the State of Alaska or the equivalent elsewhere.	Familiarity with provisions of unemployment insurance laws, rules, regulations, policies and procedures of the Employment Security Division, and State and Federal legislation relating to employability, placement, manpower training and unemployment insurance programs. Knowledge of nature, scope and availability of programs and services designed to alleviate social problems related to employment and employability processes, general economic conditions and trends, employment practices and manpower requirements and factors affecting labor supply and demand; interviewing techniques. Ability to gather, analyze, and research data and reason logically and accurately; interpret and apply provisions of the Alaska Unemployment Insurance Code and rules and regulations, policies and procedures of the Employment Security Division and State and Federal legislation relating to the Department's programs; make sound decisions; comprehend written material, interpret and reorganize and/or rewrite material; analyze situations accurately and recommend effective action; interpret and apply the provisions of the State and Federal labor and veterans' laws; speak and write effectively; maintain cooperative relationships with those contacted in the work. Ability to conduct and evaluate in-service training programs; develop standards, methods, policies and procedures for programs and operations; analyze situations accurately and take effective action; plan, organize and direct the work of others and coordinate technical aspects of multi-discipline programs.

Investigator II, III

Required Experience	Skills, Knowledge and Ability
One year of investigative experience, preferably including both civil and criminal cases, as an Investigator II with the State of Alaska or the equivalent elsewhere. Note: Some positions in this class may require eligibility for commission as a special officer of the Alaska State Troopers and/or background investigation.	Knowledge of investigation techniques and procedures; rules of evidence and court procedures; principles of identification, preservation, and presentation of evidence; sources of information used in locating person; laws of arrest, search and seizure, and service of legal process; legal right of citizens, interviewing techniques; basics of human behavior and social organization; duties of federal, state and local law enforcement agencies; report writing and preparing concise and complete reports; general provisions of the Penal Code. Ability to prepare concise and complete reports; learn, interpret, and apply to specific cases the provisions of the laws, rules or regulations enforced or administered; conduct investigations and detect or verify suspected violations; obtain information and evidence by observation, record examination, and interview, and analyze and evaluate the statements of witnesses or suspected violators; secure and present evidence in oral or in written form; prepare correspondence; weigh facts impartially and accurately; deal with citizens and public official under conditions requiring the utmost in tact and good judgment; analyze situations accurately; think and act quickly in emergencies, and adopt an effective course of action; maintain confidentiality of information. Special Characteristics: Willingness to travel and/or work irregular, unusual hours as required by the investigation. In addition, positions in option #2 requires knowledge of principles and practices of supervision, and the ability to supervise and assess the work of subordinates

Field Auditor

Required Experience	Skills, Knowledge and Ability
Six years of accounting and/or auditing experience, one year of which must have been in the field of formal auditing and/or first line supervision of accounting functions at a level equivalent to Accounting Supervisor I. Substitution: College education in accounting, business or public administration, economics, financial management, or other business oriented discipline may be substituted for the experience on a year-for-year basis except for the required one year of formal auditing and/or first line supervision.	Field Auditors are the "local" representatives of Tax unit. Each auditor is responsible to serve between 700 and 1100 Alaska employers. Services include: random audits of 2% of employers, annually, as mandated by federal grant. These amount to about 90% of audits conducted. Another 10% of audits are conducted either at the request of employers, or in an effort to obtain delinquent reports and/or taxes. Provide regular training to employers to minimize the employer costs of compliance, and to minimize instances of delinquency due to misunderstanding or confusion of the ES Tax laws with federal reporting for income or social security taxes. Assist employers in their efforts to understand and comply with the requirements of the Employment Security Act. Advise Alaska employers in matters of ES tax, and the reduction/minimization of the associated reporting and tax burden. Field auditors often perform their duties at the employers' place of business. They are responsible to coordinate and account for their own travel arrangements – from typical commercial transport and accommodations to small aircraft and sleeping on the floor of the village school.

Microfilm Equipment Operator I, II

Required Experience	Skills, Knowledge and Ability
One year of training and/or experience in the operation of microfilm equipment to produce microfilm or microfiche including processing, duplication and quality control equipment.	methods, materials and equipment used in microphotography; general and film filing and retrieval systems; basic production methods, fundamentals of supervision. Skills in operation, adjustment, and minor repair of microfilm equipment. Ability to instruct others in the operation of microfilm equipment; follow oral and written instructions; write and speak effectively.

Program Coordinator

Required Experience	Skills, Knowledge and Ability
Graduation from college and five years of professional experience in employment programs, employment security, private employment service, community development, public relations, personnel or business management, vocational or remedial education or educational administration or development or administration of criminal justice programs (in the public or private sector). Substitution: Additional qualifying experience may be substituted for the required education on a year-for-year basis. One year at the level of Project Coordinator is desirable. Graduate study may be substituted for the required experience on a year-for-year basis.	Under general supervision: (1) is responsible for the planning, direction and coordination of one or more Statewide programs centered upon employment assistance services or other public assistance of comparable scope; (2) is responsible for evaluating one or more statewide programs and providing professional or technical assistance in support of special or ongoing programs; or (3) coordinate the statewide Criminal Justice Standards and Goals Program. Under definition (1) and (3) this class represents positions having full responsibility for a statewide program; in some work situations supervises a staff of professional, technical and clerical personnel. Under definition (2), this class gathers and evaluates data concerning current ongoing statewide programs; recommends corrective action and provides assistance in implementing changes similar to that in options (1) and (3).

Micro/Network Tech I

Required Experience	Skills, Knowledge and Ability
High school diploma or the equivalent; AND two years experience which demonstrates routine use of two or more kinds of "off-the-shelf" application software (e.g., word-processing, database, spreadsheet, etc.). Additionally, applicants must show experience in basic microcomputer hardware software support which includes installing and configuring microcomputers and/or peripherals, installing software and performing routine file backup operations. SUBSTITUTION: Twelve semester hours from an accredited college in software applications, office automation, computer networking, electrical engineering or computer science may be substituted for the two years experience such that one semester hour equals two (2) months work experience. Other types of equivalent training (e.g., trade or technical school or the military) may be substituted for required work experience where the applicant provides a Certificate of Completion for courses taken and evidence of 12.5 hours classroom experience for each semester hour (2 months) substituted.	Working knowledge of microcomputer terminology. Working knowledge of at least one application in two of the three most commonly used application software categories word processing, database, and spreadsheet). Working knowledge of operating system commands for one major microcomputer operating system. Working knowledge of commonly used microcomputer hardware. Working knowledge of troubleshooting techniques for computers and their peripherals. Some knowledge of microcomputer hardware configuration. Ability to read, understand, and apply information in technical manuals and journals. Ability to learn the techniques used to install and remove interface cards, microprocessors, memory chips, and the like. Ability to learn the fundamentals of network installation and maintenance. Ability to communicate required actions to novice microcomputer users in simple, easily understood terms.

competency in unemployment insurance adjudication. With the State of Alaska this is equivalent to Unemployment Insurance Specialist IB, or Employment Security Specialist IB in an unemployment insurance unit.

Other combinations of training and experience will be considered on an individual basis for comparability.

Must possess a valid Alaska driver's license.

degree of compliance with established Federal/State law/rules and Department policy. Detect payment errors, procedural problems and related inadequacies for referral to management.

Knowledge / Skills:

Able to plan, schedule, and perform independently

Required to have an extensive knowledge of the UI program

Must have a familiarization with bookkeeping principles

Needs a strong understanding of the pertinent principles/concepts of Regulations and Statutes

Necessary to travel and work in rural environments

Must conduct extensive fact-finding with numerous groups; claimant, employers, agency staff, etc.

Required to exhibit and demonstrate diplomacy under adverse circumstances

Must have well established investigative and interpretive skills

Status Examiner I, II

Required Experience	Skills, Knowledge and Ability
One year of experience as Status Examiner I for the State of Alaska; OR Two years of experience in the accounting or the collection of delinquent funds, or in interpreting or administering portions of a tax law. Substitution: College level course work in accounting may substitute for the work experience in option 2 on the basis of one semester hour per one month of experience up to a maximum of 24 credit hours.	Knowledge of provisions of the Alaska State Employment Security Act, legal and departmental precedents affecting employer liability determinations. Ability to exercise sound judgment in areas of employer liability, present complex legal and administrative matters to laymen clearly and concisely, both orally and in writing; analyze accounting and auditing reports and supervise the work of others. Field auditors often perform their duties at the employers' place of business. They are responsible to coordinate and account for their own travel arrangements – from typical commercial transport and accommodations to small aircraft and sleeping on the floor of the village school. Status Examiner is the official title of the job classification for the central processing function of ES Tax. Workers are responsible for almost all aspects of employer EST account maintenance. Employer account services include: Establishing active contribution accounts for employers who must (in compliance with federal and state employment security laws and regulations) report wages and pay ES taxes each quarter. Detecting and correcting errors in reporting. Each quarter: receive and process 16,000 ES Tax reports – containing approximately 300,000 line items - ensuring each employer receives proper credit. Make deposits of all employer contributions to the trust fund within 72 hours of receipt. Calculate proper employer contribution rates, according to the law and supporting regulations, and defend rating decisions in appeal hearings. Offer assistance to Alaska employers requesting help fulfilling the requirements of the Alaska Employment Security Act and the supporting regulations.

Unemployment Insurance Quality Control Auditor

Required Experience	Skills, Knowledge and Ability
High school graduation or the equivalent. AND One year of experience in unemployment insurance claims processing or related work in unemployment insurance programs, which must have demonstrated	<u>Duties:</u> Analyze all information and prior adjudication related to a random sample of UI claims using investigative and standard accounting methodology to assess the

SUBCOMMITTEE REPORT

I. Department of Labor and Workforce Development, Employment Security Division, Job Training & Work Readiness Program, ABE

II. BRU and component names as listed in state budget
BRU: Employment Security Division
Special and Supplemental Services Budget Component

III. Total Budget, all funds and funding source

State General Fund:	\$1,740,806
Federal Office of Adult and Vocational Education Fund:	645,994
Total:	\$2,386,800

IV. Total revenue derived: net cost/income to state

- \$10 each for GED duplicate Diploma - estimated program revenue is \$300 year
- Federal Revenue: 645,994

V. Identify Constitutional and Statutory provisions governing agency operation.

- Chapter 33 Special Programs
4 AAC 33.025 Adult Basic Education Grants
- Chapter 39 Diplomas Under Special Conditions
4 AAC 39.040 Delegations of Authority to Issue Diplomas in Connection Adult Basic Education Programs
- The Workforce Investment Act of 1998, Title II: Adult Education and Family Literacy Act

VI. Agency Mission, Goals and Objectives

The mission of Adult Basic Education is to provide instruction in basic academic skills at a maximum level equivalent to a high school education to learners over the age of 16 who are not enrolled in school.

Goals:

Provide instruction in the following:

- beginning and intermediate basic skills.
- in obtaining a GED (and testing for a GED).
- English Literacy (formerly English as a Second Language).
- Workplace literacy if funding allows.
- Family Literacy if funding allows.

Supervise all GED Testing Centers in Alaska

- provide technical assistance to 28 testing centers
- approve opening/closing of test centers
- oversee test security, perform investigations of test breeches
- manage GED transcript retrieval system
- produce over 2,000 GED Diplomas annually

Administer 14 Regional Adult Education Programs, 4 Volunteer Literacy Programs, and 1 Corrections Literacy Program.

- Provide Staff Development opportunities.
- Evaluate all programs annually.
- Provide technical assistance.

Unemployment Insurance Specialist II, III, IV

Required Experience	Skills, Knowledge and Ability
Successful completion of the departmentally approved training program in Employment Security/Unemployment Insurance Specialist IA level. Unemployment Insurance Specialist IB represents the fully trained worker performing average difficulty unemployment insurance work. Duties are more routine, limited in scope, variety, and complexity than the Unemployment Insurance Specialist II. Work requires familiarity with and use of a number of established methods and techniques as appropriate to specific situations. Incumbents must adjust and correlate data, recognize discrepancies and deviations in results; assignments are well defined and involve fewer procedural steps or operation than at higher levels.	Knowledge of principles and concepts upon which unemployment insurance services are based; general economic conditions and trends affecting labor supply and demand. Ability to gather and analyze data and reason logically and accurately; comprehend written material and interpret and apply rules and instructions; establish and maintain cooperative relations with those contacted in the work; analyze situations accurately and take effective action; understand and apply provisions of the Alaska Unemployment Insurance code, and rules and regulations, policies and procedures of the Employment Security Division, and State and Federal legislation relating to the Department's programs; make sound decisions' elicit required information perform accurate numerical calculations; convey information to a variety of individuals in simple, understandable, and precise terms' organize work and time, establish priorities, meet deadlines and work under pressure.

EDUCATION SPECIALIST II

Serves as staff advisor and as subject matter consultant in Adult Basic Education. Is responsible for the full range of program administration, in addition to serving as a curriculum consultant in Adult Basic Education. Supervise lower level professionals.

REQUIRED EXPERIENCE

Bachelor's degree from an accredited college and four years of professional experience in education, one year of which was as a staff advisor/specialist, administrator, supervisor or consultant in planning, developing and maintaining standards and evaluating educational and vocational curricula or educational programs in a specialized field.

Substitution: Appropriate graduate study may be substituted on a year-for-year basis for the non-specialized experience to a maximum of two years.

Note: Due to the duties of this position, a masters degree in Adult Education is highly desirable.

SPECIAL SKILLS & ABILITIES

Knowledge of principles, practices, and techniques of the planning, teaching and evaluating of adult basic education; curricula development techniques; basic educational budgeting.

Ability to establish and maintain cooperative relationships with those contacted in the course of the work; speak and write clearly and effectively; learn operating policies and procedures; convey information, orally or in writing, to a variety of educators and others in understandable and precise terms; plan, direct, and coordinate the work of others; analyze administrative problems and make appropriate recommendations; participate effectively in conferences and interviews; make accurate mathematical computations; compile budget estimates.

- Facilitate the partnerships with other workforce investment partners, in particular with One-Stop Job Centers.

OBJECTIVES

The objectives are:

- to increase the number of students obtaining a GED, or moving to a higher educational level by at least 2% per year for the next 3 years;
- to increase the number of students who enroll in higher education or vocational training by at least 2% per year for the next 3 years;
- to increase the number of students who go to work or advance in a current position by at least 2% per year for the next 3 years.

VII. Number of employees

- 1 Education Specialist II, Range 21 (see attachment)
- 1 Administrative Clerk, Range 10

VIII. Technology used to perform mission

Software for national program reporting requirements.

All modern office equipment.

Microfiche machine.

IX. Existing Agency contracts including amount, contractor, purpose, term and procurement method.

Anticipated contracts in FY 2000 would be for staff development activities. They would include a contract for \$10,000 for Director's training in October 1999 and \$15,000 for Instructor's training in March, 2000.
Procurement method: RSA

A one-time-only contract to update the GED transcript retrieval and storage system for about \$20,000.

X. Existing privatization practices. Their effectiveness and public accountability.

No additional comments

XI. Recommendations per Section 5 in SB 33, including suggestions for new legislation.

n/a

XII. Explain the rationale for each, and number of votes for and against.

n/a

XIII. Problems/barriers to implementing proposed privatization.

n/a

2. Provide financial and technical assistance to service delivery areas, other agencies, and contractors who are awarded federal funds:
 - A. Allocate funds accurately and on time to service delivery areas, and enter into grant agreements for all JTPA and Welfare-To-Work funds;
 - B. Promote mandatory performance standards by the service delivery areas and assist them in achieving those standards;
 - C. Coordinate statewide services in response to layoffs and closures which may include awarding grants and contracts to other agencies and contractors for these services.
3. Provide accurate and timely reporting of financial and participant activity to the federal funding agencies for the JTPA and Welfare-To-Work Programs.
4. The AHRIC will provide guidance to the JTPA and WtW programs as well as to other federally funded programs.
 - A. Assist the AHRIC in keeping the Governor's Coordination and Special Services Plan, JTPA Title III and Welfare-to-Work plans current with updates and changes
 - B. Provide funding to the AHRIC as they develop policy guidance to the Alaska work force development programs.

VII. Number of Employees, specialized expertise needed for mission:

- The Job Training Partnership Office depends upon 10 permanent full time employees and 29 full time non-permanent employees (see attachment).
- The mission of JTPA requires that the Job Training Partnership Office provide financial and technical assistance to service delivery areas, other agencies, and contractors in the area of employment and training programs. The staff requires expertise in grant administration, financial analysis, program operations and service delivery.

VIII. Technology used to Perform Mission

Electronic Communication, accounting software and various office technology.

IX. List existing Agency Contracts including amount, contractor, purpose, term, and procurement method

Amount	Contractor	Purpose	Term	Procurement Method
\$233,821	MetSYS, Inc.	MIS Purchase	3/1/99 to 3/30/00	Competitive Solicitation
\$30,000	KYUK	Video Production	1/1/99 to 6/30/99	Small Procurement
\$22,645	ETI, Inc.	Participant Follow-up	7/1/98 to 6/30/99	Renewal - Competitive Solicitation on Original
\$15,000	Center for Working Life	Rural Outreach Training	12/23/98 to 12/31/99	Small Procurement
\$3,000	JT Consulting	Web Page Design	3/1/99 to 6/30/99	Small Procurement
\$4,500	System Concepts, Inc.	MIS Technical Support	7/1/98 to 6/30/99	Small Procurement

- X. Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability.
No other privatization practices utilized, other than mentioned above.
- XI. Make Recommendations per Section 5 in SB 33, including suggestions for new legislation.
None.
- XII. Explain rationale for each recommendation, the number of votes for and against it.
n/a
- XIII. List problems or barriers to implementing proposed privatization.
n/a

SUBCOMMITTEE REPORTS

I. Agency and Department Name:
Department of Labor and Work Force Development, Job Training and Work Readiness, Job Training Partnership Office

II. BRU and component names as listed in the state budget:
BRU: Job Training and Work Readiness
Components: Job Training Partnership Act
State Training and Employment Program

III. Total Budget, all funds:
JTPA:
Federal Rcpts \$15,732,300
General Fund \$40,400
GF/Prgrn \$43,700
I/A Rcpts \$56,300

STEP:
I/A Rcpts \$1,732,300
IV. Total Revenue Derived, net cost/income to state:
\$0.00

V. Constitutional and Statutory Provisions Governing Agency Operation:
PL 97-300 Fed
20 CFR 626-631 Fed
AK Admin. Order #122

VI. Agency Mission, Goals and Objectives:

Mission:

The mission of this section is to ensure that Alaska has a workforce adequately trained and prepared to meet the needs of existing and future employment opportunities.

Goals:

The goal of the JTPA component is to prepare Alaskans for work, whether they are moving from school-to-work, unemployment-to-work, or welfare-to-work, and to meet the needs of Alaska's employers seeking a skilled labor force ready to work.

The Purpose of STEP is to provide employment training services to those citizens who are unemployed or likely to become unemployed, to help prevent future claims for unemployment benefits, to increase training opportunities to workers affected by changes in the state's economy, and to attract new businesses to the state by having a skilled labor force ready to work.

Objectives:

- 1. Provide administration of JTPA and Welfare-To-Work programs according to applicable regulations:**
 - A. Plan and begin implementation of the Workforce Investment Act;**
 - B. Provide guidance and technical assistance on implementation of the federal act and regulations to the service delivery areas;**
 - C. Participate in planning for the WIA with Alaska Human Resources Investment Council, other agencies and advisory committees;**
 - D. Prepare and update the plans for statewide services under the WIA and Welfare-To-Work Programs.**

this class represents positions having regional responsibility for a statewide program; a second option is statewide responsibility for a minor project, having a specific target group. The Project Coordinator is involved in all aspects of the project including policy development and program and fiscal management. Positions in this class may frequently have lead responsibility over a small number of employees assisting in the assigned project on a regular or temporary basis.

REQUIRED EXPERIENCE

Bachelor's degree in a field closely related to that of the specific project.

AND

Either:

(a) Three years professional experience in the specific field of the project, one year of which must have included administrative responsibilities.

OR

(b) Master's degree in a field closely related to that of the specific project and two years experience in such a field, one year of which must have included administrative responsibilities.

OR

(c) Any combination education and experience equivalent to (a) or (b) above.

SPECIAL SKILLS & ABILITIES

Knowledge of: Social, cultural and economic needs of the target group federal or state program guidelines; applicable Alaska laws and regulations; dynamics of individual and group interactions; statistical methods; professional knowledge in the specialized field of the project (such as employment, nutrition, or alcoholism.)

Ability to: Interpret and apply the provisions of applicable federal or state programs; analyze operations; evaluate suggestions; establish and maintain cooperative working relationships with those contacted on work; develop an effective public relations program; communicate orally and in writing with professional and lay people; convey technical information in lay terms; administer a statewide public assistance program.

This is the full working level in the series. Incumbents perform grant administration functions with a minimum of direction. They serve as subject matter experts, recommending changes to grant administration policies and procedures, and may act as a working leader over lower level grant administrators.

REQUIRED EXPERIENCE

A bachelor's degree from an accredited college;
AND
One year of entry level experience administering grants. With the State of Alaska this experience is equivalent to Grant Administrator I.

Substitution: Four years of work experience including one year of clerical experience at the level of Administrative Clerk III or Accounting Clerk II will substitute for the required college education.

The required experience may be substituted with two years of technical or paraprofessional level experience in accounting, auditing or administrative functions some of which included dealing with grants. This experience is equivalent to Accounting Technician I or Administrative Assistant with the State of Alaska.

SPECIAL SKILLS & ABILITIES

Considerable knowledge of state and federal rules, regulations, policies, procedures and reporting requirements for grants and grant recipients.

Considerable knowledge of operational and technical problems involved in administering a specialized statewide or department-wide grant-in-aid program.

Working knowledge of the fundamentals of budgeting and accounting as applied to public administration.

Working knowledge of generally accepted accounting theories, principles, methods, practices and terminology.

Some knowledge of the organization and administration of agencies.

Ability to communicate effectively with others, both verbally and in writing.

Ability to read, comprehend and interpret state and federal laws, rules, and regulations.

Ability to establish and maintain effective relationships with government officials, private industry officials, professional personnel and others.

Ability to communicate with individuals in a variety of cultures and environments.

Ability to maintain favorable working relationships with a wide variety of professional and voluntary groups.

Ability to negotiate contract agreements.

Ability to analyze data and operations in terms of management controls, systems and procedures, to assess them critically, and to make recommendations for changes.

Ability to use reference materials, manuals, and guides related to the work.

Ability to identify discrepancies or inaccuracies in data and make corrections.

VIII. Technology Used to Accomplish Mission:

- Modern office equipment (personal computer, phones, copiers, Internet, modem, faxes, etc..)
- Software for word processing, spreadsheets, data base management, presentations and project planning.

IX. No Professional Services Contracts at this time.

- Client training services are granted out via competitive procurement to qualified service providers, public and private.

X. Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability.

- As mentioned above, training services are granted out via competitive procurement. Training providers may include private for profit business, and are subject to meeting strict performance (placement) standards and program compliance.

XI. Make recommendations per Section 5 in SB 33, including suggestions for new legislation.

- None at this time.

XII. Explain rationale for each recommendation, the number of votes for and against it.

n/a

XIII. List problems or barriers to implementing proposed privatization.

- None at this time.

SUBCOMMITTEE REPORTS

new to DOL

- I. Alaska Department of Labor and Workforce Development, Employment Security Division, Job Training & Work Readiness Section, JTPA
- II. Employment Training/Rural Development component. Statewide Service Delivery.
- III. State General Funds: $\rightarrow$ 458.00
3,256.80
8,693.00
Total: \$12,407.80
for JTPA funds
" "
million
- IV. Revenue Derived- 0
Income to State
- V. Constitutional and Statutory Provisions (AK Dept. of Labor and Workforce Development citations)
PL 97-300, The Job Training Partnership Act
PL 105-220, The Workforce Investment Act of 1998
- VI. Agency Mission, Goals and Objectives:

Mission:

The program mission is to provide quality job and career training opportunities for youth and adults in order to develop a sound labor force that enhances economic development and stability in Alaska.

Goals:

To provide relevant and customized employment and training services to (program) eligible Alaskans within the Statewide Service Delivery Area.

- Disadvantaged Adults (age 22 +)
- Disadvantaged Youth (ages 14-21)
- Dislocated Workers

Objectives:

- Enroll/Serve 525 economically disadvantaged adults
- Place 341 (65%) of the Trainees into full-time, unsubsidized jobs
- Enroll/Serve 785 economically disadvantaged youth
- Obtain positive program outcomes (enter-employment, return-to-school, GED, enlist in military, etc.) 628 of those youth (80%)
- Place 364 of the Dislocated worker/trainees into full time, unsubsidized jobs (70%)

VII. Number of Employees

34- PFT
1-PPT
14- NP

- The component utilizes the Program Coordinator, Community Development Specialist (I, II, III) Grants Administrator (I, II) and Administrative Clerk III job classifications. The specialized expertise required by the employees to help them accomplish the program mission include the following: (see attachment)

This is the full working level in the series. Incumbents perform grant administration functions with a minimum of direction. They serve as subject matter experts, recommending changes to grant administration policies and procedures, and may act as a working leader over lower level grant administrators.

REQUIRED EXPERIENCE

A bachelor's degree from an accredited college;
AND
One year of entry level experience administering grants. With the State of Alaska this experience is equivalent to Grant Administrator I.

Substitution: Four years of work experience including one year of clerical experience at the level of Administrative Clerk III or Accounting Clerk II will substitute for the required college education.

The required experience may be substituted with two years of technical or paraprofessional level experience in accounting, auditing or administrative functions some of which included dealing with grants. This experience is equivalent to Accounting Technician I or Administrative Assistant with the State of Alaska.

SPECIAL SKILLS & ABILITIES

Considerable knowledge of state and federal rules, regulations, policies, procedures and reporting requirements for grants and grant recipients.

Considerable knowledge of operational and technical problems involved in administering a specialized statewide or department-wide grant-in-aid program.

Working knowledge of the fundamentals of budgeting and accounting as applied to public administration.

Working knowledge of generally accepted accounting theories, principles, methods, practices and terminology.

Some knowledge of the organization and administration of agencies.

Ability to communicate effectively with others, both verbally and in writing.

Ability to read, comprehend and interpret state and federal laws, rules, and regulations.

Ability to establish and maintain effective relationships with government officials, private industry officials, professional personnel and others.

Ability to communicate with individuals in a variety of cultures and environments.

Ability to maintain favorable working relationships with a wide variety of professional and voluntary groups.

Ability to negotiate contract agreements.

Ability to analyze data and operations in terms of management controls, systems and procedures, to assess them critically, and to make recommendations for changes.

Ability to use reference materials, manuals, and guides related to the work.

Ability to identify discrepancies or inaccuracies in data and make corrections.

COMMUNITY DEVELOPMENT SPECIALIST I

This is the journey level in the series in which incumbents work with greater independence than at the entry/trainee level but without the involvement in program planning, budget and staff supervision which distinguishes the Community Development Specialist III. This class is distinguished from Grants Administrator II in that the latter class works in a centralized office and has minimum involvement in client and community outreach and referral networking.

REQUIRED EXPERIENCE

One year of entry level experience in employment training and/or community development grants administration, learning community outreach techniques and the basic principles, practices and regulations pertaining to employment training and community development grant programs. This experience is equivalent to Community Development Specialist I with the State of Alaska.

One year of experience working in a grant or loan administration program involving negotiating, drafting, amending and monitoring grant or loan contracts may substitute for the year of community development experience. This experience is equivalent to Grants Administrator I or Loan Examiner I with the State of Alaska.

OR

Two years of technical or paraprofessional level experience in accounting or administrative functions including some involvement with State or federal grants may substitute for the year of required experience. This experience is equivalent to Accounting Technician I or Administrative Assistant with the State of Alaska.

SPECIALIZED SKILLS & ABILITIES

Considerable knowledge of counseling and interviewing techniques.

Considerable knowledge of rules, regulations, policies, procedures, precedents and terminology used in the work.

Working knowledge of the operational and technical problems involved in administering employment training and community development grant programs.

Working knowledge of community organizations and agencies.

Working knowledge of federal and State grant procedures and reports.

Ability to interview individuals to obtain information needed to assess skills and aptitudes and to determine eligibility for job training programs.

Ability to establish and maintain effective relationships with government officials, private industry officials, professional personnel, and others.

Ability to read, comprehend, interpret, and explain State and federal laws, rules and regulations.

Ability to organize, evaluate, and communicate information to others effectively, both orally and in writing.

Ability to recognize and respond to cultural differences, life styles and values.

Component: Unemployment Insurance

Manager: Rebecca Gamez, Director

Tel: (907) 465-2712 Fax: (907) 465-4537 E-mail: Rebecca_Gamez@labor.state.ak.us

Component Mission

To alleviate the hardships that result from loss of wages during periods of involuntary unemployment, and to stabilize local economies and workforce during periods of economic downturn.

Component Services Provided

1) BENEFIT PAYMENTS:

- Provide partial income replacement to insured workers during periods of unemployment.
- Provide a convenient and efficient means for clients to apply for Unemployment Insurance (UI) benefits.
- Deliver Unemployment Insurance benefits correctly and in a timely manner.
- Provide due process rights when determining program eligibility and appoint an independent tribunal to hear and decide appeals from eligibility determinations.
- Meet Federal performance criteria (Desired Levels of Achievement and Secretary of Labor Standards).
- Secure Federal Unemployment Tax Act (FUTA) credits for Alaskan employers by remaining in compliance with Federal Law.
- Identify workers most likely to exhaust unemployment benefits and reduce the duration of benefits claimed by registering workers in a job matching system or requiring participation in reemployment services designed to return displaced Alaskan workers to the workforce.

2) REVENUE COLLECTION:

- Classify employers who may be required to contribute to the Alaska UI Trust fund and determine employer tax rates under an experience rating system based on quarterly payroll decline.
- Receive contributions from employers for the payment of unemployment benefits, maintain accounting records of all contributions submitted by employers and deposit those contributions to the Alaska UI Trust Fund as required by state and federal statutes.
- Apply statutory remedies when employers do not comply with state law.
- Insure the review of the revenue generating mechanism to maintain the trust fund solvency.
- Work with and train employers on how to meet the UI Tax requirements.

3) PROGRAM INTEGRITY:

- Protect the Unemployment Insurance Trust Fund by preventing, discouraging, detecting and recovering Unemployment Insurance benefit overpayments; conduct employer and wage audits.
- Investigate fraud referrals from Unemployment Insurance Call Centers, cross match audits, issue administrative fraud determinations, and prepare fraud cases for state and federal criminal prosecution.
- Manage overpayment recovery activities and maintain overpayment records.

Under general supervision: (1) is responsible for the planning, direction and coordination of one or more Statewide programs centered upon employment assistance services or other public assistance of comparable scope; (2) is responsible for evaluating one or more statewide programs and providing professional or technical assistance in support of special or ongoing programs; or (3) coordinate the statewide Criminal Justice Standards and Goals Program.

Under definition (1) and (3) this class represents positions having full responsibility for a statewide program; in some work situations supervises a staff of professional, technical and clerical personnel. Under definition (2), this class gathers and evaluates data concerning current ongoing statewide programs; recommends corrective action and provides assistance in implementing changes similar to that in options (1) and (3).

REQUIRED EXPERIENCE	EXAMPLES OF DUTIES
Graduation from college and five years of professional experience in employment programs, employment security, private employment service, community development, public relations, personnel or business management, vocational or remedial education or educational administration or development or administration of criminal justice programs (in the public or private sector). Substitution: Additional qualifying experience may be substituted for the required education on a year-for-year basis. One year at the level of Project Coordinator is desirable. Graduate study may be substituted for the required experience on a year-for-year basis.	Following acts of federal or state legislative bodies, develops and submits proposals to funding authorities; monitors progress of proposals and negotiates any amendments necessary to gain approval and funding of project. Recommends on policy and establishes administrative procedures for implementing programs on a statewide basis, including implementing accountability procedures. Formulates cooperative agreements with other government and private agencies engaged in referral of applicants to appropriate programs. May serve as executive director of an advisory group. Acts as representative for the agency director in meetings with state officials, other governmental agencies and the public to discuss and design program activities and training courses. Through close coordination with the director, assures that program will follow overall employment objectives of state government. Continually analyzes programs and establishes methodology for formal evaluation; performs extensive evaluations and studies of a conceptual nature. Identifies, analyzes and documents procedural and policy problems; recommends corrective action. Provides professional or technical assistance in implementation of changes; redesigns systems and office procedures as required and trains staff in new programs.

Department of Labor

- Collected \$1,532,688 in benefit overpayments through offset of benefits and cash collections.
- Provided toll free telephone access to all UI services for all Alaskan workers.
- Initiated a regularly scheduled sampling of customer satisfaction with UI services.
(92% of sampled UI clients report that they received good to very good levels of customer service).

Statutory and Regulatory Authority

AS 23.20
Federal/State Extended Unemployment Compensation Act
8 AAC 85
5 U.S.C. Sec. 8501-8525
Trade Act of 1974
Federal Unemployment Tax Act
Social Security Act: Titles III, IX, XI, XII
AS 23.20.354

- Maintain accuracy of benefit payments and tax operations through a standardized quality control methodology.

Component Goals and Strategies for FY2000

- 1) IMPROVE QUALITY AND TIMELINESS OF UNEMPLOYMENT INSURANCE DELIVERY.
 - Develop and implement staff training programs.
- 2) MONITOR EMPLOYERS COMPLIANCE WITH FEDERAL AND STATE TAX MANDATES.
 - Increase field and central office contacts.
- 3) PROVIDE TIMELY AND EFFICIENT CUSTOMER SERVICE.
 - Implement electronic fund transfer for payment of benefits.
- 4) ADJUST SERVICES TO MEET CUSTOMER NEEDS.
 - Continue to monitor customer satisfaction.

Key Component Issues for FY1999 – 2000

- Address Data Processing issues that impact our program including Year 2000 mandated issues, the need for a new tax mainframe system and replacement of the existing archiving system.
- Diminished resources dictate that we adapt technology to deliver services that meet or exceed customer expectations.
- Unemployment Insurance Call Centers require a staff of fully trained seasonal workers to meet fluctuating workload demands. Complexities of the program require an extensive training period and results in a long learning curve.
- Maintain trust fund balances sufficient to cover unforeseen benefit distributions in order to respond to economic downturns.
- A shift from a paper, mail delivered system to a paperless, electronic delivery system requires that we utilize postal cost savings to offset additional costs related to telephonic claims processing and direct deposit.

Major Component Accomplishments for FY1998

- Unemployment Insurance benefits totaling \$118,048,615 were paid to 50,253 insured workers. Timeliness of payments improved by 10% and 93.4% of all benefits were paid correctly.
- Maintained the solvency of the Alaska UI Trust fund:
 - a) 63,868 Contribution Reports processed from employers.
 - b) \$125,216,887 deposited to the UI Trust Fund.
- \$3,869,054 was deposited to the State Training and Employment Program Account for the training of displaced workers.
- Returned \$282,743 in overpaid contributions to Alaskan employers.

(STEP)

Next Program

Department of Labor

Unemployment Insurance

Proposed Changes in Levels of Service for FY2000

- Implementation of a Direct Deposit Program for payment of UI Benefits providing quicker access to their benefits for our rural clients.
- Allow multiple users in different locations to have access to the same information by developing an imaging archival system.
- Improve efficiency in processing employer contributions and refunds by developing a mainframe tax system compatible with our current benefit system.

Component — Summary of Budget Changes

From FY1999 Authorized to FY2000 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY1999 Authorized	0.0	16,849.3	915.8	17,765.1
Adjustments which will continue current level of service:				
-Adjust Contractual Services Fund Source Distribution (D4 of 5)	0.0	-1.5	1.5	0.0
-Adjust Contractual Services Fund Source Distribution (D5 of 5)	0.0	152.3	-152.3	0.0
-Adjust Personal Services Fund Source Distribution (D1 of 5)	0.0	-152.3	152.3	0.0
-Adjust Personal Services Fund Source Distribution (D2 of 5)	0.0	1.3	-1.3	0.0
-Adjust Travel Fund Source Distribution (D3 of 5)	0.0	0.2	-0.2	0.0
-Line Item Transfer from Personal Services to Contractual Services(C2 of 2)	0.0	0.0	0.0	0.0
-Transfer federal authorization to the DP component from the UI component	0.0	-629.2	0.0	-629.2
-Transfer Internal Auditor Position & costs to Commissioner's Office	0.0	-72.8	0.0	-72.8
-Transfer Personnel Specialist Position & costs to Management Services	0.0	-66.8	0.0	-66.8
-Transfer Split PCN's & Related Federal Authorization from UI to ES component (C1 of 2)	0.0	-242.7	0.0	-242.7
-Transfer T&B to Employment Services	0.0	0.0	-572.5	-572.5
Proposed budget increases:				
-Add Federal Funds for Increased Overhead and TRA Grants	0.0	700.0	0.0	700.0
FY2000 Governor	0.0	16,837.8	343.3	16,881.1

Department of Labor

Unemployment Insurance

Resource Summary

All dollars in thousands

	FY1998 Actuals	FY1999 Authorized	FY2000 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	0.0	13,179.9	11,362.7
72000 Travel	0.0	281.0	248.3
73000 Contractual	0.0	3,545.7	4,276.2
74000 Supplies	0.0	253.6	251.1
75000 Equipment	0.0	392.8	392.8
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	132.1	350.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	0.0	17,765.1	16,881.1
Funding Sources:			
1002 Federal Receipts	0.0	16,849.3	16,537.8
1007 Inter-Agency Receipts	0.0	343.3	343.3
1049 Training and Building Fund	0.0	572.5	0.0
Funding Totals	0.0	17,765.1	16,881.1

Estimated Unemployment Insurance Revenue Collections

Description	Master Revenue Account	FY1998 Actuals	FY1999 Authorized	FY1999 Cash Estimate	FY2000 Governor
Unrestricted Revenues					
Training & Building Fund	51155	0.0	572.5	0.0	0.0
Unrestricted Total		0.0	572.5	0.0	0.0
Restricted Revenues					
Federal Receipts	51010	0.0	16,849.3	16,849.3	16,537.8
Interagency Receipts	51015	0.0	343.3	343.3	343.3
Restricted Total		0.0	17,192.6	17,192.6	16,881.1
Total Estimated Revenues		0.0	17,765.1	17,192.6	16,881.1

Department of Labor

Component: Commissioner's Office

Manager: Ed Flanagan, Deputy Commissioner

Tel: (907) 465-2700 Fax: (907) 465-2784 E-mail: Ed_Flanagan@labor.state.ak.us

Component Mission

To foster and promote the welfare of the wage earners of the state, improve their working conditions and advance their opportunities for profitable employment.

Component Services Provided

The department's programs affect all Alaskan workers and employers within the state. Strong direction from the Commissioner's Office is critical to the success of the services the Department of Labor provides.

Component Goals and Strategies for FY2000

- 1) **DIRECT THE EFFICIENT ADMINISTRATION OF DEPARTMENTAL PROGRAMS.**
 - Monitor the performance of each division to assure that division goals are met.
- 2) **INCREASE OUTREACH TO THE PUBLIC, WORKERS AND EMPLOYERS IN THE DELIVERY OF SERVICES.**
 - Strengthen the enforcement of the workers' compensation laws.
 - Increase efforts to ensure public and employee safety through cooperative agreements.
 - Increase the public's access to employment services.
- 3) **PROMOTE EMPLOYMENT OPPORTUNITIES FOR THE STATE'S LABOR FORCE**
 - Participate in economic development activities within the state.
- 4) **PROMOTE THE DEVELOPMENT OF A SELF-SUFFICIENT ALASKAN LABOR FORCE**
 - Monitor the utilization of training dollars.
 - Promote the expansion of training opportunities for Alaskans.

Key Component Issues for FY1999 - 2000

Reestablish the internal review process for all divisions and programs by the Commissioner's Office Internal Auditor.

Major Component Accomplishments for FY1998

- 1) **The Commissioner's Office led a multi-agency Jobs cabinet with primary focus on Alaska Hire and Welfare to Work efforts.**
 - In 1997, 6,742 more Alaskans were employed than in 1996, and wages earned by Alaskans (as determined by Permanent Fund Dividend data) increased by \$283 million.
 - 3,528 fewer non-residents worked in Alaska in 1997 than did in 1996, and wages leaving Alaska with non-resident workers decreased by \$7.3 million.

Department of Labor

Budget Request Unit: Office of the Commissioner

Manager: Ed Flanagan, Deputy Commissioner

Tel: (907) 465-2700 Fax: (907) 465-2784 E-mail: Ed_Flanagan@labor.state.ak.us

BRU Mission

To foster and promote the welfare of the wage earners of the state, improve their working conditions and advance their opportunities for profitable employment.

BRU Services Provided

The Commissioner's Office component provides direction to the department's divisions in the administration of the department's programs.

The Alaska Labor Relations Agency component facilitates the resolution of disputes between organized labor and public employers in the state. The Agency promotes cooperative relations between government and its employees and protects the public's interest in the provision of uninterrupted government services.

BRU Goals and Strategies for FY2000

1) PROMOTE EMPLOYMENT AND TRAINING OPPORTUNITIES FOR ALASKANS

- Increase the public's access to employment services.
- Participate in economic development activities.
- Monitor the utilization of training dollars and promote increased training opportunities.

2) ASSIST IN PROVIDING UNINTERRUPTED GOVERNMENT SERVICES.

- Conduct training sessions on the Public Employment Relations Act.
- Provide increased mediation and conciliation services.

Key BRU Issues for FY1999 - 2000

With the major state employee union bargaining agreements and many school district employee contracts expiring during this period, a significant increase in disputes requiring resolution may occur. Increased activity would challenge the Alaska Labor Relations Agency's ability to provide timely ongoing services.

Major BRU Accomplishments for FY1998

- In 1997, 6,742 more Alaskans were employed than in 1996, and wages earned by Alaskans (as determined by Permanent Fund Dividend data) increased by \$283 million.
- 3,528 fewer non-residents worked in Alaska in 1997 than did in 1996, and wages leaving Alaska with non-resident workers decreased by \$7.3 million.
- The Alaska Labor Relations Agency reduced the backlog of state supervisory unit clarification petitions by 30%.

Department of Labor

Budget Request Unit: Administrative Services

Manager: *Remond Henderson*
~~Arbe Williams~~, Director

Tel: (907) 465-2720 Fax: (907) 465-2107 E-mail: ~~Arbe_Williams~~@labor.state.ak.us

BRU Mission

To provide for efficient administrative and data processing services in support of the department's programs, and to provide for the collection, analysis and publication of demographic and economic information in support of sound policy, business, program and personal employment decisions.

BRU Services Provided

The Management Services component provides budget planning, monitoring and reporting; federal, state and unemployment insurance trust fund accounting; publication functions; human resource management; and procurement, mail and office space management to departmental programs.

The Labor Market Information component collects, analyses and publishes information on employment, unemployment, wage rates, occupational injuries, population estimates and forecasts, and other economic and demographic information.

The Data Processing component provides long-range planning, project management, mainframe and distributed systems applications analysis and programming, database and security administration and network services — installations and support.

BRU Goals and Strategies for FY2000

- 1) Implement a long-term plan to provide for the informed financial management of the department's programs.
 - Review departmental program support needs and craft a minimal cost plan to meet them.
- 2) Provide reliable and cost effective data processing services and support which fully utilize emerging technologies to benefit program operations and public services.
 - Replace obsolete hardware and upgrade software to meet departmental standards.
 - Maintain adequate data processing disaster recovery plans.
- 3) Take full advantage of the federal Bureau of Labor Statistics (BLS) support of statistical programs and mandates for employment and training program evaluation to benefit Alaska's information and program needs.
 - Continue to participate in the development of the new BLS program and funding guidelines to the extent possible.

Key BRU Issues for FY1999 – 2000

- Providing support and training with the implementation of changing technologies and program services.
- Participation in and support for implementation of the federal Workforce Investment Act of 1998 as the state's and individual program needs are addressed.

Department of Labor

- 2) Continued emphasis on expansion of employment for Alaskans in the seafood processing industry with the direct involvement of the Commissioner's Office in outreach to employers and coordination with other agencies and stakeholders through the Salmon Cabinet, Salmon Forum and other activities.
- 3) Initiated an Electronic Fund Transfer project for Unemployment Insurance benefits with initial project management provided by the Commissioner's Office.

Statutory and Regulatory Authority

AS 05.20
AS 08.18, 08.52
AS 16.10.280
AS 18.31, 18.60, 18.62, 18.63
AS 23
AS 36
AS 37.07
AS 42.40.705 - 42.40.890
AS 44.31
CH 95, SLA 89
CH 17, SLA 91
CH 17, SLA 93

Does not include new areas from Dept of Ed & C&R.A

Department of Labor

Component: Labor Market Information

Manager: Arbe Williams, Director

Tel: (907) 465-2720 Fax: (907) 465-2107 E-mail: Arbe_Williams@labor.state.ak.us

Component Mission

To provide accurate and timely economic and demographic data and analysis to assist government, industry, and individuals to make informed choices.

Component Services Provided

- Develops information on employment by industry and occupation, unemployment, wage rates, population, census geography, occupational injuries and fatalities, housing statistics and other economic variables.
- Prepares reports on employment and training program participant's success in gaining employment and on resident hire.

Component Goals and Strategies for FY2000

1) MAXIMIZE THE ACCURACY OF DATA PRODUCED.

- Meet or exceed all quality standards set by the US Bureau of Labor Statistics (BLS).
- Work with the Census Bureau to insure as accurate a year 2000 census as possible.

2) MAXIMIZE THE AVAILABILITY OF DATA PRODUCED.

- Increase amount of historical data available on the Internet.
- Work with the US Department of Labor to implement the Workforce Investment Act of 1998 as it relates to this component. New data series, analysis or the reformatting of existing data may be required as this law is implemented.

3) PROVIDE OBJECTIVE PROGRAM OUTCOME STATISTICS FOR EDUCATION AND TRAINING PROGRAMS USING WAGE RECORDS AND OTHER DATA FILES.

- Through the Alaska Human Resources Investment Council, work to implement a standardized reporting procedure for recording program outcomes.

4) IMPROVE RESPONSE TO AD HOC REQUESTS FOR LABOR MARKET INFORMATION.

- Fully implement the Public Online Labor market And Research Information System (POLARIS) database, and train component staff in its use.

Key Component Issues for FY1999 - 2000

The federal Workforce Investment Act of 1998 brings a new governance structure to production of Labor Market Information (LMI). The Act specifies a much stronger state and local partnership in the national LMI system. The extent to which this Act will have on the increase or decrease of federal revenues to this component is unknown at this time.

Department of Labor

Component: Management Services

Manager: Arbe Williams, Director

Tel: (907) 465-2720 Fax: (907) 465-2107 E-mail: Arbe_Williams@labor.state.ak.us

Component Mission

To provide for efficient and effective administrative services in support of the department's programs.

Component Services Provided

Budget planning, monitoring and reporting; federal, state and unemployment insurance trust fund accounting; publication; human resource management; procurement, mail and office space management.

Component Goals and Strategies for FY2000

IMPLEMENT A LONG TERM PLAN WHICH MINIMIZES THE COST OF ADMINISTRATIVE SERVICES WHILE MEETING THE CHANGING NEEDS FOR PROGRAM SUPPORT.

- **Participate with program managers in planning for program services.**
- **By the end of the fiscal year, identify specific information and other administrative support service needs and implement procedures that meet those needs with minimal current and future costs.**

Key Component Issues for FY1999 - 2000

The component will focus on the need to maximize the use of the electronic desktop applications and communication systems to reduce administrative costs and increase operating efficiencies.

Major Component Accomplishments for FY1998

- **The Fiscal Unit refined financial reporting to more accurately report on and project program expenditures.**
- **The Internal Auditor substantially completed the documentation of the financial activity of the Unemployment Insurance (UI) database that collects UI Trust Fund payments and disburses UI benefit payments.**
- **This component trained the majority of department users in the statewide desktop applications.**
- **The Publications Unit provided oversight and direction in the publication of departmental information and materials on the Internet.**

Statutory and Regulatory Authority

**AS 09.38.115
AS 23.05.060 (3)
AS 38.10
AS 44.31
1 CFR part 15.7
41 CFR parts 29 - 70**

Department of Labor

Component: Data Processing

Manager: Mike Noel, Manager of Information Services
Tel: (907) 465-4881 Fax: (907) 465-5788 E-mail: Mike_Noel@labor.state.ak.us

Component Mission

Provide data processing support and services to all departmental programs and to the Alaska Job Center Network.

Data Processing was formally a separate BRU that has been merged into the Administrative Services BRU in the FY2000 budget.

Component Services Provided

- Data processing operations long-term planning.
- Technology assessment.
- Data Processing development and enhancement project management.
- Production job running, merging and printing, production output.
- Database administration.
- Local Area Network installation, maintenance and administration.
- Mainframe and Local Area Network application analysis and programming.
- Expert-level PC and LAN desktop troubleshooting support in coordination with local, first-level support.

PARTNER AGENCIES

There are both public and private partners in the Alaska Job Center Network. The public sector partners are programs within this department, the Department of Health and Social Services, the Department of Education, and the Department of Community and Regional Affairs.

Component Goals and Strategies for FY2000

- 1) **COMPLETE PREPARATION FOR YEAR 2000.**
 - Test disaster recovery plans.
 - Review contingency plans.
- 2) **PROVIDE FASTER AND MORE RELIABLE COMMUNICATIONS AND LESS COSTLY SUPPORT.**
 - Complete migration to single network protocol.
 - Replace Novell file and print servers and client software.
 - Improve shared desktop environment.
- 3) **INSTALL ALASKA JOB CENTER NETWORK COMPUTERS TO IMPROVE SERVICE.**

Major Component Accomplishments for FY1998

- Population projections to the year 2025 were prepared for the first time since 1991.
- The 1997 Boundary and Annexation Survey for all of the State's Census Areas and Boroughs was completed.
- Conducted a special labor market survey of 24 communities in rural Alaska.
- Designed and implemented a website for the Alaska Job Center Network.
- Industry employment forecasts were completed for two-, five-, and ten-year horizons.
- Provided labor market information to policymakers and line staff through dozens of presentations and workshops.

Statutory and Regulatory Authority

AS 44.31.020
AS 44.19.626 (d)(3) - (e)
AS 23.05.060 (3)
AS 37.07.050
AS 09.38.115

41CFR parts 29 - 70

04 AAC 31.060

Department of Labor

Component: Data Processing

Manager: Mike Noel, Manager of Information Services
Tel: (907) 465-4881 Fax: (907) 465-5788 E-mail: Mike_Noel@labor.state.ak.us

Component Mission

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Data Processing was formally a separate BRU that has been merged into the Administrative Services BRU in the FY2000 budget.

Component Services Provided

- Data processing operations long-term planning.
- Technology assessment.
- Data Processing development and enhancement project management.
- Production job running, merging and printing, production output.
- Database administration.
- Local Area Network installation, maintenance and administration.
- Mainframe and Local Area Network application analysis and programming.
- Expert-level PC and LAN desktop troubleshooting support in coordination with local, first-level support.

PARTNER AGENCIES

There are both public and private partners in the Alaska Job Center Network. The public sector partners are programs within this department, the Department of Health and Social Services, the Department of Education, and the Department of Community and Regional Affairs.

Component Goals and Strategies for FY2000

- 1) **COMPLETE PREPARATION FOR YEAR 2000.**
 - Test disaster recovery plans.
 - Review contingency plans.
- 2) **PROVIDE FASTER AND MORE RELIABLE COMMUNICATIONS AND LESS COSTLY SUPPORT.**
 - Complete migration to single network protocol.
 - Replace Novell file and print servers and client software.
 - Improve shared desktop environment.
- 3) **INSTALL ALASKA JOB CENTER NETWORK COMPUTERS TO IMPROVE SERVICE.**

Department of Labor

- Participate in the planning and development of integrated computer applications with partner agencies in the Alaska Job Center Network.

Key Component Issues for FY1999 – 2000

- Disaster recovery planning, year 2000 compliance testing and contingency planning will be the top priority, perhaps even to the extent of suppressing other desired changes.
- Recruitment and retention of data processing staff is already a severe problem and we expect it to become much worse as Year 2000 and other fixed deadline tasks fuel competition for our staff.
- Implementation of statewide e-mail system and resolution of use of the standard used by the Alaska Job Center Network partners are key to improving e-mail reliability and minimizing support costs.
- Transition of Employment Services offices to Alaska Job Center Network one-stop service delivery will increase travel costs and require additional support staff.

Major Component Accomplishments for FY1998

- Replaced most IBM Systems Network Architecture network equipment with Internet Protocol based equipment to facilitate statewide efforts to migrate to a single protocol on the wide area network.
- Deployed network computers and Alaska Job Center Network standard workstations to replace low-end personal computers and dumb terminals in order to extend Internet access to almost all staff.
- Completed Year 2000 remediation of our old Unemployment Insurance tax mainframe system to ensure its continued operation until it can be replaced.
- Substantially resolved audit findings relating to charges in our Unemployment Insurance benefits system thus significantly improving the reliability of our financial records.
- Completed automation of Worker's Compensation re-employment benefits that resulted in a more rapid and accurate review of cases.

Statutory and Regulatory Authority

No statutes and regulations.

Labor Market Information

Specialized Expertise Needed for Mission

Expertise in the areas of economics and statistical analysis is required of all professional staff. Professional staff must have a college degree in economics, statistics, or mathematics. Further specialized knowledge in the areas of demographics, actuarial analysis, and geographic information systems is required by some staff in this component.

The Labor Market Information component works in cooperation with the federal Bureau of Labor Statistics and the US Census Bureau. As such staff in this component must be fully conversant in all statistical procedures used by those agencies.

Specialized Equipment needed for Mission

The complexity and magnitude of computations in statistical analysis requires the use of computers and specialized statistical software. Some software is commercially available, while other software is developed by staff within the component or in cooperation with the Bureau of Labor Statistics.

Geographic Information System (GIS) computer hardware and software used to assist with the census.

Privatization Practices

*ask Dwight
get the
contracts*
A private contractor is utilized to key punch wage record information for entry into the Occupational Information Database. Also large printing jobs are sent to private vendors.

Management Services

Specialized Expertise Needed for Mission

Expertise in the areas of accounting and/or personnel management is required of all professional staff. Professional staff are college educated in accounting and some are CPA's. Specialized knowledge in the areas of GAAP, audit, federal grant accounting and reporting, and funds control are also required of some staff. Staff must be fluent in state and federal accounting practices.

Specialized Equipment needed for Mission

This unit uses the State accounting (AKSAS) and payroll (AKPAY) systems, the State budgeting (operating and capital) systems, and the State personnel system and WorkPlace Alaska.

services applications.

Specialized Equipment needed for Mission

IVR (Interactive Voice Response) machines in Anchorage, Fairbanks, and Juneau allow unemployment insurance claimants to file their claims by telephone.

AIX (IBM variant of UNIX) computers in Anchorage and Juneau used as departmental WWW servers.

2 Pitney Bowes inserters (both in Juneau) used to stuff outgoing mail to unemployment insurance claimants into envelopes for mailing.

3 IBM mainframe printers (all in Juneau) used to print outgoing mail to unemployment insurance claimants.

A small IBM mainframe computer (in Juneau) used by programmers to test applications.

Software development tools (as described above under specialized expertise).

Privatization Practices :

Large printing jobs are sent to private vendors.

Alaska Labor Relations Agency

Specialized Expertise Needed for Mission

Professional staff must be fluent in state labor relations laws, agency and court decisions, as well as federal court decisions, including those issued by the National Labor Relations Board (NLRB). Staff must have ability to conduct legal research through the internet or law library, and to conduct impartial hearings and write clear, concise decisions. One staff member must be a licensed attorney to conduct unfair labor practice hearings, as required by agency statute and the Administrative Procedure Act (AS 44.62).

Specialized Equipment needed for Mission

Standard office equipment including a personal computer with internet access for research.

Privatization Practices

Privatization Practices

Large printing jobs are sent to private vendors.

Data Processing

Specialized Expertise Needed for Mission

In order to effectively do their jobs DP staff need great understanding of the agency operations they are supporting. This includes the laws governing their operation, the way the agency implements those laws, the agency organization, and the flow of work through the organization. This is needed in order to implement automation of functions, to correct problems that may occur in existing automation, and to efficiently provide direct support to agency staff in their use of the automation.

Specialized expertise in the technologies implemented within the agencies is also required.

For the programmers supporting the unemployment insurance and employment services applications this includes use of IBM's DB2 database, use of Sterling Software's Cool:Gen mainframe ICASE software development tools, and use of Software AG's Natural for DB2 ad hoc reporting/programming language - all in addition to expertise in the standard software tools (Cobol, CICS, MVS, etc) used by many other agencies outside DOL.

For the programmers supporting other agencies within DOL this includes use of Microsoft Visual Basic programming language and Microsoft SQL server database (also in addition the the above standard software tools).

The database support staff assists all the programmers and therefore require expertise in all of the above products.

The network services staff require expertise in the lan wiring of the DOL buildings statewide, Citrix Wincenter multiuser Window NT products (and the associates Microsoft Windows Terminal Server), NCD "black boxes", and IBM AIX unix computers in addition to more commonly used products such as Windows NT, NT servers, Novell servers, Cisco routers and switches, and the usual variety of desktop computers, printers and software.

Expertise in IBM mainframe systems programming (OS/390, CICS, DB2, CA products, SAG products, etc) is required to maintain the mini-mainframe used (for Y2K testing) by the programmers supporting the unemployment insurance and employment

MEMORANDUM**STATE OF ALASKA
DEPARTMENT OF LABOR and
WORKFORCE DEVELOPMENT
Administrative Services Division**

TO Dwight Perkins, Deputy Commissioner
Department of Labor and
Workforce Development

DATE September 24, 1999

FILE Privatize-2.doc

THROUGH:

PHONE 465-6035

FROM Chris Miller, Chief 
Research and Analysis

SUBJECT Privatization of Data
collection

Could R&A privatize the collection of wage, labor and occupational information?

The answer to that question is: It depends.

Research and Analysis currently evaluates all non-federal projects to determine the most efficient means to do the work within the contractual requirements of the funding agency and the time constraints of the project. We have utilized private contractors for data entry, printing and for special survey projects and will continue to do so.

However, federal law prohibits the privatization of federally funded work done in Research and Analysis. The federal Wagner-Peyser Act, which is the primary source of federal funds to Research and Analysis from the Employment and Training Administration and the Bureau of Labor Statistics states that funds can only be given to state agencies with "merit staff". This portion of the Act has been recently upheld in federal court (STATE OF MICHIGAN, v. United States Department of Labor). Our contract with the BLS fund further stipulates,

"A state agency shall not subgrant or contract substantive program work under the Cooperative Agreement with out the permission of the BLS. Substantive program work includes the sampling, data collection, estimation, and validation activities under the Cooperative Agreement."

The BLS has stated that it would not provided funds to Research and Analysis if it were to subcontract out work.

On top of these federal prohibitions, just the logistics alone would prove very cumbersome. Data collection for the BLS fed/state statistical programs is done at both the federal and state levels. Processing occurs both in Washington DC and Juneau. The BLS pays for direct telecommunication from our office to their computers in Washington DC. This line is not only used to pass collected data, but to access processing systems that transform the sample data into estimates and other forms of information. The BLS regards much of the data within its system as highly confidential. To insure data security there are firewalls on both ends of this line. I am sure that you can appreciate that access to the BLS computer system is not under my span of control.

Finally, confidentiality of certain administrative and other records held by the state could also be an issue that might preclude any efficiency gained from privatization. The policy of giving confidential records to the private sector needs to be carefully considered.

5. MASS LAYOFF STATISTICS (MLS)

Detailed information on permanent job cutbacks, including the resultant unemployment registered at the State and area levels; the identification of substantial layoffs and plant closures from the perspective of dislocated worker legislation and the identification of declining industries.

B. AUTHORIZING LEGISLATION

The BLS is authorized to collect labor market information pursuant to the 1884 statute (29 USC 1), an Act to Establish the Bureau of Labor, as amended. Section 14 of the Wagner-Peyser Act (29 USC 49 f(a)(3)(D)) authorizes the Secretary of Labor to reimburse the States to provide data for national statistical programs. Some programs such as OES are authorized by the Job Training Partnership Act (29 USC 1501), which amended the Wagner-Peyser Act.

The BLS uses a cooperative agreement to fund cooperative statistical programs because of the agency's ongoing involvement in the programs, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 USC 6301-08). The specific statistical programs funded through the LMI Cooperative Agreement are described in more detail in the work statements in Part III, Application Materials.

C. ELIGIBLE APPLICANTS

Eligible applicants are State agencies designated by the Governor pursuant to the Workforce Investment Act of 1998, or their equivalents in non-State jurisdictions. The BLS may select an alternative applicant if a State agency declines to apply for cooperative agreement funding or otherwise substantially fails to meet BLS application and performance requirements.

D. REGULATIONS AND REFERENCE DOCUMENTS

The LMI programs are administered in accordance with the program operating manuals cited in the work statements, and with:

- Title 29 Part 93 of the Code of Federal Regulations (hereinafter cited as 29 CFR 93), *New Restrictions on Lobbying* (Federal Register, Vol. 55, No. 38, February 26, 1990);
- Title 29 Part 96 and 99 of the Code of Federal Regulations (hereinafter cited as 29 CFR 96 and 99), *Audit Requirements for Grants, Contracts and Other Agreements*. (Federal Register, Vol. 64, No. 57, March 25, 1999);
- Title 29 Part 97 of the Code of Federal Regulations (hereinafter cited as 29 CFR 97), *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, which reflects the Final (Common) Rule, as adopted by the Department of Labor, implementing OMB Circular A-102, as revised (Federal Register, Vol. 60, No. 75, April 19, 1995);

U.S. Department of Labor

Bureau of Labor Statistics
2 Massachusetts Ave. N.E.
Washington, D.C. 20212

Date : JUN 10 1999

LMI Administrative Memorandum No. S-99- 1

MEMORANDUM FOR: STATE AGENCY ADMINISTRATORS
BLS REGIONAL COMMISSIONERSFROM : ROBERT A. GADDIE
Acting Associate Commissioner
Office of Field Operations

SUBJECT : 2000 Labor Market Information Cooperative Agreement

1. **Purpose:** This is to transmit the 2000 LMI Cooperative Agreement (CA) application materials to State agencies for the operation of the LMI cooperative statistical programs and activities, and alert State agencies to those areas of the CA that have changed.
2. **Summary of Changes:** In addition to some minor editorial corrections and routine updates of reference dates, we have made other, more significant changes to the CA. These are described below, organized by Part and Section of the CA.

PART I, ADMINISTRATIVE REQUIREMENTS***Section D., Regulations and Reference Documents***

DOL Grant Interim Final Rules were published in the *Federal Register* on Thursday, March 25, 1999. They amend 29 CFR Part 96, *Audit Requirements for Grants, Contracts and Other Agreements*. Also, *Audits of States, Local Governments and Non-Profit Organizations* was published as a new regulation (29 CFR 99) codifying the revised OMB Circular A-133.

Section E., Program Funding

We have added language about MLS funding.

Section S., Confidentiality

This section has been modified slightly to bring it into conformance with BLS policy.

Department of Labor

Unemployment Insurance

Component — Personal Services Information

Authorized Positions			Personal Services Costs	
	<u>FY1999</u> <u>Authorized</u>	<u>FY2000</u> <u>Governor</u>		
Full-time	175	167	Annual Salaries	8,995,367
Part-time	75	65	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	3,155,953
			Less 8.49% Vacancy Factor	(788,640)
			Lump Sum Premium Pay	0
Totals	250	232	Total Personal Services	11,362,700

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Accounting Clerk II	1	0	5	0	6
Accounting Spvr I	0	0	2	0	2
Accounting Spvr II	0	0	1	0	1
Accounting Tech I	1	1	2	0	4
Accounting Tech II	0	0	1	0	1
Administrative Assistant	1	0	1	0	2
Administrative Clerk II	0	0	7	0	7
Administrative Clerk III	4	1	4	0	9
Appeals Referee II	3	0	3	0	6
Appeals Referee III	1	0	0	0	1
Asst Dir Employ Security	0	0	1	0	1
College Intern I	0	0	1	0	1
Employ Sec Analyst I	0	0	2	0	2
Employ Sec Analyst II	0	0	6	0	6
Employ Sec Analyst III	0	0	11	0	11
Employ Sec Spec Ib	53	11	39	0	103
Employ Sec Spec III	6	1	4	0	11
Employ Sec Spec IV	0	0	2	0	2
Employment Service Manager II	0	1	0	0	1
Employment Service Mgr III	1	0	1	0	2
Field Auditor I	7	2	2	1	12
Field Auditor II	1	1	1	0	3
Investigator I	1	0	0	0	1
Investigator II	2	1	1	0	4
Investigator III	1	0	0	0	1
Micro/Network Tech I	1	1	1	0	3
Microfilm Equip Op I	0	0	1	0	1
Microfilm Equip Op II	0	0	1	0	1
Prog Coordinator	0	0	3	0	3
Spvr Audit Operations	0	0	1	0	1
Status Examiner I	0	0	3	0	3
Status Examiner II	0	0	1	0	1
Student Intern I	0	0	1	0	1
Supvr	0	0	1	0	1
Unem Ins Qtd Contd Auditor	3	1	1	0	5
Unemployment Ins Spec II	0	0	9	0	9
Unemployment Ins Spec III	0	0	2	0	2
Unemployment Ins Spec VI	0	0	1	0	1
Totals	87	21	123	1	232

29 CFR 97.32(g)(1)-(3). Pursuant to those standards, specifically, 29 CFR 97.32(g)(1), the BLS reserves the right to transfer title of any ADP equipment, purchased with Cooperative Agreement funds, upon termination of financial assistance or when the equipment is no longer needed by the State agency.

P. PROCUREMENT

Except as noted below, when procuring property and services under the Cooperative Agreement, a State agency shall follow the same policies and procedures it uses for procurements from its non-Federal funds. The State agency shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations [29 CFR 97.36(a)].

- ☐ Pursuant to the provisions of OMB Circular A-87, a State agency shall request BLS approval prior to the procurement of ADP equipment, whether by rental-purchase agreement or other method of procurement, except as provided in LMI Administrative Memorandum S-89-4;
- ☐ A State agency shall not subgrant or contract substantive program work under the Cooperative Agreement without the permission of the BLS. Substantive program work includes the sampling, data collection, estimation, and validation activities under the Cooperative Agreement.

Q. CLOSEOUTS AND AUDITS

Appropriate LMI Memorandums on closeouts and audits will provide specific guidance on the requirements of 29 CFR 97.50, regarding closeout, and 29 CFR 96, regarding the Single Audit Act.

If, by virtue of an AAMC, a CA extends beyond the end of the fiscal year of funding, a two-step closeout process is required. A State agency shall perform a partial closeout (i.e., financial reconciliation) of the base programs (CES, LAUS, OES, ES-202) at the end of the fiscal year of funding. A State agency shall perform a final closeout of all base programs and AAMCs either

- ☐ ninety (90) days after the last AAMC ends, or;
- ☐ ninety (90) days after the end of the fiscal year in which the last AAMC ends.

The State agency has the option of deciding when the final closeout is to be performed; however, the State agency must notify the Regional Office before the end of the fiscal year of funding which option it has selected.

R. RECORDS

1. RETENTION

A State agency shall retain records in accordance with 29 CFR 97.42, Retention and Access Requirements for Records. Subject to the qualifications set forth in 29 CFR 97.42(b), a State agency shall retain all records pertinent to the Agreement, including financial and statistical records and supporting documents, for a period of three years after the close of the

Department of Labor

- Provide public resource areas, equipment and labor market information.
 - Present skill-building workshops on work search and interviewing techniques, resume writing, and completing applications.
- 4) **Special Initiatives:**
- a) **Vocational Counseling Program:** Vocational counselors provide comprehensive counseling and assessment services at all nineteen Alaska Employment Service offices. Services include:
 - Assistance with work-related choice, change or adjustment; handling stress due to job loss; awareness of employer expectations; work ethics; and job search skills training.
 - Assessment of applicants' abilities, interests, personality traits, transferable skills, literacy skills, and work values.
 - An employment plan is completed and based upon plan steps, the client is assisted in achieving employment goals through job placement, job development, job search skills training, referral for services and/or formal training. Intensive follow-up support is available.
 - b) **Seafood Unit:**
 - Work with employers to promote job placement and skill development for Alaskan workers in the seafood industry.
 - Provide group orientations for applicants.
 - Screen applicants according to employer criteria.
 - List job openings, advertise, and participate in recruitment and job fair activities.
 - Promote seafood jobs as a positive option for public assistance recipients.
- 5) **Administer employment and training programs made possible by specific federal appropriations.**
- Alien Labor Certifications.
 - Trade Act - North America Free Trade Agreement/Trade Adjustment Assistance.
 - Worker Profiling & Unemployment Insurance Reemployment Services.
 - Welfare to Work and Worker Opportunity Tax Credits.
 - Priority Service to Veterans through the Disabled Veterans Outreach Program and the Local Veterans' Employment Representatives program.

Component Goals and Strategies for FY2000

- 1) **INCREASE VISIBILITY TO OUR CUSTOMERS AS ALASKA'S PRIMARY LABOR EXCHANGE.**
- a) **Employers:**
 - Contact employers to inform them of the benefits of using our services.

Component: Employment Services

Manager: Rebecca Gamez, Director

Tel: (907) 465-2712 Fax: (907) 465-4537 E-mail: Rebecca_Gamez@labor.state.ak.us

Component Mission

To foster and promote the welfare of Alaska wage earners by operating a statewide public labor exchange.

Component Services Provided

LABOR EXCHANGE & EMPLOYMENT ASSISTANCE:

1) Provide the state's largest public labor exchange for employers and job seekers.

- List vacancies for employers (job orders).
- Connect qualified job seekers with employer vacancies.
- Provide interview facilities.

PARTNER AGENCIES

Agencies involved in the Alaska Job Center partnership with the Department of Labor, Employment Security Division include:

The Department of Community and Regional Affairs
The Department of Education
The Department of Health and Social Services
The University of Alaska
Several Community Colleges

2) Provide the required work test for Unemployment Insurance (UI) claimants to establish their availability for work.

- Assess the employability of profiled UI clients.
- Determine which reemployment services will best prepare profiled clients to return to suitable work as soon as possible.
- Schedule and follow up on reemployment services progress.

3) The Employment Security Division (ESD) is mandated by the Wagner-Peyser Act and the new Workforce Investment Act (WIA) to provide employment services to Alaska's universal population - all employers, workers and job seekers. We provide initial information and resources that permit job seekers to decide if they are ready for work or if they need other services such as training, counseling or unemployment insurance.

- Assist employers in recruiting and identifying applicants.
- Provide employers with information on wages, worker availability and labor market conditions.
- Advise employers on legal hiring, interviewing and employment practices.
- Greet job seekers and guide them toward appropriate services including training, vocational counseling or services provided by other agencies such as public assistance.
- Refer job seekers to job interviews.

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- Develop software to allow for self-registration and self-referral.

Major Component Accomplishments for FY1998

- Expanded availability and access to information and services to all areas of Alaska by using Internet technology.
- Created Alaska's Job Bank that lists all open job orders on the Internet.
- Developed an Internet Job order entry form for employers so they do not have to contact Employment Services staff in-person or by telephone to submit a job order.
- Provided quality staff training and development particularly with the financial assistance of Alaska Job Center Network resources.
- Processed 305 North America Free Trade Agreement cases.
- Processed 861 Work Opportunity Tax Credit applications, of which 654 were federally approved.
- Met or exceeded Veterans standards for referrals and services.
- Provided vocational counseling services to over 3,000 clients.
- Seafood initiative: The Seafood Employment Unit developed a cooperative recruitment effort with the Division of Public Assistance and seafood employers to target public welfare recipients for seafood jobs. Seafood employment staff also organized and participated in job fairs for employers, extended recruitment efforts to Alaskans in rural areas, and provided orientations for seafood job applicants. Fifty-eight percent of all seafood job openings listed with the Employment Service were filled.

Statutory and Regulatory Authority

Wagner-Peyser Act
20 CFR Chapter V
AS 23.20
8 AAC 85
5 U.S.C. Sec. 8501-8525
Trade Act of 1974

Department of Labor

- Add links and functions to our employer web sites to provide current information and to make it easier for employers to use our services. Example: On the employer web page, add a link to Labor Market Information's employment and labor market statistics site.

- Provide toll free telephone access for employers to submit job orders.

b) Job Seekers:

- Provide distance-spanning technologies such as Internet access; toll free telephone access to America's Job Bank; place personal computers with Internet access in 3 villages; and integrate Alaska's Job Bank with America's Job Bank and America's Talent Bank to ensure availability of employment services to all Alaskans.
- Deliver employment services on three levels: self-service, group orientations and workshops and one-on-one interviews to accommodate the needs of all job seekers.
- Develop self-registration and self-referral processes.
- Provide public resource areas and equipment in local offices.
- Provide priority service and placement to Veterans.

2) COLLOCATE AND COORDINATE SERVICES AND RESOURCES WITH OTHER AGENCIES

- To provide employment, training and public assistance related service delivery in one-stop and rural environments.
- Review the potential of collocation for each local office by the end of the fiscal year.

3) DEVELOP REVENUE-GENERATING STRATEGIES BY THE END OF THE FISCAL YEAR TO MAINTAIN LEVELS OF SERVICE AS FEDERAL FUNDING DECLINES.

- Explore the possibilities of charging a fee for providing certain services.
- Apply for grants that will pay for specific services.

4) MEET OR EXCEED U.S. DOL VETERANS PERFORMANCE STANDARDS.

- Increase by at least 15%, referrals and services to veterans by focusing on those 22 years of age or older.

Key Component Issues for FY1999 – 2000

- 1) Secure additional funding to increase field office staffing and/or hours of operation.
- 2) Continue migration and transition of the Alaska Employment Service into the one-stop service delivery environment.
- 3) Work with the soon to be developed Workforce Development Board(s) as described in the Workforce Investment Act as a key participant and planning partner for local service delivery in the Workforce Development plan.
- 4) Establish the policy that federal appropriations for specific programs are a purchase of services and the level of service will not exceed the appropriated resources. Unfunded federal mandates will be challenged.
- 5) Implement the Employment Service Technology Plan by the end of the fiscal year.
 - Update programming to integrate Department of Labor's computer system with America's Job Bank and America's Talent Bank.

Department of Labor

Employment Services

Proposed Changes in Levels of Service for FY2000

As self-service activities such as self-referral and self-registration increase, staff mediated services are expected to decrease. For example, as self-referrals increase by 15%, referrals from Employment Service staff will decrease by 15%.

Component — Summary of Budget Changes

From FY1999 Authorized to FY2000 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY1999 Authorized	0.0	9,390.7	515.9	9,906.6
Adjustments which will continue current level of service:				
-Adjust Contractual Services Fund Source Distribution (A3 of 5)	0.0	27.5	-27.5	0.0
-Adjust Equipment Fund Source Distribution (A5 of 5)	0.0	-20.0	20.0	0.0
-Adjust Personal Services Fund Source Distribution (A1 of 5)	0.0	36.5	-36.5	0.0
-Adjust Supplies Fund Source Distribution (A4 of 5)	0.0	-7.4	7.4	0.0
-Adjust Travel Fund Source Distribution (A2 of 5)	0.0	-36.6	36.6	0.0
-Line Item Transfer from Grants and Contractual Services to Personal Services (B2 of 2)	0.0	0.0	0.0	0.0
-Transfer federal authorization to the DP component from the ES component	0.0	-50.4	0.0	-50.4
-Transfer Funding for Internal Auditor Position to Commissioner's Office	0.0	-6.3	0.0	-6.3
-Transfer Funding for Personnel Specialist Position to Management Services	0.0	-5.9	0.0	-5.9
-Transfer personal services to contractual	0.0	0.0	0.0	0.0
-Transfer Split PCN's & Related Federal Authorization from UI to ES component (B1 of 2)	0.0	242.7	0.0	242.7
-Transfer T&B from Unemployment Insurance	0.0	0.0	572.5	572.5
Proposed budget increases:				
-Add Interagency Authorization for Welfare to Work Activities	0.0	0.0	350.0	350.0
FY2000 Governor	0.0	9,570.8	1,438.4	11,009.2

Department of Labor

Employment Services

Resource Summary

All dollars in thousands

	FY1998 Actuals	FY1999 Authorized	FY2000 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	0.0	7,146.3	8,146.0
72000 Travel	0.0	190.0	197.5
73000 Contractual	0.0	1,507.4	1,905.9
74000 Supplies	0.0	130.0	139.8
75000 Equipment	0.0	120.0	120.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	812.9	500.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	0.0	9,906.6	11,009.2
Funding Sources:			
1002 Federal Receipts	0.0	9,390.7	9,570.8
1007 Inter-Agency Receipts	0.0	241.8	591.8
1049 Training and Building Fund	0.0	0.0	572.5
1108 Statutory Designated Program Receipts	0.0	274.1	274.1
Funding Totals	0.0	9,906.6	11,009.2

Estimated Employment Services Revenue Collections

Description	Master Revenue Account	FY1998 Actuals	FY1999 Authorized	FY1999 Cash Estimate	FY2000 Governor
Unrestricted Revenues					
Training & Building Fund	51155	0.0	0.0	572.5	572.5
Unrestricted Total		0.0	0.0	572.5	572.5
Restricted Revenues					
Federal Receipts	51010	0.0	9,390.7	9,390.7	9,570.8
Interagency Receipts	51015	0.0	241.8	241.8	591.8
Statutory Designated Program Receipts	51063	0.0	274.1	274.1	274.1
Restricted Total		0.0	9,906.6	9,906.6	10,436.7
Total Estimated Revenues		0.0	9,906.6	10,479.1	11,009.2

Department of Labor

Component: State Training Employment Program

Manager: Rebecca Gamez, Director

Tel: (907) 465-2712 Fax: (907) 465-4537 E-mail: Rebecca_Gamez@labor.state.ak.us

Component Mission

To turn actual or potential Unemployment Insurance (UI) claimants into UI Trust Fund contributors through training investments in the Alaskan workforce.

Component Services Provided

Provide Alaskan workers access to state and employer sponsored training programs and services including:

- Industry specific on-the-job and classroom training.
- Job search assistance and other supportive services.
- Vocational counseling and career guidance.

PARTNER AGENCIES

The Alaska Department of Labor collects (collection activities budgeted in UI Component) one tenth of one percent of the employee UI tax contributions and passes the funding through the Alaska Human Resource Council to the Alaska Department of Community and Regional Affairs, which in turn awards grants to private employers to train and hire unemployed workers.

Oversight of the STEP is centered at the Alaska Human Resource Investment Council, while general management of the program is the responsibility of the Job Training Partnership Office within the Department of Community and Regional Affairs. The Department of Labor is responsible for financial administration of the Employment and Training account.

Component Goals and Strategies for FY2000

TO REDUCE CURRENT AND FUTURE CLAIMS AGAINST UNEMPLOYMENT BENEFITS THROUGH THE UPGRADING OF WORKER'S SKILLS.

- Placement in stable or growing industries and occupations.
- Foster growth of existing businesses through availability of a skilled labor force and attraction of new businesses to Alaska.
- Promotion of local hire.

Key Component Issues for FY1999 - 2000

Improve the financial and performance measurement reporting systems for the State Employment and Training Program.

Major Component Accomplishments for FY1998

The Alaska Department of Labor will issue its Annual State Training and Employment Program (STEP) review in December 1998, releasing FY1997 accomplishments. The FY1996 annual program review showed that the STEP achieved the following:

Department of Labor

Employment Services

Component — Personal Services Information

Authorized Positions			Personal Services Costs	
	<u>FY1999</u> <u>Authorized</u>	<u>FY2000</u> <u>Governor</u>		
Full-time	114	122	Annual Salaries	6,373,110
Part-time	30	28	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	2,172,049
			Less 4.67% Vacancy Factor	(399,159)
			Lump Sum Premium Pay	0
Totals	144	148	Total Personal Services	8,146,000

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Accounting Tech III	0	0	1	0	1
Administrative Assistant	1	1	3	0	5
Administrative Clerk II	0	0	2	0	2
Administrative Manager IV	0	0	1	0	1
Administrative Specialist	0	0	1	0	1
Asst Dir Employ Security	0	0	1	0	1
Dep Dir ESD	0	0	1	0	1
Division Director	0	0	1	0	1
Employ Counselor I	0	0	0	1	1
Employ Counselor II	3	2	2	7	14
Employ Counselor III	0	0	1	0	1
Employ Sec Analyst I	0	0	1	0	1
Employ Sec Analyst II	0	0	5	0	5
Employ Sec Analyst III	0	0	5	0	5
Employ Sec Spec Ia	0	0	1	1	2
Employ Sec Spec Ib	29	11	6	28	74
Employ Sec Spec II	1	0	0	1	2
Employ Sec Spec III	3	1	0	0	4
Employment Service Manager II	0	0	1	2	3
Employment Service Mgr I	0	0	0	10	10
Employment Service Mgr III	0	0	0	2	2
Employment Service Mgr IV	1	1	0	0	2
Micro/Network Tech I	1	0	2	0	3
Prog Coordinator	0	0	3	0	3
Program Budget Analyst III	0	0	1	0	1
Secretary I	0	0	1	0	1
Spec Asst to the Comm I	0	0	1	0	1
Totals	39	16	41	52	148

Department of Labor

State Training Employment Program

Resource Summary

All dollars in thousands

	FY1998 Actuals	FY1999 Authorized	FY2000 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	0.0	0.0	0.0
72000 Travel	0.0	0.0	0.0
73000 Contractual	3,867.4	4,046.1	4,046.1
74000 Supplies	0.0	0.0	0.0
75000 Equipment	0.0	0.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	3,867.4	4,046.1	4,046.1
Funding Sources:			
1054 State Employment & Training Program	3,867.4	4,046.1	4,046.1
Funding Totals	3,867.4	4,046.1	4,046.1

Estimated State Training Employment Program Revenue Collections

Description	Master Revenue Account	FY1998 Actuals	FY1999 Authorized	FY1999 Cash Estimate	FY2000 Governor
Unrestricted Revenues					
None.		0.0	0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0	0.0
Restricted Revenues					
State Employment & Training Fund	51394	3,867.4	4,046.1	4,046.1	4,046.1
Restricted Total		3,867.4	4,046.1	4,046.1	4,046.1
Total Estimated Revenues		3,867.4	4,046.1	4,046.1	4,046.1

Department of Labor

- Had 1,270 active clients.
- Reduced the number of STEP clients that filed UI claims from 514 in the four quarters before entering STEP to 303 in the four quarters after completing STEP.
- Preliminary data indicates that the number of STEP clients exhausting their UI claims has declined by approximately 35%.
- 353 STEP clients entered newly created jobs.
- Over 80% of the clients left the program under positive circumstances.

Statutory and Regulatory Authority

CH 85, SLA 98
CH 116, SLA 98
CH 17, SLA 93
CH 17, SLA 91
CH 95, SLA 89
AS 23.20.185 - 275
§ AAC 87.010

Budget Request Unit: Employment Security.

Manager: Rebecca Gamez, Director

Tel: (907) 485-2712 Fax: (907) 485-4537 E-mail: Rebecca_Gamez@labor.state.ak.us

BRU Mission

To ease the negative effects that involuntary unemployment has on Alaska's wage earners, to stabilize the local economy and workforce during periods of economic downturn, to operate a statewide public labor exchange and to provide employment training.

Note: In FY2000, the Alaska Work Programs (AWP) component was renamed the Work Services (WS) component. FY1998 and FY1999 financial activity is reported in the AWP component. The FY2000 activity is reported in the WS component.

BRU Services Provided

The Unemployment Insurance (UI) program assesses and collects employer contributions for deposit into the UI Trust Fund and pays UI benefits to workers who are temporarily unemployed and looking for work.

The Employment Services (ES) program provides labor exchange services for all Alaskans. The Vocational Counseling program better prepares job seekers for employment and the Seafood Unit works with employers to promote job placement and skill development for Alaskan workers in the seafood industry.

Work Services provides a specialized labor exchange and case management service for recipients of both Alaska Temporary Assistance Program (ATAP) and food stamps to place them in unsubsidized employment. Among the services provided in this program are employability assessment, training, counseling and placement.

State Training Employment Program (STEP) provides Alaskans access to state and employer sponsored training.

BRU Goals and Strategies for FY2000

1) PROVIDE AN EFFECTIVE STATEWIDE LABOR EXCHANGE.

- List vacancies for employers (job orders).
- Connect qualified job seekers with employer vacancies.
- Provide interview facilities.

2) ENSURE UNEMPLOYMENT INSURANCE BENEFITS PROMOTE ECONOMIC STABILITY IN ALASKA.

- Provide partial income replacement to insured workers during periods of unemployment.
- Provide a convenient and efficient means for clients to apply for Unemployment Insurance (UI) benefits.
- Deliver Unemployment Insurance benefits correctly and in a timely manner.
- Receive contributions from employers for the payment of unemployment benefits, maintain accounting records of all contributions submitted by employers and deposit those contributions to the Alaska UI Trust Fund as required by state and federal statutes.
- Apply statutory remedies when employers do not comply with state statutes.

Department of Labor

State Training Employment Program

Proposed Changes in Levels of Service for FY2000

No changes are proposed to the levels of service provided by this component.

Component — Summary of Budget Changes

From FY1999 Authorized to FY2000 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY1999 Authorized	0.0	0.0	4,046.1	4,046.1
FY2000 Governor	0.0	0.0	4,046.1	4,046.1

Department of Labor

- **Exceeded Veterans' performance standards for referrals and services despite reduced veterans staffing due to funding shortfalls. These standards are set by the U.S. Department of Labor, Veteran's Employment and Training Service (VETS) and are included in the Wagner-Peyser grant that funds Employment Service operations.**

Department of Labor

- Protect the Unemployment Insurance Trust Fund by preventing, discouraging, detecting and recovering Unemployment Insurance benefit overpayments and conduct employer and wage audits.
- 3) PROVIDE SERVICES THAT AID ALASKANS TO SUCCESSFULLY COMPETE IN THE JOB MARKET.
 - Assess the employability of profiled UI clients.
 - Determine which reemployment services will best prepare profiled clients to return to suitable work as soon as possible.
 - Schedule and follow up on reemployment services progress.
- 4) SUPPORT ALASKA'S ECONOMIC GROWTH AND DEVELOPMENT.
 - Assist employers in recruiting and identifying applicants.
 - Provide employers with information on wages, worker availability and labor market conditions.

Key BRU Issues for FY1999 – 2000

- The key issue for the Employment Security Division is becoming Year 2000 compliant.
- Dealing with the challenge of unfunded federal mandates.
- Pursuing alternative funding sources for our programs.
- Implementing new distance spanning technology to better serve both our rural and urban clients.
- Lead the movement to the one-stop environment as it better serves our customers.
- Effectively participate in welfare reform.
- Comply with the recently passed federal Workforce Investment Act of 1998 which mandates states integrate employment, training, and related public services into a one-stop service delivery system.

Major BRU Accomplishments for FY1998

UNEMPLOYMENT INSURANCE PROGRAM

- Processed all UI through regional call-centers and paid out a total of \$118,048,615 in benefits to 50,253 customers. In this environment, 93.4% of all UI benefits were correctly paid and the timeliness of benefits paid was improved by 10%.
- Initiated a biannual customer satisfaction poll and 92% of the sampled UI customers reported that they received good to very good levels of customer service.

EMPLOYMENT SERVICE PROGRAM

- Expanded availability and access to information and services to rural areas by using Internet technology and developed an Internet Job order entry form for employers. Also using this distance spanning technology, we created Alaska's Job Bank, an interactive Internet site.
- Put the Federal Government on notice that the Alien Labor Certification program's funding shortfall would result in our ceasing to process certifications for employment. The Federal Government found the promised funds.

Employment Security

Proposed Changes in Levels of Service for FY2000

UNEMPLOYMENT INSURANCE PROGRAM

- Implementation of a Direct Deposit Program for payment of UI Benefits.
- Development of a mainframe tax system compatible with our current benefit system and more accommodating to employers' needs. An FY2000 Capital Budget request for this effort has been submitted.

EMPLOYMENT SERVICE PROGRAM

- To respond to customer needs and to compensate for diminishing resources, ES self-service activities (such as self-referral and self-registration) are increasing. As customers move to self-service, staff delivered services are expected to decrease for self-reliant customers allowing staff to serve more customers needing one-on-one and group reemployment services.

Employment Security

Budget Request Unit — Summary of Budget Changes

From FY1999 Authorized to FY2000 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY1999 Authorized	130.9	26,240.0	7,220.3	33,591.2
Adjustments which will continue current level of service:				
-Employment Services	0.0	180.1	572.5	752.6
-Unemployment Insurance	0.0	-1,011.5	-572.5	-1,584.0
-Alaska Work Programs	-130.9	0.0	-1,742.5	-1,873.4
-Work Services	130.9	0.0	1,742.5	1,873.4
Proposed budget decreases:				
-Work Services	0.0	0.0	-153.3	-153.3
Proposed budget increases:				
-Employment Services	0.0	0.0	350.0	350.0
-Unemployment Insurance	0.0	700.0	0.0	700.0
FY2000 Governor	130.9	26,108.6	7,417.0	33,656.5

Employment Security

Budget Request Unit — Financial Summary

All dollars in thousands

	FY1998 Actuals				FY1999 Authorized				FY2000 Governor			
	General Funds	Federal Funds	Other Funds	Total Funds	General Funds	Federal Funds	Other Funds	Total Funds	General Funds	Federal Funds	Other Funds	Total Funds
Formula Expenditures												
None.												
Non-Formula Expenditures												
Employment Services	0.0	0.0	0.0	0.0	0.0	9,390.7	515.9	9,906.6	0.0	9,870.8	1,438.4	11,009.2
Employment/Unemployment Svcs	5.8	28,581.5	1,060.2	29,647.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Unemployment Insurance	0.0	0.0	0.0	0.0	0.0	16,849.3	915.8	17,765.1	0.0	16,537.8	343.3	16,881.1
Alaska Work Programs	295.6	0.0	1,338.0	1,633.6	130.9	0.0	1,742.5	1,873.4	0.0	0.0	0.0	0.0
Work Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	130.9	0.0	1,588.2	1,720.1
Governor's Committee on Employment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
State Training Employment Prog	0.0	0.0	3,867.4	3,867.4	0.0	0.0	4,048.1	4,048.1	0.0	0.0	4,048.1	4,048.1
Totals	302.4	28,581.5	6,266.6	35,150.5	130.9	26,240.0	7,220.3	33,591.2	130.9	26,168.6	7,417.0	33,656.5

I. Department of Labor and Workforce Development

II. BRU: Workers' Compensation
Components: **Workers' Compensation**
 Second Injury Fund
 Fishermen's Fund

III. Total Budget: **Workers' Compensation – \$2,478.7**
 1004 GF – \$2,403.8
 1005 P/R – \$29.9
 1007 I/A – \$45.0

Second Injury Fund – \$2,858.9
 1007 I/A – \$5.9
 1031 SIF – \$2,853.0

Fishermen's Fund – \$1,301.0
 1032 FF – \$1,301.0

Total (all funds):
 1004 GF – \$2,403.8
 1005 PR – \$29.9
 1007 I/A – \$50.9
 1031 SIF – \$2,853.0
 1032FF – \$1,301.00

Grand Total (all funds) – \$6,638.60

IV. Total Revenue Derived:

Workers' Compensation – FY00
 Restricted Revenue: \$45.0 I/A, \$29.9 GF P/R

Second Injury Fund – FY00
 Unrestricted Revenue: \$3,087.9 Second Injury Fund
 Restricted Revenue: \$5.9 I/A

Fishermen's Fund – FY00
 Unrestricted Revenue: \$1,340.6 Disable Fishermen's Res. Acct.

V. Workers' Compensation: AS 23.30, 8 AAC 45, 8 AAC 46
Second Injury Fund: AS 23.30
Fishermen's Fund: AS 23.35, 8 AAC 55

VI. Sec. 84. Division of Workers' Compensation. The mission of the Division of Workers' Compensation is to:

MEMORANDUM**STATE OF ALASKA
DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT****TO: Dwight Perkins, Deputy Commissioner****DATE: 9/27/99****PHONE: 465-2712****FROM: Rebecca Gamez, ESD Director****SUBJECT: Privatization Issues**

Per your request, here are specific responses to inquiries by the Legislative Privatization Subcommittee as to whether the Employment Services and Unemployment Insurance programs of the Department of Labor and Workforce Development can be privatized in the future, such as in five years. The Employment Security Division (ESD) of the Alaska Department of Labor is composed of federally-funded programs that provide employment and unemployment insurance services to Alaskans.

Employment Services The first category, employment services, is authorized and funded by the Wagner-Peyser Act of 1933 to administer a labor exchange program that most effectively responds to the needs of the state's employers and jobseekers. (20 CFR s.652.3). The services provided under the Act range from employee job search and placement, including testing, counseling, assessment and referral to employers, services for workers experiencing layoffs, developing and providing labor market and occupational information, evaluation of programs, and administering the work test for the state unemployment compensation system. (29 USC s. 49f(a)).

In August 1998, the federal Workforce Investment Act (WIA) was signed into law (PL 105-220). One of five titles of the WIA contains amendments to the Wagner-Peyser Act, retaining both separate authorization and funding stream for employment services. The WIA requires that the public labor exchange services authorized under the Wagner-Peyser Act be part of the one-stop system, and that these services be incorporated into the five-year strategic plan required under the WIA.

Regarding privatization, The U.S. Department of Labor has maintained that the delivery of employment services under the Wagner-Peyser Act, (developing and prescribing "minimum standards of efficiency", as stated in the W-P Act), must be executed by merit-staffed employees. A federal court has upheld this interpretation. (State of Michigan v. Alexis M. Herman (No. 5:98-CV-16) issued May 15, 1998, U.S. District Court for the Western District of Michigan).

Unemployment Insurance Program Similarly, the USDOL requires that only merit-staffed employees administer the UI program, and failure to do so would cause the USDOL to deny certification of the Alaska UI grant, thus eliminating administrative funds necessary for its operation. Specifically, section 303(a)(1) of the Social Security Act (SSA) requires the merit-staff system, while both the SSA and the Privacy Act of 1974 place stringent federal limitations on the release of confidential information, such as individual tax, wage and benefit information, to any third party. This reinforces the requirement of a merit-staffed system to administer all aspects of this program.

I trust that these specific answers and citations are responsive to your request for further information. Please contact me if I can be of further assistance.

Contract Hearing Officer: Private sector attorneys are periodically required to perform as the Commissioner of Labor and Workforce Development's designee to chair a Board hearing in workers' compensation cases due to the potential of a conflict of interest should the hearing be conducted by a member of the Workers' Compensation Division staff.

X. Existing Privatization Practices:

Runzheimer International provides cost-of-living analysis in an effort to fairly reflect the cost of living difference between this state and the area where the recipient may reside.

Ingenix, Incorporated develops and makes available a medical fee schedule which is a compilation of medical providers' charges for various treatments and procedures. AS 23.30.095(f) requires that all medical charges shall be subject to regulation by the Board. Under 8 AAC 45.082(l), the Board has adopted a regulation which requires the use of a medical fee schedule and payments at the lower of the actual fee or the 90th percentile of the schedule. Accordingly, all insurers must be using the fee schedule.

Contracted Hearing Officers are periodically required in order to eliminate or reduce the potential for a conflict of interest. The Department of Law cannot provide this service as they may only represent the Board in cases where the workers' compensation statutes or regulations are alleged to be unconstitutional.

- (1) ensure that eligible Alaska workers are provided adequate medical care, prompt payment of benefits, and, if needed, voluntary rehabilitative services;
- (2) provide protection to employers from being sued in court by employees for workplace injuries;
- (3) provide assistance with medical costs of injuries or illnesses due to commercial fishing activities onshore or in state water, and
- (4) reimburse employers for compensation paid to employees involved in a second injury.

VII. Number of Employees:

**Workers' Compensation – 33 PFT
3 PPT**

This component has specialized positions which must be intimately familiar with and able to apply workers' compensation law while adjudicating disputes between employees and employers. Additional specialized positions are involved in the mediation of workers' compensation disputes in an attempt to resolve them informally. Other specialized positions would be those involved with administering the volunteer reemployment benefits program.

Second Injury Fund – 3 PFT

Fishermen's Fund – 3 PFT

- VIII. Technology used to perform the mission would include the Workers' Compensation Information Handling System. This is a custom designed data base into which all workers' compensation activity in the State of Alaska is entered. The Fishermen's Fund also uses a similar custom designed database which is geared to the activities of that program. Additional technology would include the use of WestLaw, an internet legal resource tool used for researching workers' compensation case law, the internet which is used in researching numerous activities, and microfilm equipment which is used to film files which greatly reduces the need for as much physical storage area.**

IX. Workers' Compensation – Existing Contracts

Runzheimer International: 8 AAC 45.138(b) provides that the Alaska Workers' Compensation Board will contract with an organization to perform cost-of-living surveys.

Ingenix, Incorporated: AS 23.30.095(f) and 8 AAC 45.082(l) provide for the Alaska Workers' Compensation Board to select an organization which collects medical providers' charges for various treatments and procedures and publish a schedule of these charges.

*Pass them
apart
with a
pin*

Federal Training Grant: Funds are granted for the professional development of vocational rehabilitation staff. The FY 00 budget includes an appropriation for \$50.7 federal funds and the required state general fund match of \$5.6.

Independent Living Part B: Federal formula grant funds are awarded to the state to provide independent living services for individuals with significant disabilities to enable them to live and work independently in the community of their choice. FY 00 budget appropriates \$387.8 federal funds, required general fund match of \$34.7. General funds of \$ 529.7 are also appropriated for this program.

Independent Living Older Blind: Federal competitive grant funds of \$208.0 are awarded to the state to provide independent living services for individuals who are age 55 or older and who experience blindness. Required state match of \$23.1 is also included in the budget.

Disability Determination: The state receives federal funds from the Social Security Administration to adjudicate claims for disability benefits under Title II and Title XVI of the Social Security Act. Federal funds of \$4,855.9 are in the FY 00 budget. No state funds are required.

Assistive Technology: Federal competitive grant funds were awarded to the state to provide support systems for change and advocacy in developing and implementing a consumer responsive and comprehensive statewide program of technology related assistance for individuals with disabilities of all ages. This was a 10-year grant due to expire 6/30/00, which was extended for 3 years. The FY 00 budget includes an appropriation for \$747.7. No state funds are required.

Alaska Transition Initiative: Federal competitive 5 year grant was awarded to the state to develop a statewide service delivery system for transition so that youth with disabilities will transition successfully for school to adult life. The FY 00 budget includes an appropriation for \$500.5. No state funds are required.

Supported Employment: Federal formula funds are awarded to the state to provide services to individuals with the most severe disabilities who require supported employment to enter or retain competitive employment. The FY 00 budget includes an appropriation of \$400.0. No state funds are required.

V. *Identify Constitutional and Statutory Provisions Governing Agency Operations*

Workforce Investment Act – Title IV Rehabilitation Act Amendments of 1998

Randolph-Sheppard Act

Americans with Disabilities Act

Technology Related Assistance for Individuals With Disabilities Act

Individuals with Disabilities Education Act

34 CFR Parts 76 – 80, 85, 326, 345, 361, 350, 362, 363, 365, 366, and 395.

DVI

Department of Labor and Workforce Development
Division of Vocational Rehabilitation
Subcommittee Report -

I. *Agency & Department Name:*

Department of Labor and Workforce Development, Division of Vocational Rehabilitation

II. *BRU & Component Names as listed in state budget:*

Vocational Rehabilitation BRU

Client Services
Vocational Rehabilitation Administration
Independent Living Rehabilitation
Disability Determination
Special Projects
Assistive Technology
Americans with Disabilities Act (ADA)

III. *Total Budget, all funds / identify fund sources*

Total Budget FY 00	\$23,624.9
Federal Funds	\$18,762.2
General Fund Match	\$ 2,155.9
General Funds	\$ 1,821.5
General Fund Program	\$ 4.9
Interagency Receipts	\$ 665.4
Voc Small Business	\$ 215.0

IV. *Total Revenue derived / net cost/ income to state*

Vocational Rehabilitation Basic Support Program: Alaska is eligible to receive the minimum federal allotment of \$7,736,247 if the state meets its required maintenance of effort (MOE) by contributing state funds of \$3,735,400. Currently Alaska is short of the MOE by \$ 433.4 and will lose a like amount of federal funds if other sources are of MOE are not found.

Business Enterprise Program: Vending machine commissions are paid to the program by private vending machine companies operating vending sites on public property. By statute (AS 23.15.130) these funds can only be used for the Business Enterprise Program to assist persons who are blind or who have other severe disabilities in operating vending sites. The FY 00 budget appropriates \$215.0 from this funding source.

Ronald Feigin	\$48,070	7/1/99-6/30/00
Gerald Morris	\$14,820	"
Heasoo Kang	\$11,400	"
Wandal Winn	\$109,440	"
Jeffrey Partnow	\$2,280	"
John Koivunen	\$5,415	"

All medical contracts were awarded based on AS 36.30.850(b)(4), which does not require competition. *Why?*

Contract for interpreting services for deaf individuals:

Robin Price	\$46,800	7/15/99 - 6/30/00
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The competitive process was used to select this contractor.

X. *Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability.*

Vocational Rehabilitation has formed a strong partnership with private rehabilitation service providers. The Rehabilitation Act requires the program to use services provided by private community rehabilitation programs (CRP) for consumers who need such services to assist them in obtaining or maintaining employment. In federal fiscal year 98 the division paid \$860.9 to private service providers. This is an extremely effective means of providing a comprehensive rehabilitation program. State rehabilitation counselors work with the consumers to develop independent employment plans, including services purchased from private providers, and services which need to be provided directly by the counselor such as counseling and guidance. To receive federal funding the program must employ qualified counselors who determine the consumers' eligibility for services and assist them in developing employment plans.

The division grants all independent living funds to private non-profit organizations that directly provide independent living services. This has resulted in the expansion of independent living services statewide using the expertise of independent living specialist employed by those organizations. The division continues to monitor these grants to insure that high quality services are provided to consumers. Following are the private organizations receiving grants for FY 00:

Access Alaska - Fairbanks	Specialized Services	\$ 15,410
AK Center for Blind Adults	"	\$ 12,858
Arctic Access	"	\$ 3,828
Deaf Community Services	"	\$ 9,857
Kenai Peninsula IL Center	"	\$ 17,362
Southeast Alaska Independent Living (SAIL)"		\$ 20,988

AS 47.80.300 (State Independent Living Council)
 AS 23.15.010 – 320 (Vocational Rehabilitation)
 AS 39.52.120 (state ethics)
 AS 44.62.310 (open meetings)
 AS 36.30 (procurement)
 4 AAC 54 (Vocational Rehabilitation)
 2 AAC.12 (procurement)

VI. Agency Mission, Goals and Objectives / do reality check

SB 169 states: The mission of the Division of Vocational Rehabilitation is to assist individuals with disabilities to overcome barriers to employment and maintain suitable employment.

This statement should be expanded to read: The mission of the Division of Vocational Rehabilitation is to assist individuals with disabilities to overcome barriers to employment and encourage independence and integration into their communities.

VII. Number of Employees / Identify Specialized Expertise Needed for Mission

The division has a total of 125 positions. Vocational rehabilitation counselors are required to obtain certification as Certified Rehabilitation Counselor (CRC). To be eligible for CRC the individual must have a Masters degree.

OK

VIII. Describe Technology Used to Perform Mission / Identify Specialized Equipment Needed for Mission

The program purchases assistive equipment and devices needed by consumers with disabilities to enable them to work or to live independently. This can include simple devices such as a grab bar for a shower to a sophisticated talking computer. Employees with disabilities are provided specialized equipment if needed to perform their job. This includes a variety of accommodations such as large screen computers or flashing lights for telephones.

IX. List Existing Agency Contracts including amount, contractor, purpose, term, and procurement method.

Contracts with medical doctors for consultation services:

Doug Smith	\$5,700	7/1/99 – 6/30/00
Majorie Smith	\$39,250	"
Robert Hunter	\$475	"
Aron Wolf	\$2,500	"
Jay Caldwell	\$35,150	"
Shirley Fraser	\$4,940	"

MEMORANDUM**State of Alaska**

Department of Labor and Workforce Development

Division of Vocational Rehabilitation

⇔

Central Office

To: Dwight Perkins
Deputy Commissioner**Date: September 24, 1999****e-mail:****Phone: 465-****Fax: 465-2856****From: Dave Quisenberry**
Acting Director**Subject: Privatization**

You have asked whether it is possible for the division's counseling staff to be privatized. Although it is not feasible for State counselors, substantial privatization is already occurring in the purchase of services from community rehabilitation programs.

There are many prescriptive requirements for the State to receive funds under the Rehabilitation Act to assist individuals with disabilities towards the goal of employment. The Act (Title IV of the Workforce Investment Act of 1998, PL 105-220) requires the State to designate an agency to operate the State Plan for Vocational Rehabilitation. Section 101(a)(2)(B) of the Act requires the State to designate an agency or division as the sole agency to administer the State Plan for Vocational Rehabilitation. In Alaska, this designation is the Division of Vocational Rehabilitation within the Department of Labor and Workforce Development. As part of its requirements, the division must insure that it:

- (I) "is primarily concerned with vocational rehabilitation..of individuals with disabilities, and is responsible for the vocational rehabilitation program of the designated state agency;
- (II) has a full-time director (and)
- (III) has a staff employed on the rehabilitation work of the organizational unit all or substantially all of whom are employed full time on such work..."

Throughout the Rehabilitation Act, reference is made to the Designated State Unit as the sole entity authorized to make programmatic and resource commitments on behalf of individuals with disabilities. Examples:

Sec. 102 Eligibility and Individualized Plan for Employment

Access Alaska - Anchorage	Specialized Services	\$ 45,300
Access Alaska - Anchorage	IL Center Services	\$249,286
Access Alaska - Fairbanks	"	\$236,938
Arctic Access	"	\$ 36,865
Kenai Peninsula IL Center	"	\$161,600
SAIL	"	\$ 37,719
SAIL	Older Blind Services	\$ 15,586*
Access Alaska - Fairbanks	"	\$ 15,586*
AK Center for Blind Adults	"	\$ 15,586*
Kenai Peninsula IL Center	"	\$ 15,586*

***The grantees providing services for older blind individuals will be awarded additional grant funds of \$37,500 each for FY 00.**

XI. *Make recommendations per section 5 in SB 33, suggestions for new legislation.*

Section 5 provides a comprehensive approach to assess privatization of government services. An extremely important role for the state Vocational Rehabilitation program has been to ensure high quality services provided by qualified professionals through monitoring and evaluating services provided by staff as well as private service providers. Standards must be maintained.

XII. *Explain rationale for each recommendation, the number of votes for/ against it.*

XIII. *List problems or barriers to implementing proposed privatization.*

Federal law contains restrictions for the receipt of federal funds for vocational rehabilitation. Funds cannot be awarded directly to a private for profit entity.

MEMORANDUM

**DEPARTMENT OF LABOR
And Workforce Development**

STATE OF ALASKA

Labor Standards & Safety Division

**TO: Dwight Perkins
Deputy Commissioner**

DATE: September 24 , 1999

THRU:

FILE: ASAC1.doc

PHONE: 465-4855

**FROM: Al Dwyer
Division Director**

SUBJECT: Privatization ASAC

The Alaska Safety Advisory Council (ASAC) works in cooperation with official and unofficial organizations, individuals and groups to marshal resources toward reducing accidental deaths and injuries and to promote safety, health and wellness for all Alaskans. Their highest profile function is the Governor's Safety and Health Conference, which they offer every year. Approximately 350 people attend the conference.

The DOL&WD are investigating the possibility of privatizing the safety conference planning and implementation. The ASAC will still be a part of the process and, except for the funds required to implement the conference, will remain part of the DOL&WD budget. There are some personnel problems that need to be resolved before we can finalize the plan.

(a)(6) "The *designated State unit* shall determine whether an individual is eligible for vocational rehabilitation services under this title ..."

(b) Development of an Individualized Plan for Employment

"If an individual is determined to be eligible for vocational rehabilitation services as described in subsection (a), the *designated State unit* shall complete the assessment for determining eligibility and vocational rehabilitation needs, and shall provide the individual...options for developing an individualized plan for employment.."

(C) Signatories

"A: Individualized plan for employment shall be --

- (i) agreed to, and signed by, such eligible individuals or, as appropriate, the individual's representative; and
- (ii) approved and signed by a qualified rehabilitation counselor *employed by the designated State unit.*"

The division did respond to a request for information on privatization for Subcommittee Report -- SB 33 in August 1999. Contained in that report included information requested where the division identified privatization practices. I've included for your review, relevant information provided in that report.

Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability.

Vocational Rehabilitation has formed a strong partnership with private rehabilitation service providers. The Rehabilitation Act requires the program to use services provided by private community rehabilitation programs (CRP) for consumers who need such services to assist them in obtaining or maintaining employment. In federal fiscal year 98 the division paid \$860.9 to private service providers. This is an extremely effective means of providing a comprehensive rehabilitation program. State rehabilitation counselors work with the consumers to develop independent employment plans, including services purchased from private providers, and services which need to be provided directly by the counselor such as counseling and guidance. To receive federal funding the program must employ qualified counselors who determine the consumers' eligibility for services and assist them in developing employment plans.

Please let me know if additional information is necessary.

(4) ensure that children are not exploited in dangerous occupations.

(c) The mission of the Mechanical Inspection Section in the Division of Labor Standards and Safety is to protect employers and employees by

(1) providing oversight and inspection for hazards related to boilers, pressure vessels, elevators, escalators, wheelchair lifts, recreational devices, electrical and plumbing installations statewide;

(2) testing and licensing people associated with some of the activities set out in (1) of this subsection.

(d) The mission of the Occupational Safety and Health Administration in the Division of Labor Standards and Safety is to work in partnership with Alaska employers and workers toward eliminating workplace injuries, illnesses, and deaths, and to assist employers in complying with state and federal regulations relating to occupational safety and health.

(e) The mission of the Alaska State Advisory Council in the Division of Labor Standards and Safety is to work with organizations, individuals, and groups that are interested in the promotion of safety to reduce accidental death and injury.

Number of Employees (FY 2000 Authorized)

Wage and Hour	21 PFT
Mechanical Inspection	19 PFT
Occupational Safety & Health	36 PFT
Safety Advisory Council	1 PPT

Wage and Hour, Mechanical Inspection, and Occupational Safety and Health program/field staff have to meet the job specifications required for them to perform investigative and consultation activities pertinent to the individual program. Some of the activity specific job types are as follow:

Wage and Hour Investigators (11)

Electrical Inspector (3) 2

Elevator Inspector (1)

Plumbing Inspector (3)

Boiler/Pressure Vessel Inspector (3)

Industrial Hygienist (9) (5 Safety / 4 Consultation)

Occupational Safety Compliance Officers (12) (6 Safety / 6 Consultation / 1 Discrimination)

Each section also has management staff to oversee the specific job categories that are not counted above.

Technology Used to Perform Mission

Program staff use the department's Local Area Network to access databases relevant to the individual program as well as general communications between regional offices, other divisions and departments. The Mechanical Inspection section uses a network database for licensing information; Occupational Safety and Safety provides case file information to FED OSHA through a NCR server/system.

The Mechanical Inspection staff use various testing equipment and standard tools for inspecting mechanical devices. Occupational Safety and Health compliance and enforcement staff use various types of highly specific laboratory equipment for measuring noises, air particles, etc. and safety gear and equipment at the

Agency: Department of Labor

BRU / Division: Labor Standards & Safety

Components: Wage and Hour
Mechanical Inspection
Occupational Safety and Health
Alaska Safety Advisory Council

*need to fund
an other mech. inspec.
Elevator
get some mech. contractors
to talk to u.*

FUNDING

Expenditures

(FY 2000 Authorized)	Federal	GF/Match	GF	GF/PR	VA	Exp Total
Wage and Hour			1,343.5		21.6	1,365.1
Mechanical Inspection			465.1	755.7	410.5	1,631.3
Occupational Safety and Health	1,777.2	1,131.1			23.1	2,931.4
Safety Advisory Council				106.7		106.7
LS&S Total	1,777.2	1,131.1	1,808.6	862.4	455.2	6,034.5

Revenues

GF/PR Revenues	FY 2000 Estimate	FY 2000 Auth	Difference
Mechanical Inspection	888.2	755.7	132.5
Safety Advisory Council	111.7	106.7	5.0

** Note: Excess receipts go back to the Council for next year's conference via front section carryforward language.

STATUTORY PROVISIONS (Summary)

Division of Labor Standards and Safety AS 23.10.075

Wage and Hour AS 23.05; AS 23.10

Mechanical Inspection AS 18.60; AS 18.62

Occupational Safety & Health AS 18.60; AS 18.63; AS 18.31 and 29 CFR 1952.240

Safety Advisory Council AS 18.60.830-840

LS&S Missions and Goals (SB 169, Sec. 85)

Division of Labor Standards and Safety. (a) The mission of the Division of Labor Standards and Safety is to provide assistance and oversight to both employees and employers in the state by ensuring safe and healthy working conditions, just compensation, and legal employment practices, and to provide public and consumer protection by ensuring the integrity and safety of various mechanical systems and equipment.

(b) The mission of the Wage and Hour administration in the Division of Labor Standards and Safety is to

- (1) assist employers by responding to their questions concerning the application of the wage and hour statutes and regulations to their unique business situations;
- (2) ensure that employees are justly compensated for work;
- (3) safeguard workers from unscrupulous employment practices; and

FY99 Info

Subject: FY99 Info**Date: Mon, 20 Sep 1999 12:11:00 -0800****From: Alan Dwyer <alan_dwyr@labor.state.ak.us> Internal****Organization: Alaska Department of Labor and Workforce Development****To: Dwight L Perkins <dwight_perkins@labor.state.ak.us>****CC: Laura L Baker <laura_baker@labor.state.ak.us> ,****Thomas E Stuart <thomas_stuart@labor.state.ak.us> ,****Randy Carr <randy_carr@labor.state.ak.us> ,****Denny Bowden <dcnnis_bowden@labor.state.ak.us>**

Hello Dwight:

I hope the following answers your questions if not, let me know.

1. What is the revenue generated in FY99 (including fines) by our various programs?

OSH: (FFY99) from fines.....\$311,203
 MIS: (SFY99) Electrical CF's.....\$367,240
 Plumber CF's.....\$132,335
 Asbestos abatement CF's...\$83,440 (to AKOSH in FY00)
 Explosive Handlers CF's...\$9,900 (ditto)
 Hazardous Paint CF's.....\$34,460 (ditto)
 Elevators.....\$73,177
 Boilers/Pressure Vessels..\$1,038,067

total revenue \$2,048,822

In addition to the above but not included as revenue, W&H collected through the enforcement of Titles 36 and 23 a total of \$1,051,836.67. This money was distributed to the claimants.

2. What was the total number of inspections, investigations by program, performed in FY99??

OSH: Enforcement inspections..... 429
 Consultations..... 337
 MIS: Boiler/Pressure Vessels insp.....3589
 Electrical insp.....1138
 Plumbing insp..... 471
 Elevator insp..... 551
 Recreational Device insp..... 28
 Licensing checks.....1776*
 W&H: Title 23 claims closed..... 665
 Investigations Title 36..... 67
 Payrolls audited Title 36.....3982
 Title 36 enforcement actions..... 282
 Title 36 on-site inspections..... 311

* The electrical and plumbing inspectors check each job site they visit for proper contractor registration, electrical/mechanical administrator and certificate of fitness licensing. If violations are found they contact our investigator who completes the investigation and prepares the case for the DA or advises the inspector to issue a Cease & Desist order.

3. What was the Federal target for AKOSH in FFY99??

Ans. Health consultations was 98. We did 106.

Post-it Fax Note	7671	Date	9/21/99
To	DL	From	Dwight
Co/Dept		Ca	
Phone 1		Phone 2	
Fax 1		Fax 2	

job site that are required by law. Most program staff use cameras and other standardized tools necessary to carry out their functions.

Privatization Practices

The inspection of tramways has been wholly privatized due to lack of state resources. There are currently only two privately licensed tramway inspectors in the state. One is employed by Alyeska Resort, Girdwood, AK, and he is limited to inspecting the assets of his employer. The other is an insurance company representative who is limited to inspecting devices insured by his company or associated brokeraged companies. Although these services have been privatized, there are not enough actively licensed inspectors to meet the need.

The second area privatized, is the inspection of boilers and pressure vessels. In addition to the three State of Alaska inspectors, there are 35 licensed private sector inspectors licensed in the State. These individuals are either employed by owner-operators of large systems or by insurance companies. The employees working for owner-operator companies are limited by their National Board Commission restrictions to inspecting only vessels owned and operated by their employers.

MEMORANDUM
DEPARTMENT OF LABOR AND
WORKFORCE DEVELOPMENT

STATE OF ALASKA
Labor Standards and Safety

TO: Dwight Perkins
Deputy Commissioner

DATE: October 19, 1999

FILE: 1_oshpriv_2.doc

PHONE: 465-4855

FROM: Al Dwyer
Director

SUBJECT: AKOSH Privatization Issues

As we discussed, I am providing you with the information you requested for the Privatization Committee meeting tomorrow.

1. Explain why AKOSH paperwork takes so long to complete?

Answer: Inspection report form as prescribed by federal OSHA has to be filled out in entirety before any determination can be made. There are times when an officer has to wait for the employer to provide documentation that refutes the allegation. Also, in particular cases that involve sampling, it is necessary to wait for the return of the lab results. In addition, the inspection process requires internal review by supervisors to verify the proper citations, applicability of laws, etc. have been cited relating to the alleged violation. It is important to note that this timeframe has been lengthened due to reduction in staff both at the reviewing level and administrative support. In addition to the actual inspections, inspectors work on multiple cases at a time, respond to phone inquiries, participate in hearings, attend federal required training classes, etc.

2. Why is the cost per inspection so high (based on committees calculations)?

In determining how much an inspection costs the following all need to be taken into consideration: Mandatory outside training for staff; cost of acquiring data from Research and Analysis; supervisory and administrative staff costs; Fixed/overhead costs such as office space, equipment, vehicles, DP computer support; Legal support from Department of Law; OSH Review Board expenses and Review Board hearing officer contract; travel and per diem to perform training and on-site investigations. *includes wages & benefits*

Using a refined calculation* we estimate inspection activity to cost around \$2,500.00 each. We also estimate that 40% of that cost are state funds versus federal funds.

FY99 Info

Safety visits was 250. We did 231.
Health enforcement inspections was 180. We did 177.
Safety enforcement inspections was 396. We did 252.*

* Safety enforcement personnel were kept busy with 8 fatality investigations which accounts for missing the target number.

4. What is the difference between an IH (Industrial Hygienist) and a Safety Compliance Officer??

Ans. Industrial Hygienist = Conducts independent inspections of worksites to determine compliance with occupational health standards; takes sample at workplaces to determine the presence of physical and chemical elements hazardous to health. Investigates complaints where workers are alleged to be exposed to conditions that are hazardous to health; investigates accidents and illnesses where hazardous health conditions are suspected.

IH's typically have a chemistry degree or public health degree and at least two years of experience as an IH.

Safety Compliance Officer = Performs workplace inspections according to OSH procedures; holds opening conferences to advise employers and employees of the program purpose and their rights and responsibilities; conducts inspections to identify and document employee exposure to hazards; investigates occupational accidents and fatalities; provides testimony to OSH review board; investigates complaints of safety and health related discrimination.

Safety Compliance Officers generally are required to have at least 5 years of general work experience preferably in any of the following industries: construction, petroleum, manufacturing, logging, fish processing, electrical, gas, wholesale and retail trades and sanitary services.

c). Planned Program Inspections:

Our internal policy, based on the fact that we are a State Plan State with both Enforcement and Consultation, is as long as the employer has an ongoing consultation intervention activity enforcement resources are focused elsewhere until the next inspection cycle.

None of the above activities exempt an employer from Fatality, Catastrophe, or Complaint inspections by the enforcement section.

In the interest of time, I have asked Tom Stuart, Chief of AKOSH, to attend the committee meeting with you. He will be able to answer any program questions the Committee may have. His hands-on knowledge will provide the Committee members with greater perspective of the AKOSH program activities and requirements.

cc: Tom Stuart, Chief, AKOSH
Laura Baker, Administrative Manager, LS&S

Equation: SFY 99 budget (\$2,931.4) X 75% divided by 869 (consultations, investigations & training classes) = \$2,500.00 (Fed - \$1,500.00; State - \$1,000.00).

*(The consultation and investigation numbers previously provided reflected approximately 75% of the activity for the year (federal fiscal year) and 103 training classes were not included in the consultation total.)

3. *Under what circumstances would the federal government subsidize consultation and training programs?*

Subsidy is provided to state government entities when they enter into a contract with the federal government and meet the federal requirements. Funding would be available through different grant vehicles. Federal OSHA will not enter into an agreement with private sector.

4. *Are there any federal funded OSH programs anywhere that are not state plan states, i.e.: private sector or public sector?*

There are no private sector OSHA programs. We are aware of five states that have federal enforcement programs with state consultation and training provided through Universities. (University of Alabama, Colorado State University, Indiana University of Pennsylvania, Georgia Tech, and Boise University.)

5. *What is the charge for consultation services in the real world?*

We do not know.

In addition, I want to clarify my statement in the last paragraph of the September 24, 1999 memo regarding enforcement activities on sites participating in consultation activities.

Enforcement Planned Program Inspections:

If an employer has an ongoing consultation intervention then he would not be subject to an enforcement inspection under the following guidelines:

a). *Safety and Health Achievement Recognition Program (SHARP):*

1 year from consultation visit (some issues may be longer depending on the amount of time to work out the abatement, such as Process Safety Management issues).

b). *Voluntary Protection Program (VPP):*

Merit Level - 1 year from date of Merit award and may stay in this level for a period of three years while working toward the Star Level.

Star Level - 3 years from date of award and may be extended in three-year increments as long as they meet the requirements.

**MEMORANDUM
DEPARTMENT OF LABOR****STATE OF ALASKA
Labor Standards & Safety Division****TO:** Dwight Perkins
Deputy Commissioner**DATE:** September 24 , 1999**THRU:****FILE:** privl.doc**FROM:** Al Dwyer
Division Director**PHONE:** 465-4855**SUBJECT:** AKOSH Questions

This is in response to questions concerning AKOSH which were asked by the privatization committee.

1. What are the rates of pay for Industrial Hygienists and Compliance Officers??

Ans: CO: Range 49 Local 71 yearly salary & benefits: \$66.0 to \$78.0 (depends upon years of service & location).

IH: Range 19 GGU yearly salary & benefits: \$62.0 to \$78.0 (depends upon years of service & location).

2. Why do AKOSH inspectors perform fewer inspections than MIS inspectors??

Ans: The paper work required by MIS inspectors usually consists of one piece of paper which lists the violations of one code found on the installation of one system or type of work i.e., separate reports from each inspection discipline (plumbing, electrical, boilers etc). Most MIS inspections take less than one day to complete. Each MIS inspection program requires a specialist in that program. Each MIS program has its own code. These codes are very technical and require the inspectors to be specialists in their field.

AKOSH has certain inspection functions that require specialists but the average AKOSH inspection covers every aspect of worker safety i.e., machine guards, trip hazards, hazardous materials, toxic air, extension cords, proper lighting levels, adequate guard rails, structural integrity of floors & roofs, employee safety training, proper emergency egress, ladder use, the list is almost endless. Every site inspection must include a check of all of these items. The time it takes to perform a safety inspection depends on the size of the workplace. Some inspections take 2 weeks some 3 days. After the inspection is completed, forms must be filled out. The average paperwork required for each safety enforcement inspection consists of approximately 50 pages and takes close to 30 days to complete. Health enforcement cases average 150 pages and take close to 45 days to complete. This requires the inspector to research the regulation as well as all federal interpretations of the applicable rules. Sometimes samples need to be sent out to a lab for analysis. The inspector has to wait for their findings and add that information to his report. This takes time. It is for those reasons that the feds allow the inspectors 30 days to complete their reports.

During the last FY, in addition to their normal workload, AKOSH investigated 8 fatalities. A fatality takes many months to complete the necessary reports. In some instances, a fatality may

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol
Juneau, AK 99801-1182
Phone: 907-465-3991
Fax: 907-465-3908

October 14, 1999

Memorandum

TO: Representative John Cowdery

FROM: Kathleen L. Wakefield
Legislative Analyst

RE: OSHA Inspections

You asked if any states use private sector employees to carry out OSHA inspections. According to the National Conference of State Legislatures, states may use private sector employees for follow-up consultations after an OSHA inspection is done, but not for the inspection itself (the consultation is a free, on-site meeting to help employers correct any OSHA violations in the workplace). According to OSHA, one of the requirements of a federally approved state OSHA program is that the state will maintain a "sufficient number of qualified enforcement personnel."¹

Currently, 23 states and jurisdictions, including Alaska, have federally-approved state OSHA programs which cover both public and private sector employees.² Plans in Connecticut and New York cover only public sector employees.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

¹ "What is a State OSHA Program?" Occupational Safety & Health Administration, U.S. Department of Labor, <http://www.osha-slc.gov/fso/osp/faq.html>.

² According to OSHA, the following states and jurisdictions have approved plans covering both the public and private sectors: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virgin Islands, Washington, and Wyoming. "State Occupational Safety and Health Plans," Occupational Safety & Health Administration, U.S. Department of Labor, <http://www.osha-slc.gov/fso/osp/faq.html>.

Dwight Perkins

September 23, 1999

B/PV Program

I think that most people are aware of what happens to a building whenever a boiler or pressure vessel blows up so I won't waste space explaining why the program exists.

Scope

Generally, MIS does not inspect places of residence with less than 6 families.

Where it has jurisdiction, MIS is responsible for ensuring that all boilers and pressure vessels are safe and properly constructed and used. This includes any repairs or modifications to them. MIS must issue certificates of operation to the owners of B/PV's and suspend or revoke them if the device is unsafe or not operated in a safe manner. They must enforce the applicable codes. They must keep a record of each device and the type, dimensions, maximum allowable working pressure, age, condition, location, and the date of the last recorded internal inspection.

Inspectors

Before being employed by the DOL as deputy inspectors, the statute requires that they must pass the National Board of Boiler and Pressure Vessel Inspector examination. Another statute allows the DOL to appoint insurance company and owner-user company employees as special inspectors. Before they can be appointed, they must pass the National Board examination. Special inspectors must report their findings to MIS. At the present time, insurance inspectors and owner-user inspectors inspect about half of the devices in the state.

B/PV Privatization

Privatization of this program would require very little adjustment. We already have the statutes in place that allow special inspectors (AS 18:60.240). They would have to be amended to require that unless the owner-user employs a National Board inspector, they must have insurance. The insurance company would then provide the inspections and inform DOL whenever they drop a policy. At the present time, we contact insurance companies and owner-users whenever they are late with their inspection reports.

To the extent that B/PV inspections are delegated to owner-user and insurance company employees, municipality employees could also receive delegation with an amendment to the statute. MIS would handle the inspection information the same way it does now with the owner-users and insurance companies.

Another statute change would allow private or self-employed inspectors to perform these inspections. I think this approach would be cost prohibitive. The travel and per diem required would drive the cost per inspection through the roof. Inspector liability insurance would also be a cost factor.

Program Management

Years ago it was made clear to MIS that no matter what the cost of providing the B/PV inspection, the charge to the owner would never be different than what we would charge for a similar B/PV inspection in Anchorage. To deal with this problem, we make every attempt to get the most out of our travel dollars by performing as many B/PV inspections as possible during each trip. There are many B/PV's that are located in remote areas where the expense of getting there and back far exceeds the inspection fee. How could we expect private industry to accept losses like that?

**MEMORANDUM
DEPARTMENT OF LABOR****STATE OF ALASKA****TO:** Dwight Perkins
Deputy Commissioner**DATE:** September 23 , 1999**THRU:****FILE:** mispriv.doc**FROM:** Al Dwyer
Director**PHONE:** 465-4855**SUBJECT:** Privatization of MIS

You have requested my comments concerning the privatization of the Mechanical Inspection Section (MIS) inspection functions. My comments are based on my experience as an employee of the MIS from 1982 through 1995. During that period I served as a State Electrical Inspector from 1982 to 1990, Assistant Chief from 1990 to 1993 and Chief of the section until my appointment as the Division Director in 1996. My day-to-day experiences dealing with contractors and local governments on code and licensing enforcement issues will I hope, provide you with enough information to assist the committee in making their recommendations.

MIS History

- 1955 - Boiler and Pressure Vessel (B/PV) Section created.
- 1969 - Electrical Inspection program created by Legislature no positions funded
- 1972 - Plumbing Inspection program created by Legislature, no positions funded
- FY 77 - Program receipt authority granted to fund 4 Electrical Inspectors
- FY 78 - Program receipts fund 3 Plumbing Inspectors
- FY 78 - Elevator program created with funding for 1 Elevator Inspector
- FY 84 - Amusement ride program transferred to MI from Public Safety with no funds for Inspectors

Secondary Inspector Functions

Since before 1975, MIS has enforced the construction industry licensing laws. By statute, this function was shared with the Department of Commerce. This shared responsibility made sense and still does. Our inspectors visit or attempt to visit every construction job in the state. It made fiscal sense to add this secondary function to our electrical and plumbing inspector's duties. Therefore, they were trained to enforce the complicated construction industry licensing laws. Since the B/PV and elevator inspectors generally visit existing installations where there are no contractors, they were not utilized for this purpose.

Since 1974, MIS has administered and enforced the certificate of fitness licensing program utilizing the electrical and plumbing inspectors. This program generates revenue.

The inspectors from each program are tasked with creating examinations based on the most recently adopted code (usually every 3 years) which are used to license journeyman level tradesmen in the electrical, plumbing and boiler operator trades.

Dwight Perkins

September 23 , 1999

are defined as hotels, resident housing with more than one rental unit, restaurants, taverns, lodging houses, children's homes, auditoriums, town halls, or any structures designed or used for public assembly whether publicly or privately financed. Records are kept on each violation to ensure proper abatement. Penalties are charged to installers who refuse to abate a violation. An integral part of their duties is to check installers for current certificates of fitness. Our inspectors also monitor the workmanship of installers who repeatedly violate the code. The inspector presents his case to the division director who decides if a Certificate of Fitness should be cancelled. The inspector must also give code workshops to installers whenever there is a code update. This occurs every 3 years. The code updates usually are for 8 hours.

There are no fees charged for electrical code enforcement unless a violation is not abated. In extreme cases, a fine is charged at the rate of \$1000/violation/day.

Privatization Issues

MIS avoids performing inspections in communities where qualified electrical inspectors are employed by the local government. In most cases, MIS inspectors work well with the local inspectors. MIS is an information source for local jurisdictions. Unfortunately, there are not very many communities who can provide electrical inspections. Most communities experience little construction activity so little in fact, that they provide no inspection services. Frequently the only person qualified to inspect in most communities is the installer or his best friend. Our program is focused on the bush communities i.e.; in communities where there are no inspections.

There are national organizations that certify electrical inspectors. It could be possible to deputize these people to perform the service. But, as stated above in the B/PV program, the travel and per diem costs required to perform electrical inspections statewide are at a level where it would not be profitable for a private inspector. The B/PV issues regarding cost per inspection and oversight would also apply to this program.

At the present time there is a statute that allows the Commissioner to delegate electrical inspection authority on request to power companies. This is not a common request.

Elimination of this program would greatly effect revenues derived from the inspector's certificate of fitness, construction contractor and electrical/mechanical administrator enforcement activities. There would be no enforcement of these licensing programs.

Plumbing Program

Like our electrical inspectors, our plumbing inspectors are from the plumbing industry. They are all at least journeyman plumbers. As stated above under the B/PV section, we are in the process of training and testing two of these inspectors to perform cast iron boiler inspections. One of our plumbing inspectors has already passed the National Board test and is a full-fledged B/PV inspector who doubles as a plumbing inspector. Like our electrical inspectors, the plumbing inspectors must provide code classes to installers whenever a new edition of the code is adopted.

Scope

The statute requires the state to administer the plumbing code in every city, community or borough which have a population of 2500 or more. The MIS does not interfere with any community who enforces the code unless their enforcement is less stringent than the code.

Dwight Perkins

September 23, 1999

Another approach that MIS developed was to utilize our 3 plumbing inspectors to inspect small cast iron boilers. MIS provided special training for them and required them to pass an examination designed to test their knowledge on the code requirements for cast iron boilers. I must add here that their cooperation and willingness to be trained and perform these additional inspections without complaint was most appreciated. This approach will dramatically decrease our backlog of inspections.

Some additional concerns if privatized:

- Loss of a positive cash flow to the GF
- Will increase the cost to the public.
- Oversight issues

The statutes could be repealed and all liability for the program removed from the state. It should be noted here that the State of Kansas dropped its oversight of B/PV's for two years before re-enacting the law. The reasons were: increased cost to the owner-user and lack of oversight by any entity after the insurance company cancelled a policy because the B/PV owner failed to abate violations. The cancellation cured the insurance company's liability but did nothing to ensure public safety.

Elevator Program

Our elevator inspectors have always come to us from the industry. They were in most cases, at the installer journeyman level.

Scope

In addition to elevators, this program includes the inspections of escalators, dumb waiters, inclined lifts, moving walks, wheelchair lifts, stairway chairlifts and recreational devices such as tramways, ski lifts and amusement rides. This FY budget forced the layoff of one elevator inspector which leaves one. In order to deal with this, MIS has submitted a regulation change to allow biennial instead of annual inspections for elevators.

Inspection Delegation

We have for many years, had a memorandum of understanding with the Municipality of Anchorage which authorizes them to inspect elevators within their service areas at no cost to the state. MIS has extended that MOU to include all elevators within their municipal boundaries. This has worked out well and they employ qualified inspectors. Anchorage sends MIS quarterly reports. This practice could be extended to any community willing to pay for the program. The down side for delegating this program is that except for Anchorage, there are not enough elevators to pay for the program i.e.; Fairbanks has 170, Juneau has 118 and Ketchikan has 46. At a fee of \$120/inspection there is not much revenue.

Electrical Program

Our electrical inspectors come to us from the industry and are at least at the journeyman level. Most of our electrical inspectors are also electrical administrators (master electricians). Since most people understand the dangers of electricity, I do not see the need for explaining why the program exists.

Scope

The statute states that the department "may" inspect. There is no requirement that an installation be inspected. The scope of this program includes the inspection of new installations and alterations to existing installations at places of employment or in public structures in the state. "Public structures"

Component Transaction Detail - FY00 Operating Budget

Component: Employment Services
BRU: Employment Security

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Svc	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	9,847.0	7,088.7	190.0	1,507.4	130.0	120.0	0.0	812.9	0.0	114	30
Fed Rcpts		9,333.7										
UA Rcpts		239.4										
Stat Desig		273.9										
FY 1999 COLA Authorization	SalAdj	59.6	59.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts		57.0										
UA Rcpts		2.4										
Stat Desig		0.2										
Transfer personal services to contractual	LIT	0.0	(701.6)	0.0	701.6	0.0	0.0	0.0	0.0	0.0	0	0
Position Adjustment for staffing needs	PesAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	-1
Transfer position to Unemployment Insurance	TrOut	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Delete PCN's in the Employment Services component	Dec	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	-3
Add Interagency Authorization for Welfare to Work Activities	Inc	358.0	244.0	0.0	88.0	10.0	0.0	0.0	0.0	0.0	0	0
UA Rcpts		358.0										
Transfer Funding for Personnel Specialist to Management Svcs	TrOut	(5.9)	(5.0)	(0.2)	(0.6)	(0.1)	0.0	0.0	0.0	0.0	0	0
Fed Rcpts		(5.9)										
Transfer Funding for Internal Auditor to Commissioner's Ofc	TrOut	(6.3)	(5.2)	(0.3)	(0.7)	(0.1)	0.0	0.0	0.0	0.0	0	0
Fed Rcpts		(6.3)										
Transfer SpM PCN's & Related Federal Auth'n from UI to ES	TrIn	242.7	192.3	0.0	50.4	0.0	0.0	0.0	0.0	0.0	9	0
Fed Rcpts		242.7										
Transfer federal authorization to DP from ES	TrOut	(50.4)	0.0	0.0	(50.4)	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts		(50.4)										
Line Item Transfer from Grants & Contractual to Personal Svc	LIT	0.0	702.7	0.0	(389.8)	0.0	0.0	0.0	(312.9)	0.0	0	0

Dwight Perkins

September 23, 1999

With some exceptions, the code applies to all new work in relocated buildings, and to any alteration, repairs, or reconstruction of buildings. MIS "may" inspect work installed, removed, altered, or replaced on any plumbing, gas or drainage piping, plumbing fixture, water heater, or water treatment equipment in a building or other location.

Although the department is authorized by statute to charge a fee, the fees are too low to pay for the paper work. In extreme cases, fines are charged for non-abatement of violations at the same rate as the electrical program (\$1000/violation/day).

Privatization Issues

The electrical program issues apply to the plumbing program as well.

Component Transaction Detail - FY00 Operating Budget

Component: Alaska Work Programs
BRU: Employment Security

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	1,861.7	1,582.0	15.0	274.7	5.0	5.0	0.0	0.0	0.0	28	0
Q/F Match 129.0												
WA Rcpts 1,732.7												
FY 1999 COLA Authorization	SalAdj	11.7	11.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Q/F Match 1.0												
WA Rcpts 9.8												
Positions & Funds transfer to Work Services Component	TrOut	(1,873.4)	(1,573.7)	(15.0)	(274.7)	(5.0)	(5.0)	0.0	0.0	0.0	-28	0
Q/F Match (130.9)												
WA Rcpts (1,742.5)												

Component Transaction Detail - FY00 Operating Budget

Component: Unemployment Insurance
BRU: Employment Security

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Per Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PPT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	17,644.7	13,059.5	281.0	3,545.7	253.8	392.8	0.0	132.1	0.0	175	75
Fed Rcpts 16,734.3												
IA Rcpts 342.3												
Trng/Bldg 568.1												
FY 1999 COLA Authorization	SalAdj	120.4	120.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 116.0												
IA Rcpts 1.0												
Trng/Bldg 4.4												
Position Adjustment for staffing needs	PosAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	1
Transfer position from Employment Services	Trin	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0
Deleted PCN's in UI component	Dec	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	-7
Add Federal Funds for increased Overhead and TRA Grants	Inc	700.0	0.0	0.0	482.1	0.0	0.0	0.0	217.9	0.0	0	0
Fed Rcpts 700.0												
Change status from seasonal to full time for 4 positions	PosAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	4	1
Line Item Transfer from Personal Services to Contractual	LIT	0.0	(661.3)	0.0	661.3	0.0	0.0	0.0	0.0	0.0	0	0
Transfer Personnel Specialist & costs to Management Svcs	TrOut	(66.6)	(57.7)	(1.6)	(8.4)	(0.9)	0.0	0.0	0.0	0.0	-1	0
Fed Rcpts (66.6)												
Transfer Internal Auditor & costs to Commissioner's Office	TrOut	(72.6)	(59.6)	(3.9)	(7.7)	(1.5)	0.0	0.0	0.0	0.0	-1	0
Fed Rcpts (72.6)												
Transfer Split PCN's & Related Federal Auth'n from UI to ES	TrOut	(242.7)	(192.3)	0.0	(50.4)	0.0	0.0	0.0	0.0	0.0	-9	0
Fed Rcpts (242.7)												
Transfer federal auth'n to OP from UI	TrOut	(629.2)	(73.8)	(7.0)	(548.4)	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts (629.2)												

Component Transaction Detail - FY00 Operating Budget

Component: State Training Employment Prog
BRU: Employment Security

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee Empl Trng	ConfCom	4,048.1	0.0	0.0	4,048.1	0.0	0.0	0.0	0.0	0.0	0	0
4,048.1												

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Component Transaction Detail - FY00 Operating Budget

Component: Work Services
BRU: Employment Security

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Positions & Funds transfer from Alaska Work Programs	Trin	1,973.4	1,573.7	15.0	274.7	5.0	5.0	0.0	0.0	0.0	20	0
G/F Match 130.9												
IA Rcpts 1,742.5												
Interagency Receipt and Positions Decrement	Dec	(153.3)	(153.3)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-2	0
IA Rcpts (153.3)												

Component Transaction Detail - FY00 Operating Budget

Component: Management Services
BRU: Administrative Services

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	2,210.4	1,845.4	10.5	278.0	39.4	29.1	0.0	0.0	0.0	33	2
Fed Rcpts 1,802.4												
G/F Match 296.7												
IA Rcpts 121.3												
FY 1999 COLA Authorization	SolAdj	12.6	12.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 9.1												
G/F Match 1.5												
IA Rcpts 1.4												
CIP Rcpts 0.6												
Position Adjustment for staffing needs	PosAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	-1
Transfer CIP to Data Processing	TrOut	(0.6)	(0.6)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
CIP Rcpts (0.6)												
Transfer Personnel Specialist to Management Services	Trin	66.8	67.7	1.6	6.4	0.9	0.0	0.0	0.0	0.0	1	0
Fed Rcpts 66.8												
Transfer Funding for Personnel Specialist to Management Svcs	Trin	5.9	5.9	0.2	0.6	0.1	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 5.9												
Transfer Funding for Internal Auditor to Commissioner's Ofc	TrOut	(15.0)	(12.3)	(0.8)	(1.0)	(0.3)	0.0	0.0	0.0	0.0	0	0
G/F Match (15.0)												
Increase Interagency Receipt Auth'n to align with receipts	Inc	60.0	0.0	10.0	25.0	10.0	5.0	0.0	0.0	0.0	0	0
IA Rcpts 50.0												
***** Changes from FY00 Governor Amended to FY00 Senate *****												
SSub: General Fund Reduction of Pers Svcs	Dec	(13.1)	(13.1)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
G/F Match (13.1)												
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
General Fund Reduction of Personnel Services	Dec	(13.1)	(13.1)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
G/F Match (13.1)												

Component Transaction Detail - FY00 Operating Budget

Component: Data Processing
BRU: Administrative Services

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Lands/Build	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee (thru FY00 Governor Amended) *****												
Conference Committee	ConfCom	4,581.8	2,894.1	48.2	1,588.0	85.8	157.5	0.0	0.0	0.0	40	1
Fed Rcpts 3,078.1												
IA Rcpts 1,410.0												
CIP Rcpts 82.5												
FY 1999 COLA Authorization	SelAdj	8.8	8.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
IA Rcpts 8.8												
Transfer personal services to contractual	LIT	0.0	(10.0)	0.0	10.0	0.0	0.0	0.0	0.0	0.0	0	0
Position Adjustment for staffing needs	PosAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Transfer CIP from Management Services	Trin	0.8	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
CIP Rcpts 0.8												
Decrease Federal Receipt Authorization	Dec	(3.8)	0.0	0.0	0.0	0.0	(3.8)	0.0	0.0	0.0	0	0
Fed Rcpts (3.8)												
Decrease One Full Time Position Funding	Dec	(87.8)	(82.8)	0.0	(5.3)	0.0	0.0	0.0	0.0	0.0	0	0
IA Rcpts (87.8)												
Increase Interagency Receipt Authorization	Inc	122.8	114.8	8.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
IA Rcpts 122.8												
Miscellaneous line item adjustments	LIT	(8.0)	0.0	8.2	(17.8)	(8.3)	18.9	0.0	0.0	0.0	0	0
Travel fund source adjustment (2 of 5)	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
IA Rcpts 2.0												
CIP Rcpts (2.0)												
Contractual fund source adjustment (3 of 5)	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
IA Rcpts (1.8)												
CIP Rcpts 1.8												
Supplies fund source adjustment (4 of 5)	FndChg	8.8	8.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
IA Rcpts 4.0												
CIP Rcpts (4.8)												

Component Transaction Detail - FY00 Operating Budget

Component: Unallocated Reduction
BRU: Office of the Commissioner

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Lands/Build	Grants	Misc	PFT	PPI
***** Changes from FY00 Governor Amended to FY00 Senate *****												
Department-wide unallocated 10% GF travel reduction Gen Fund (14.8)	Dec	(14.8)	0.0	(14.8)	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Department-wide unallocated 1.5% GF pers svcs reduction Gen Fund (71.9)	Dec	(71.9)	(71.9)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
Department-wide unallocated 10% GF travel reduction Gen Fund (14.8)	Dec	(14.8)	0.0	(14.8)	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Department-wide unallocated 1.5% GF pers svcs reduction Gen Fund (71.9)	Dec	(71.9)	(71.9)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0

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Component Transaction Detail - FY00 Operating Budget

Component: Labor Market Information
BRU: Administrative Services

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Svc	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	2,899.6	2,262.3	55.7	513.1	51.1	15.4	0.0	0.0	0.0	41	0
Fed Rcpts 1,245.2												
Q/F Match 70.8												
Gen Fund 488.9												
IA Rcpts 1,016.7												
Stat Desig 77.0												
FY 1999 COLA Authorization	SalAdj	14.0	14.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 8.3												
Q/F Match 0.4												
Gen Fund 0.9												
IA Rcpts 5.6												
Invt Loss 0.0												
Transfer personal services to non-pers svcs	LIT	0.0	(92.8)	10.6	42.0	15.0	25.0	0.0	0.0	0.0	0	0
Position Adjustment for staffing needs	PesAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-5	0
Change Investment Loss Trust Fund to General Fund	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund 0.9												
Invt Loss (0.9)												
Delete Excess SB 334	Dec	(385.5)	(351.7)	0.0	(33.8)	0.0	0.0	0.0	0.0	0.0	0	0
Interagency Receipt Authorization												
IA Rcpts (385.5)												
Ch 85 SLA 96 (SB 334)	FisM99	447.0	336.0	0.0	98.0	4.0	9.0	0.0	0.0	0.0	3	0
Guidelines & Sids for State Trng Prgms												
IA Rcpts 447.0												
***** Changes from FY00 Governor Amended to FY00 Senate *****												
SSub: General Fund Reduction of Pers Svcs & 1 PFT	Dec	(55.0)	(55.0)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Gen Fund (55.0)												
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
General Fund Reduction of Personal Services & 1 PFT	Dec	(55.0)	(55.0)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Gen Fund (55.0)												

Component Transaction Detail - FY00 Operating Budget

Component: Alaska Labor Relations Agency
BRU: Office of the Commissioner

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Per Srv	Travel	Contractual	Commodities	Equipment	Land/Bld	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee Gen Fund 323.2	ConfCom	323.2	254.6	19.3	42.9	4.9	1.8	0.0	0.0	0.0	4	0
FY 1999 COLA Authorization Gen Fund 0.5 Invt Lss 0.5	SalAdj	1.0	1.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer contractual to personal services	LIT	0.0	5.4	0.0	(0.4)	0.0	0.0	0.0	0.0	0.0	0	0
Change Investment Loss Trust Fund to General Fund Gen Fund 0.5 Invt Lss (0.5)	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer contractual & equipment to personal services	LIT	0.0	6.3	0.0	(5.1)	0.0	(1.2)	0.0	0.0	0.0	0	0

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Component Transaction Detail - FY00 Operating Budget

Component: Commissioner's Office
BRU: Office of the Commissioner

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Lands/Build	Grants	Misc	PFT	PFT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	475.7	408.7	17.2	41.3	6.7	1.8	0.0	0.0	0.0	5	0
Gen Fund 475.7												
MA Rcpts 5.0												
FY 1999 COLA Authorization	SalAdj	0.8	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund 0.4												
Invt Loss 0.4												
Change Investment Loss Trust	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fund to General Fund												
Gen Fund 0.4												
Invt Loss (0.4)												
Transfer Funding for Internal	Trin	6.3	5.2	0.3	0.7	0.1	0.0	0.0	0.0	0.0	0	0
Auditor from ES												
Fed Rcpts 6.3												
Transfer Funding for Internal	Trin	15.0	12.3	0.8	1.6	0.3	0.0	0.0	0.0	0.0	0	0
Auditor from Mgmt Services												
Gen Fund 15.0												
Transfer Internal Auditor Position	Trin	72.8	59.8	3.9	7.7	1.8	0.0	0.0	0.0	0.0	1	0
from UI												
Fed Rcpts 72.8												
***** Changes from FY00 Governor Amended to FY00 House *****												
HSub: Delete Special Asst	Dec	(103.3)	(103.3)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Position & Pers Svcs												
Gen Fund (103.3)												
HSub: Misc. Reduction Equal to	Dec	(124.1)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	(124.1)	0	0
FY 99 Austerity Program												
Gen Fund (124.1)												
***** Changes from FY00 Governor Amended to FY00 Senate *****												
SSub: Delete Special Asst	Dec	(103.3)	(103.3)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Position & Pers Svcs												
Gen Fund (103.3)												
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
Delete Special Asst Position &	Dec	(103.3)	(103.3)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Personal Services												
Gen Fund (103.3)												

Component Transaction Detail - FY00 Operating Budget

Component: Workers' Compensation
BRU: Workers' Compensation

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Lands/Build	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	5,352.4	2,144.6	43.0	294.5	55.0	0.0	0.0	2,614.4	0.0	39	2
Gen Fund 2,450.7												
GF/Prgm 29.9												
IA Rcpts 19.4												
Sec Injury 2,852.4												
FY 1999 COLA Authorization	SalAdj	9.0	9.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund 4.4												
IA Rcpts 0.1												
Sec Injury 0.6												
Invt Loss 4.7												
Change Investment Loss Trust	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fund to General Fund												
Gen Fund 4.7												
Invt Loss (4.7)												
Transfer Positions and Funds to	TrOut	(2,853.0)	(189.0)	0.0	(32.2)	(2.0)	0.0	0.0	(2,809.6)	0.0	-3	0
Second Injury Fund Component												
Sec Injury (2,853.0)												
Position Time Status Change	PesAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	1
Position Time Status Change	PesAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	-1
Increase Interagency Receipts	Inc	25.5	23.5	0.0	2.0	0.0	0.0	0.0	0.0	0.0	0	0
from Second Injury Fund												
IA Rcpts 25.5												
***** Changes from FY00 Governor Amended to FY00 Senate *****												
SSub: General Fund Reduction of	Dec	(56.0)	(36.0)	0.0	(20.0)	0.0	0.0	0.0	0.0	0.0	-1	1
Pers Svcs & Contractual												
Gen Fund (56.0)												
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
General Fund Reduction of Pers	Dec	(56.0)	(36.0)	0.0	(20.0)	0.0	0.0	0.0	0.0	0.0	-1	1
Svcs & Contractual												
Gen Fund (56.0)												

Component Transaction Detail - FY00 Operating Budget

Component: Fishermans Fund
BRU: Workers' Compensation

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee Dis Fisher 1,300.5	ConfCom	1,300.5	132.8	29.3	90.3	5.7	4.0	0.0	1,038.4	0.0	3	0
FY 1999 COLA Authorization Dis Fisher 0.5	SalAdj	0.5	0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer travel to personal services	LIT	0.0	4.0	(4.0)	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer Travel to Personal Services	LIT	0.0	2.0	(2.0)	0.0	0.0	0.0	0.0	0.0	0.0	0	0

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Component Transaction Detail - FY00 Operating Budget

Component: Fishermens Fund
BRU: Workers' Compensation

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bld	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee Dis Fisher 1,300.5	ConfCom	1,300.5	132.0	20.3	90.3	5.7	4.0	0.0	1,039.4	0.0	3	0
FY 1999 COLA Authorization Dis Fisher 0.5	SalAdj	0.5	0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer travel to personal services	LIT	0.0	4.0	(4.0)	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer Travel to Personal Services	LIT	0.0	2.0	(2.0)	0.0	0.0	0.0	0.0	0.0	0.0	0	0

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Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPI
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee Dis Fisher 1,300.5	ConfCom	1,300.5	132.8	28.3	80.3	5.7	4.0	0.0	1,039.4	0.0	3	0
FY 1999 COLA Authorization Dis Fisher 0.5	SetAdj	0.5	0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer travel to personal services	LIT	0.0	4.0	(4.0)	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer Travel to Personal Services	LIT	0.0	2.0	(2.0)	0.0	0.0	0.0	0.0	0.0	0.0	0	0

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Legislative Finance Division

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Component Transaction Detail - FY00 Operating Budget

Component: Alaska Labor Relations Agency
BRU: Office of the Commissioner

Agency: Department of Labor

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Component Transaction Detail - FY00 Operating Budget

Component: Wage and Hour Administration
BRU: Labor Standards and Safety

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	1,403.4	1,129.4	54.8	196.5	23.1	3.9	0.0	0.0	0.0	22	0
Gen Fund		1,351.9										
MA Rcpts		21.5										
FY 1999 COLA Authorization	SalAdj	5.7	5.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund		2.7										
MA Rcpts		0.1										
Invt Loss		2.9										
Change Investment Loss Trust Fund to General Fund	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund		2.9										
Invt Loss		(2.9)										
***** Changes from FY00 Governor Amended to FY00 Senate *****												
SSub: Reduce GF for Pers Svcs & Two Positions	Dec	(88.0)	(88.0)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-2	0
Gen Fund		(88.0)										
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
Reduce GF for Personal Services and 1 PFT	Dec	(44.0)	(44.0)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Gen Fund		(44.0)										

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Component Transaction Detail - FY00 Operating Budget

Component: Second Injury Fund
BRU: Workers' Compensation

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Per Srv	Travel	Contractual	Commodities	Equipment	Leads/Build	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Transfer Positions and Funds from Workers' Compensation Sec Injury 2,853.0	Trin	2,853.0	189.0	0.0	52.2	2.0	0.0	0.0	2,609.8	0.0	3	0
Increase Interagency Receipts from Workers' Compensation MA Rcpts 5.0	Inc	5.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Transfer from Personal Services to Other Line Items	LIT	(0.0)	(34.1)	2.0	20.9	3.2	0.0	0.0	0.0	0.0	0	0

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Component Transaction Detail - FY00 Operating Budget

Component: Occupational Safety and Health
BRU: Labor Standards and Safety

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Lease/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	2,823.3	2,224.6	180.5	474.9	57.7	5.6	0.0	0.0	0.0	35	0
Fed Rcpts 1,772.6												
G/F Match 1,127.6												
IA Rcpts 23.1												
FY 1999 COLA Authorization	SalAdj	8.1	8.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 4.8												
G/F Match 3.6												
Position Adjustment for staffing needs	PosAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0
Line Item Adjustment	LIT	0.0	(0.8)	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0	0
***** Changes from FY00 Governor Amended to FY00 House *****												
HSub: Eliminate OSHA, All Funding & Positions	Dec	(2,931.4)	(2,231.9)	(181.3)	(474.9)	(57.7)	(5.6)	0.0	0.0	0.0	-36	0
Fed Rcpts (1,777.2)												
G/F Match (1,131.1)												
IA Rcpts (23.1)												
HSub: Restore 7(c)(1) Grant Funding for Consultation Prgm	Inc	514.2	325.2	102.9	77.8	8.5	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 468.0												
G/F Match 46.2												
HFC: Restore Funds for Public Sector & Trans to Fed OSHA	Inc	1,800.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1,800.0	0	0
Fed Rcpts 1,000.0												
Gen Fund 800.0												

Component Transaction Detail - FY00 Operating Budget

Component: Mechanical Inspection
BRU: Labor Standards and Safety

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	1,531.1	1,425.5	130.2	250.9	22.9	0.7	0.0	0.0	0.0	22	0
Gen Fund		871.6										
GF/Prgm		753.8										
IA Rcpts		405.7										
FY 1999 COLA Authorization	SalAdj	5.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund		1.1										
GF/Prgm		1.9										
IA Rcpts		0.9										
Invt Loss		1.1										
Change Investment Loss Trust Fund to General Fund	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund		1.1										
Invt Loss		(1.1)										
Transfer to contractual line (1 OF 2)	LIT	0.0	(13.2)	0.0	13.2	0.0	0.0	0.0	0.0	0.0	0	0
Transfer to contractual line (2 OF 2)	LIT	0.0	(16.8)	0.0	16.8	0.0	0.0	0.0	0.0	0.0	0	0
Pool Secondary Educ Commission RSA	Inc	14.9	9.2	0.0	5.3	0.4	0.0	0.0	0.0	0.0	0	0
IA Rcpts		14.9										
Reduction in CBED RSA funding	Dec	(11.0)	(10.2)	0.0	(0.8)	0.0	0.0	0.0	0.0	0.0	0	0
IA Rcpts		(11.0)										
Add Fairbanks Boiler Inspector I position	Inc	90.0	90.5	7.5	11.0	0.5	0.5	0.0	0.0	0.0	1	0
GF/Prgm		90.0										
***** Changes from FY00 Governor Amended to FY00 Senate *****												
SSub: Reduce GF for Pers Svcs & Misc, & Delete 2 PFTs	Dec	(158.7)	(122.5)	0.0	0.0	0.0	0.0	0.0	0.0	(36.2)	-2	0
Gen Fund		(158.7)										
SSub: Deny Increment for Fbx Boiler Inspector	Dec	(90.0)	(99.5)	(7.5)	(11.0)	(0.5)	(0.5)	0.0	0.0	0.0	-1	0
GF/Prgm		(90.0)										
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
Reduce GF for Pers Svcs & Misc, & Delete 2 PFTs	Dec	(158.7)	(122.5)	0.0	0.0	0.0	0.0	0.0	0.0	(36.2)	-2	0
Gen Fund		(158.7)										

Component Transaction Detail - FY00 Operating Budget

Client Services
Vocational Rehabilitation

Agency: Department of Education

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	Trans Type	Total Expenditure	Per Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
unlike	CentCom	11,539.0	4,377.5	243.5	907.8	52.9	128.4	0.0	5,828.8	0.0	01	0
pta 8,177.0												
lch 1,922.4												
nd 1,273.7												
sig 165.0												
nd	ScrAdj	23.0	23.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
pta 10.3												
lch 3.0												
nd 1.4												
iss 1.4												
ord Less Trust	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fund												
nd 1.4												
iss (1.4)												
ral Fund	Inc	190.0	0.0	0.0	0.0	0.0	0.0	0.0	190.0	0.0	0	0
nd 100.0												
ral Authority	Inc	2,000.0	0.0	0.0	1,000.0	0.0	0.0	0.0	100.0	0.0	0	0
pta 2,000.0												
ole Program	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
ange												
sig (165.0)												
du 165.0												
ane in Item	Trin	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	1
ology												
RP 68-90-722	PosAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0
3-2023, 05-2100	TrOut	(167.0)	0.0	0.0	0.0	0.0	0.0	0.0	(167.0)	0.0	-2	0
for Rehab Admin												
pta (167.0)												
for Gov.	Trin	42.5	0.0	31.9	10.6	0.0	0.0	0.0	0.0	0.0	0	0
n Special Projects												
nd 37.8												
on 4.9												
iss Enterprise	Inc	60.0	0.0	0.0	0.0	0.0	0.0	0.0	60.0	0.0	0	0
g												
du 60.0												

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Component Transaction Detail - FY00 Operating Budget

Component: Alaska Safety Advisory Council
BRU: Labor Standards and Safety

Agency: Department of Labor

Transaction Title	Trans Type	Total Expenditure	Perf Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	108.3	32.3	8.7	50.3	18.0	0.0	0.0	0.0	0.0	0	1
GF/Prgm 108.3												
FY 1999 COLA Authorization	SalAdj	0.4	0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
GF/Prgm 0.4												
Transfer contractual to personal services	LIT	0.0	1.0	0.0	(1.0)	0.0	0.0	0.0	0.0	0.0	0	0

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P. 29/38

Component Transaction Detail - FY00 Operating Budget

Component: Federal Training Grant
BRU: Vocational Rehabilitation

Agency: Department of Education

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Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	58.3	0.0	30.3	24.0	2.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts		50.7										
OF Match		6.6										

FAX NO.

Component Transaction Detail - FY00 Operating Budget

Component: Client Services
Vocational Rehabilitation

Agency: Department of Education

Section Title	Trans Type	Total Expenditure	Per Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPY
***** Changes from FY00 Governor Amended to FY00 House *****												
Priority Measure Gen Fund (41.4)	Dec	(41.4)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	(41.4)	0	0
Service Travel for Governors Gen Fund (8.8)	Dec	(8.8)	0.0	(8.8)	0.0	0.0	0.0	0.0	0.0	0.0	0	0
***** Changes from FY00 Governor Amended to FY00 Senate *****												
Priority Measure Gen Fund (190.0)	Dec	(190.0)	(8.0)	(8.0)	(0.0)	(0.0)	(0.0)	(0.0)	(190.0)	(0.0)	-0	-0
Priority Measure Gen Fund (72.5)	Dec	(72.5)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	(72.5)	0	0
***** Changes from FY00 Governor Amended to FY00 Conference Committees *****												
Service Travel for Governors Gen Fund (8.8)	Dec	(8.8)	0.0	(8.8)	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Priority Measure Gen Fund (72.5)	Dec	(72.5)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	(72.5)	0	0
Priority Measure Gen Fund (190.0)	Dec	(190.0)	(0.0)	(0.0)	(0.0)	(0.0)	(0.0)	(0.0)	(190.0)	(0.0)	-0	-0
***** FY99 RPL's *****												
0-0567 Business Enterprise Program Fed Rcpts 1,000.0	RPL	1,000.0	0.0	0.0	900.0	0.0	0.0	0.0	100.0	0.0	0	0
***** FY99 Supplementals *****												
2, SLA99, Sec.9(c), change of source Stat Desig (165.0) VecSmBu 165.0	Suppl	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0

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Component Transaction Detail - FY00 Operating Budget

Component: Independent Living Rehabilitat
BRU: Vocational Rehabilitation

Agency: Department of Education

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	1,273.2	88.4	40.8	84.0	4.1	1.7	0.0	1,043.4	0.0	1	0
Fed Rcpts		520.8										
GF Match		87.8										
Gen Fund		534.8										
MA Rcpts		180.0										
FY99 Cola Spread	SalAdj	0.3	0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
MA Rcpts		0.3										
Transfer Federal Funding Auth. From Assistive Technology	Trin	75.0	0.0	0.0	0.0	0.0	0.0	0.0	75.0	0.0	0	0
Fed Rcpts		75.0										

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Component Transaction Detail - FY00 Operating Budget

Component: Voc Rehab Administration
BRU: Vocational Rehabilitation

Agency: Department of Education

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	1,121.8	619.7	66.0	489.5	17.2	29.1	0.0	0.0	0.0	8	0
Fed Rcpts 954.6												
G/F Match 167.0												
FY99 Cola Spread	SalAdj	2.4	2.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 1.9												
G/F Match 0.5												
Trans. PCN 05-2023, 05-2100 and Funding From Client Services	Trn	167.0	167.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2	0
Fed Rcpts 167.0												
Increase Federal Authority & Establish 2 positions (1 imp)	Inc	92.0	92.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0
Fed Rcpts 92.0												

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Component Transaction Detail - FY00 Operating Budget

Component: Special Projects
BRU: Vocational Rehabilitation

Agency: Department of Education

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	1,514.3	103.4	28.5	62.3	8.8	0.0	0.0	1,314.5	0.0	2	0
Fed Rcpts 1,268.8												
Gen Fund 120.5												
GF/Prgm 4.0												
IA Rcpts 120.8												
FY99 Calc Spread	SalAdj	0.8	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 0.5												
LIT to fund personal services	LIT	0.0	13.1	0.0	(13.1)	0.0	0.0	0.0	0.0	0.0	0	0
Increase Inter-Agency Receipts & Establish 4 Positions	Inc	300.0	234.0	0.0	67.0	3.0	0.0	0.0	0.0	0.0	4	0
IA Rcpts 300.0												
Line Item Transfer	LIT	0.0	0.0	0.0	34.0	5.0	10.0	0.0	(54.0)	0.0	0	0
Transfer Funding for Gov. Committee to Client Services	TrOut	(42.8)	0.0	(17.8)	(17.1)	(5.8)	0.0	0.0	(2.0)	0.0	0	0
Gen Fund (37.6)												
GF/Prgm (4.9)												
***** Changes from FY00 Governor Amended to FY00 House *****												
Miscellaneous Reduction	Dec	(300.0)	(234.0)	(0.0)	(67.0)	(3.0)	0.0	0.0	0.0	0.0	-4	0
IA Rcpts (300.0)												
***** Changes from FY00 Governor Amended to FY00 Senate *****												
Miscellaneous Reduction	Dec	(300.0)	(234.0)	(0.0)	(67.0)	(3.0)	0.0	0.0	0.0	0.0	-4	0
IA Rcpts (300.0)												
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
Miscellaneous Reduction	Dec	(300.0)	(234.0)	(0.0)	(67.0)	(3.0)	0.0	0.0	0.0	0.0	-4	0
IA Rcpts (300.0)												

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Component Transaction Detail - FY00 Operating Budget

Component: Disability Determination
BRU: Vocational Rehabilitation

Agency: Department of Education

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	4,188.5	1,257.4	118.1	1,011.1	12.1	118.0	0.0	1,680.8	0.0	23	0
Fed Rcpts 4,089.4												
HA Rcpts 99.1												
FY99 Cola Spread	SalAdj	8.5	8.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 6.5												
Increase Federal Authority & Establish 3 Permanent Positions	Inc	750.0	150.0	0.0	0.0	0.0	0.0	0.0	600.0	0.0	3	0
Fed Rcpts 750.0												

Component Transaction Detail - FY00 Operating Budget

Component: Americans With Disabilities
BRU: Vocational Rehabilitation

Agency: Department of Education

Transaction Title	Trans Type	Total Expenditure	Para Srv	Travel	Contractual	Commodities	Equipment	Land/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCam	114.7	85.0	12.1	13.1	4.5	0.0	0.0	0.0	0.0	1	0
Gen Fund 104.7												
GF/Pgm 10.0												
FY99 Cola Spread	SelAdj	0.3	0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund 0.1												
Invst Loss 0.2												
Change Investment Loss Trust	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fund in General Fund												
Gen Fund 0.2												
Invst Loss (0.2)												
Increase for Agency Compliance	Inc	75.0	0.0	25.0	50.0	0.0	0.0	0.0	0.0	0.0	0	0
IA Rcpts 75.0												
***** Changes from FY00 Governor Amended to FY00 Senate *****												
Fund Source Change	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund (105.0)												
GF/Pgm (10.0)												
IA Rcpts 115.0												
***** Changes from FY00 Governor Amended to FY00 Conference Committee *****												
Fund ADA with IA Chargebacks	FndChg	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Gen Fund (105.0)												
GF/Pgm (10.0)												
IA Rcpts 115.0												

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Component Transaction Detail - FY00 Operating Budget

Component: Assistive Technology
BRU: Vocational Rehabilitation

Agency: Department of Education

Transaction Title	Trans Type	Total Expenditure	Pers Srv	Travel	Contractual	Commodities	Equipment	Lands/Bldg	Grants	Misc	PFT	PPT
***** Changes from FY99 Conference Committee thru FY00 Governor Amended *****												
Conference Committee	ConfCom	980.1	132.0	102.0	307.0	19.7	7.5	0.0	329.0	0.0	2	0
Fed Rcpts 822.1												
MA Rcpts 98.0												
Stal Desig 62.0												
FY99 Coin Spread	SalAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts 0.0												
LIT to adjust personal services	LIT	0.0	(60.0)	0.0	50.0	0.0	0.0	0.0	0.0	0.0	0	0
PCN Trans Out to Client Svcs	TrOut	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0
Transfer Federal Authorization to Independent Living	TrOut	(75.0)	0.0	0.0	(75.0)	0.0	0.0	0.0	0.0	0.0	0	0
Fed Rcpts (75.0)												
Decrease Statutory Designated Program Receipts	Dec	(82.0)	0.0	0.0	(82.0)	0.0	0.0	0.0	0.0	0.0	0	0
Stal Desig (62.0)												
Line Item Transfer - RPS6-S-0518	LIT	0.0	0.0	0.0	(160.0)	0.0	0.0	0.0	160.0	0.0	0	0
Delete Unfunded Non-Permanent PCN	PosAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

COMMISSIONER'S OFFICE and ADMINISTRATIVE SERVICES DIVISION

Offc of Commiss	Commissioner Ofc	FED	79.1	See Attached	See Attached	5FT	See Attached	See Attached
		GF	383.2	Budget Pages	SB 169 and	Intend to		
		I/A	5.0		Budget Pages	restore 1		
		TOTAL	467.3			FT in addn		
Offc of Commiss	AK Labor Relations	GF	324.2	See Attached	See Attached	4FT	See Attached	See Attached
				Budget Pages	SB 169 and			
					Budget Pages			
Office of the Commissioner		FED	79.1			9FT		
		GF	707.4			will be 10		
		I/A	5.0					
		TOTAL	791.5					

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

COMMISSIONER'S OFFICE and ADMINISTRATIVE SERVICES DIVISION

<u>BRU</u>	<u>Component</u>	<u>Fund Source</u>	<u>Total Budget</u>	<u>Total Rev.</u>	<u>Constitutional, Statutory Prov.</u>	<u>Mission, Goals Objectives</u>	<u>Number of Empl.</u>	<u>Specialized Expertise Needed (describe)</u>	<u>Specialized Equipment Needed (describe)</u>
Admin Services	Data Processing	FED	3,858.9	0.0	See Attached	See Attached	41FT,1PT	See Attached	See Attached
		GF	111.4		Budget Pages	SB 169 and	2NP		
		IA	1,493.0		Inter-agency Receipts	Budget Pages			
		CIP	87.7		Cap Invest. Projects	primarily			
		TOTAL	5,551.0		million	computer time			
Admin Services	Mangmt. Serv.	FED	1,982.4	0.0	See Attached	See Attached	47FT,1PT	See Attached	See Attached
		GFM	280.1		Budget Pages	SB 169 and			
		GF	177.6		gen fund match	Budget Pages			
		IA	470.7						
		TOTAL	2,890.8						
Admin Services	Labor Market Info.	FED	1,251.5	0.0	See Attached	See Attached	38FT	See Attached	See Attached
		GFM	71.2		Budget Pages	SB 169 and			
		GF	435.7			Budget Pages			
		STAT	77.0		statutory gen fund receipts				
		IA	1,083.7						
		TOTAL	2,819.1						
Administrative Services Division		FED	7,092.8				126FT,2PT		
		GFM	331.3				2NP		
		GF	724.7						
		STAT	77.0						
		CIP	87.7						
		IA	3,047.4						
		TOTAL	11,360.9						

**COMMISSION ON PRIVATIZATION
AND
DELIVERY OF GOVERNMENT SERVICES**

**SUBCOMMITTEE REPORT
ON THE
DEPARTMENT OF LABOR**

November 4, 1999

**Subcommittee Members: Valerie Baffone, Chairman; Robert Derr, Jerry DesJarlais,
Kay Slack, Clark Smith, Jim Spalding, Bill Watterson**

LAW

**COMMISSION ON PRIVATIZATION
AND
DELIVERY OF GOVERNMENT SERVICES**

SUBCOMMITTEE REPORT

ON THE

DEPARTMENT OF LAW

November 18, 1999

**Subcommittee Members: Mark Johnson, Chair; Scott Brandt-Erichsen, Blake Call,
John Cowdery, Pete Kinneen, Richard McVeigh, William Oberly, Betty Rollins,
Bill Satterberg, Bruce Weyhrauch**

November 3, 1999
13631 Windward Circle
Anchorage, Alaska 99516

Senator Jerry Ward
Representative John Cowdery
Co-Chairs
Commission of Privatization
and the Delivery of Government Services
Alaska State Legislature
Anchorage, Alaska 99501

Dear Senator Ward and Representative Cowdery:

This submission constitutes the final Report of the Subcommittee for the Department of Law.

The following individuals have contributed to the work of the Subcommittee:

Mark K. Johnson, Chair
Scott Brandt-Erichsen
William B. Oberly
Richard L. McVeigh
Blake Call
Bill Satterburg
Betty Rollins
Pete Kinneen
Bruce Weyrauch

While all have contributed, no particular point which has been made in this Report should be necessarily attributed to individual members.

APPROACH OF THE SUBCOMMITTEE

The Department of Law is fairly unique among state agencies in that it exclusively performs services for the State and agencies of the State. It does not provide services to the general public or to particular classes of the public. In addition, legal services in many, if not most, cases involve the exercise of considerable discretion on the part of the attorney assigned to the case, be it at the intake, trial or appeal level.

In recognition of these facts, the Subcommittee at the outset did not commence work from the standpoint of elimination of legal professional staff or the wholesale assignment of individual programs to the private sector. In the first instance, it seems clear that appropriation for legal staff will generally produce a commitment to litigation and prosecution at that level. If more funds are appropriated, more resources will be expended on those functions. If less funds are appropriated, less resources will be expended on those functions. In this regard, the Subcommittee is probably less able to address the question of the level of appropriation for the Department than the Finance Committees, as the Subcommittee has consisted of non-budgetary professionals working on a volunteer basis.

The Subcommittee has therefore focused upon those provisions of the Full Commission's authorizing legislation which permit examination of the Department of Law from the standpoint of efficiency and effectiveness. The Subcommittee has also examined contracting policy and procedures for the Department.

To a very considerable degree, each of the subjects inquired into on the part of the Subcommittee have, in one way or another, hinged on the exercise of discretion on the part of the leadership of the Department of Law. The Department of Law is also unique among the departments of state government in that with the exception of a handful of individuals, all of the professional employees of the Department are either exempt or partially exempt State employees who serve at the pleasure of the agency head, the Attorney General, and ultimately the Governor. There is clearly more discretion exercised in carrying out the functions assigned to the Department than in any other executive Department of State government.

This circumstance has led the Subcommittee into inquiring in various ways about how the Department exercises discretion and what legal and practical limitations exist on the exercise of discretion. If any change at all is going to be made to the functions and activities of the Department by the Legislature, sooner or later the issue of the exercise of discretion on the part of the Department will enter the equation.

In light of these circumstances, the Subcommittee has ventured probably a bit further from the pathway taken by some other subcommittees of the Commission and has examined the statutory underpinnings of the Department.

SUBCOMMITTEE MEETINGS AND PROCESS

The Subcommittee has met seven times, taken extensive testimony from the Department's leadership, posed two sets of written inquiries to the Department, and discussed and debated issues as a subcommittee on multiple occasions.

The written inquiries to the Department are attached to this Report, as are the responses of the Department.

The Department has been well represented by Deputy Attorney General Barbara Ritchie, Deputy Attorney General Cynthia Cooper, and Special Assistant to the Attorney General Joan Kasson. In all instances, these representatives have responded satisfactorily to the questions of the Subcommittee. Their cooperation is appreciated.

The Subcommittee at the outset adopted a policy that it would not discuss any particular matter currently in litigation. Discussion of cases by name has been extremely rare, if it has occurred at all.

Following the fact-finding segment, the Subcommittee has met to discuss and deliberate regarding the recommendations to be included in this Report. The chair has been of the view that it is the task of the Subcommittee to generate ideas to be passed along to the full Commission and ultimately the Legislature and that therefore it is not necessary or even desirable to seek a consensus or even majority support for any particular idea to be made part of this Report. Dissent from the points contained in this Report has been encouraged, and members may submit alternative viewpoints to any point to the full Commission. The Subcommittee stands behind the points contained in this Report as ideas meriting further examination by either the full Commission or the Legislature.

Sincerely,

Mark K. Johnson, Chair

Enclosures
Appendices

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

November 29, 1999

Commission on Privatization and Delivery
of Government Services
Alaska State Legislature
Anchorage, AK 99501

Dear Commission Members:

At the November 18, 1999 meeting of the commission, a number of questions were posed to the department:

Mr. Harper requested information on the benefits accruing to the state from its expenditures on oil and gas litigation. Since 1982, the state has recovered over \$10 billion to date as a result of oil and gas tax, royalty, and regulatory litigation. Between FY 1994 and FY 1999, the period of time the contractual expenditure information provided to the commission covers, more than \$3.3 billion was collected.

Mr. Pignalberi asked the department to provide the information requested of the various subcommittees in items I - X of the commission's "Suggested Outline for Subcommittee Reports." Attached are items I - IX. For item X, we would direct the commission's attention to the department's August 31, 1999 response to Mr. Johnson, questions 1 - 5.

Also attached, per Mr. Pignalberi's request, are sample reports from the Civil Division's timekeeping and billing system.

We are still working on Mr. Pignalberi's request for information on our collection efforts. As I pointed out to Mr. Pignalberi when the request was made, this will take some time. We will submit this response to the commission as soon

as it can be completed; however, it is doubtful you will receive it until the week of December 6.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read 'Barbara J. Ritchie', written over the typed name.

By: Barbara J. Ritchie
Deputy Attorney General

Attachment

I. DEPARTMENT OF LAW

II. BRU and Component Names as Listed in Department of Law Budget

BRU	COMPONENT
a. Criminal Division	First Judicial District Second Judicial District Third Judicial District: Anchorage Third Judicial District: Outside Anchorage Fourth Judicial District Criminal Justice Litigation Criminal Appeals/Special Litigation
b. Civil Division	Deputy Attorney General's Office Collections and Support Commercial Section Environmental Law Fair Business Practices Governmental Affairs Human Services Legislation/Regulations Mental Health Lands Natural Resources Oil and Gas and Mining Special Litigation Transportation Section Timekeeping and Support
c. Statehood Defense	Statehood Defense
d. Oil and Gas Litigation and Legal Services	Oil and Gas Litigation Oil and Gas Legal Services
e. Administration and Support	Office of the Attorney General Administrative Services

III. Total Department of Law FY00 Budget, All Funds
(\$ in thousands)

	Criminal Division	Civil Division	Statehood Defense	Oil & Gas Litigation & Legal Services	Admin & Support	Total
Federal Receipts	476.1					476.1
GF Match	157.3					157.3
General Fund	12,570.8	6,797.1	1,293.0	4,784.3	837.4	26,282.6
GF Program Receipts		422.1			46.2	468.3
Interagency Receipts	960.1	13,735.1			553.3	15,248.5
Fish & Game Fund	125.8					125.8
GF Mental Health		63.0				63.0
Interagency Oil & Hazardous		465.4				465.4
Permanent Fund Receipts				1,477.0		1,477.0
Statutory Designated Receipts		505.0				505.0
Tobacco Settlement Revenue		134.0				134.0
FY 2000 Authorized Total	14,290.1	22,121.7	1,293.0	6,261.3	1,436.9	45,403.0

IV. Total Revenue
(\$ in thousands)

General Fund Program Receipts

Collected criminal fines; forfeited bonds	1,330.0
Collected cost of appointed counsel	888.9
Collected cost of incarceration	741.6
Collected civil judgments	49.2
Misc. collections not posted to debt by fiscal year-end	101.4
Consumer protection recoveries	95.4
Recovery of attorneys' fees and costs	22.0

Federal Funds

Medicaid Provider Fraud	352.4
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Oil and Gas Litigation

Royalty, tax, regulatory settlements	59,607.5
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FY99 TOTAL	63,188.4
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V. Constitutional and Statutory Provisions Governing the Department of Law

Constitution

Article III,

- Section 16 - Governor's Authority**
- Section 22 - Executive Branch**
- Section 24 - Supervision**
- Section 25 - Department Heads**

Statutes

The main statutory provisions governing the Department of Law are found in AS 44.23. The department is also referred to in numerous other places in statute. Some examples follow:

- AS 08.88 - Real Estate Commission**
- AS 09.50 - Compromise by Attorney General**
- AS 14.07 - State Board of Education legal services**
- AS 18.66 - Council on Domestic Violence and Sexual Assault**
- AS 25.24 - Child Support Enforcement legal services**
- AS 31.05 - Oil and Gas Conservation Commission legal services**
- AS 39.52 - Executive Branch Ethics Act**
- AS 42.04 - Regulatory Commission of Alaska legal services**
- AS 43.10 - Enforcement and Collection of Taxes**
- AS 44.62 - Administrative Procedures Act**
- AS 44.80 - Liability of the State**
- AS 45.50 - Competitive Practices and Regulation of Competition**
- AS 47.17 - Child Protection**
- AS 47.24 - Protection of Vulnerable Adults**

VI. Department of Law Mission, Goals, and Objectives

The mission of the Department of Law is to (1) protect the state's sovereignty; (2) prosecute crime; (3) represent and advise the state in all civil matters; and (4) provide other legal services to state government.

Goals and Strategies

CRIMINAL DIVISION:

- Protect the public through effective prosecutions.
- Assist law enforcement agencies with criminal investigations and filing misdemeanor and felony charges.
- Serve as legal advisor to grand juries and represent the state in all phases of criminal trial and appellate proceedings.
- Effectively prosecute domestic violence crimes - both felony and misdemeanor.
- Reduce fraud in benefit programs.

CIVIL DIVISION:

- Provide effective legal advice and representation of the state.
- Protect Alaska's children and youth by handling child abuse, neglect, and delinquency cases expeditiously.
- Ensure the state receives its correct share of oil and gas taxes and royalties; clarify and improve the rules governing taxpayers to reduce disputes and litigation.
- Resolve questions of state versus federal control and management of natural resources and lands.
- Increase collections of money owed the state by businesses and individuals for child support, fines, loans, and other unpaid obligations.
- Ensure the department's revised process for legal review of regulations projects continues efficiently, timely, and responsive to the needs of agencies and the public.

VII. Number of Department of Law Employees

	Full-Time	Part-Time
Criminal Division		
Attorneys	89	1
Paraprofessionals	31	
Support Staff	61	1
Civil Division		
Attorneys	120	6
Paraprofessionals	33	
Support Staff	85	2
Statehood Defense		
Attorneys	8	
Paraprofessionals	2	
Support Staff	1	
Administration and Support	20	1
Total FY2000 Authorized	450	11

VIII. Technology Used to Perform the Department of Law's Mission

General-use Computer Technology

The Department of Law's information technology infrastructure consists of over 20 Novell Netware servers and 430+ Intel Pentium-based personal computers running Windows 95/98. There are 15 locations in the state, and 11 of these locations have local area networks. All 15 locations are joined to the State of Alaska WAN through dedicated circuits ranging from 56kbps to T-1. All user workstations are configured with the TCP/IP protocol and have Internet access.

Administrative Services

State of Alaska administration applications are hosted on an OS/390 mainframe accessed through TCP/IP (tn3270) over the statewide WAN. Applications in use include accounting, payroll, and property control. Law participates in budgeting by using the states Automated Budget System, a client/server system.

Legal Research / Legislation Tracking

The primary commercial tool used for electronic legal research is WestLaw. Users gain access to WestLaw either through modems connected to dedicated analog lines, or through the internet. The largest sites also have access to the WestLaw "Premise" product, a CD-based offering that is installed in networked CD devices. Research into statutes and regulations is accomplished through WAN access to databases maintained by the Legislative Affairs Agency. Tracking of current legislation is accomplished over the WAN using standard browsers accessing web-based databases. Some tracking of legislation is accomplished over the WAN using tn3270 to access mainframe databases.

Common Agency Software

The primary software for daily use is MS Office 97. Groupwise is used for email and scheduling, although the department plans a switch to the state's SMTP-based enterprise email system. Attachmate Extra Personal Client along with QWS3270 Winsock, a free 3270 emulator, are used for OS/390 access.

Prosecutor Case Management

Tracking of all criminal prosecution efforts is accomplished through the system known as CRIMES (Criminal Record Information and Exchange System.) "CRIMES" is an Oracle-based client/server system that supports up to 180 users across the state. Each client interacts with a local server housing a replicated copy of the database. Database synchronization occurs after working hours.

Timekeeping and Billing

The Civil Division has as clients each of the individual agencies of the executive branch. Costs of legal work are charged back to client agencies. Timekeeping and billing is accomplished through use of the Barrister Javelan program, a client/server system based on MS SQL Server. There are 160 Javelan users, located in Anchorage, Juneau, Bethel, and Fairbanks. Timekeeping records are stored in a single-repository SQL database and accessed by users over the WAN. Preparation of bills by administrative staff occurs in Juneau, accessing the database over the WAN.

Litigation Support Imaging

Litigation of oil & gas taxation and royalty cases requires intensive document research. Before a case reaches the discovery phase, these documents are usually in the possession of their owners. In litigation, each side requests documents to support their respective cases, resulting in the exchange of huge volumes of paper. The Department of Law's Litigation Support group is responsible for making relevant documents available to the attorneys working on a case. This is accomplished through use of the Litigation Support

VIII - Continued

Imaging System, a UNIX-based system that stores massive quantities of legal documents for use in any necessary litigation. The system uses an Oracle database for document indexing, and includes high-capacity magneto-optical storage devices. Document research is carried on using RetrievalWare, a software product designed to facilitate searching and indexing of scanned and text-based documents.

IX. Existing Agency Contracts
(as of November 21, 1999)

FIRM	SUBJECT	PURPOSE	BEGIN DAT	END DATE	AUTH	Procurement Type
Affiliated Appraiser	Real Estate	Expert Witness	8/14/97	6/30/00	\$30,500	Exempt (Expert Witness)
Affiliated Appraiser	Real Estate	Expert Witness	11/19/97	6/30/00	\$7,000	Exempt (Expert Witness)
Ashburn & Mason	Oil & Gas	Legal Services	4/1/83	1/1/15	\$330,060	Novation
Ashburn & Mason	Oil & Gas	Legal Services	8/19/92	6/30/00	\$542,500	Limited Comp (RFP)
Bankston & McCollum	Tort Litigation	Legal Services	2/18/98	1/1/15	\$475,000	Limited Comp (RFP)
Barrister Info. Syst	Timekeeping & Billing System	Software Support	6/26/98	6/30/04	\$418,062	Limited Comp (RFP)
Baxter, Bruce, et al	Employment	Legal Services	9/22/98	9/16/99	\$60,000	Limited Comp (RFP)
Birch/Foster/Rubini	Bond/Investment Counsel	Legal Services	11/1/93	10/31/99	\$3,250,000	Formal RFP
Blumstein & Dunn, PC	Employment	Legal Services	5/28/99	1/1/15	\$15,000	Limited Comp (RFP)
Brind, Joel, Ph.D.	Abortion Statute Challenge	Expert Witness	11/7/97	1/1/15	\$10,000	Exempt (Expert Witness)
Carney, Badley et al	Construction Claims	Legal Services	11/24/98	1/1/15	\$550,000	Limited Comp (RFP)
Clarke Engineering	Condemnation Dispute	Expert Witness	1/23/93	1/1/15	\$17,500	Exempt (Expert Witness)
Covington & Burling	Fed/State Relations	Legal Services	7/1/98	6/30/00	\$35,000	Small Purch. (R&A)
Crowell & Moring	Administrative Law (federal)	Legal Services	8/13/84	6/30/00	\$70,000	Pre-dates Code
Davison & Davison	Workers' Comp.	Legal Services	6/11/97	1/1/15	\$30,000	Small Purch. (RFP)
Delaney Wiles et al.	Tort Litigation	Legal Services	12/11/95	1/1/15	\$850,000	Limited Comp (RFP)
Delaney Wiles et al.	Tort Litigation	Legal Services	12/1/98	1/1/15	\$175,000	Limited Comp (RFP)
Delaney, Wiles	Employment	Legal Services	2/22/99	1/1/15	\$35,000	Limited Comp (RFP)
DeLisio Moran et al.	Tort Litigation	Legal Services	10/10/94	1/1/15	\$215,000	Limited Comp (RFP)
Econ One	Consumer Protection/Antitrust	Expert Witness	3/1/99	6/30/00	\$50,000	Exempt (Expert Witness)
Econ One	Oil & Gas	Expert Witness	9/1/98	6/30/00	\$220,000	Exempt (Expert Witness)
Epstein, David J.	Commercial	Legal Services	11/21/85	1/1/15	\$0	Multi-State
Fast, Kathleen J.	DA Volunteer Coordinator	DA Volunteer Coordinator	3/1/99	2/28/00	\$5,000	Small Purch. (R&A)
Forslund, Curtis D.	Commercial	Legal Services	6/22/99	6/30/00	\$50,000	Small Purch. (Single)
Foster, Gary	Construction Claims	Legal Services	7/15/97	1/1/15	\$250,000	Single Source
Foster/Birch (JV)	Bond/Investment Counsel	Legal Services	10/1/95	9/30/00	\$250,000	Formal RFP
Guess & Rudd	Workers' Comp.	Legal Services	3/29/95	1/1/15	\$20,000	Small Purch. (RFP)
Guetschow, Bernd C.	Bankruptcy	Legal Services	4/20/95	6/30/00	\$50,000	Small Purch. (R&A)
Hagans, Ahearn et al	Medicaid Fraud	Legal Services	4/15/99	6/30/00	\$7,500	Exempt (Expert Witness)
Hainline & Assoc.	Construction Claims	Expert Witness	9/24/99	6/30/01	\$30,000	Exempt (Expert Witness)
Hainline & Assoc.	Construction Claims	Expert Witness	9/18/98	6/30/00	\$50,000	Exempt (Expert Witness)

IX. Existing Agency Contracts
(as of November 21, 1999)

FIRM	SUBJECT	PURPOSE	BEGIN	END	DAT	ENDDATE	AUTH	Procurement Type
Hainline & Associate	Construction Claims	Expert Witness	3/3/98	1/1/15			\$50,000	Exempt (Expert Witness)
Heller/Simpson (JV)	Bond/Investment Counsel	Legal Services	9/25/95	9/24/00			\$800,973	Formal RFP
Hogan & Hartson	Campaign Finance Reform	Legal Services	7/13/99	6/30/00			\$5,000	Small Purch. (R&A)
Hogan & Hartson	State's Rights	Legal Services	7/12/99	6/30/00			\$5,000	Small Purch. (R&A)
Hogan & Hartson, LLP	State's Rights	Legal Services	9/1/99	1/1/15			\$75,000	Limited Comp (RFP)
Hosie, Frost & Large	Consumer Protection/Antitrust	Legal Services	3/27/99	6/30/00			\$25,000	Small Purch. (R&A)
Hosie, Wes, et al.	Oil & Gas	Legal Services	5/13/92	1/1/15			\$3,639,548	Novation
J.P.Dokoozian & Assc	Construction Claims	Expert Witness	6/16/98	6/30/00			\$25,000	Exempt (Expert Witness)
Jermain, Dunnagan &	Consumer Protection/Antitrust	Legal Services	8/10/99	6/30/00			\$10,000	Small Purch. (R&A)
Kaye, Scholer, et al	Oil & Gas	Legal Services	12/1/93	1/1/15			\$32,070	Novation
Killip, Jeff	Child Protection	Legal Services	1/25/99	8/31/99			\$10,000	Small Purch. (R&A)
Koester, G. Thomas	State's Rights	Legal Services	7/26/91	1/1/15			\$403,000	Single Source
Koester, G. Thomas	State's Rights	Legal Services	6/4/99	1/1/15			\$50,000	Single Source
LCMF Inc.	Construction Claims	Expert Witness	9/3/98	6/30/00			\$10,000	Exempt (Expert Witness)
Lessmeier & Winters	Tort Litigation	Legal Services	4/25/95	1/1/15			\$305,000	Limited Comp (RFP)
Metamor	Crimes System	Software Support	6/22/98	6/30/03			\$497,000	Formal RFP
Mikunda, Cottrell &	Consumer Protection/Antitrust	Expert Witness	10/5/99	6/30/00			\$5,000	Exempt (Expert Witness)
Milton B. Barker	Bankruptcy	Paraprofessional Services	10/30/98	6/30/00			\$26,000	Small Purch. (R&A)
Morrison & Foerster	Oil & Gas	Legal Services	7/1/81	1/1/15			\$27,535,000	Pre-dates Code
Muse, Stancil & Co.	Oil & Gas	Expert Witness	4/14/99	6/30/00			\$70,000	Exempt (Expert Witness)
Owens & Turner	Technology/Patent	Legal Services	7/1/99	6/30/00			\$50,000	Small Purch. (RFP)
Pacific Economics Gp	Commercial	Expert Witness	10/23/98	6/30/00			\$100,000	Exempt (Expert Witness)
Parran, Theo., M.D.	Medicaid Fraud	Expert Witness	6/30/99	12/31/99			\$20,000	Exempt (Expert Witness)
Pillifont, Lois	DA Volunteer Coordinator	DA Volunteer Coordinator	3/1/99	2/28/00			\$5,000	Small Purch. (R&A)
Pomp, Prof. Richard	Oil & Gas	Expert Witness	8/31/99	6/30/01			\$50,000	Exempt (Expert Witness)
Preston Gates et al.	Oil & Gas	Legal Services	9/16/83	1/1/15			\$21,486,000	Pre-dates Code
Preston Gates et al.	Environmental	Legal Services	4/24/89	6/30/00			\$34,000	Emergency (type - B)
Preston Gates et al.	Bond/Investment Counsel	Legal Services	3/29/94	12/31/99			\$500,000	Formal RFP
Price & Price	Real Estate	Legal Services	8/1/96	8/31/99			\$141,677	Formal RFP (Novation)
Reich Law Firm	Collections	Legal Services	6/4/99	1/1/15			\$5,000	Small Purch. (R&A)
Resource Data, Inc.	Y2K Testing	Software Support	7/15/99	12/31/99			\$8,500	Small Purch. (Single)

**IX. Existing Agency Contracts
(as of November 21, 1999)**

FIRM	SUBJECT	PURPOSE	BEGIN	END	AUTH	Procurement Type
Ringert Clark Chart.	Collections	Legal Services	9/19/97	6/30/00	\$10,000	Small Purch. (R&A)
Robertson, et al.	Tort Litigation	Legal Services	1/29/96	1/1/15	\$100,000	Limited Comp (RFP)
Robertson, Monagle	Environmental	Legal Services	8/8/97	1/1/15	\$921,000	Limited Comp (RFP)
Rubinfeld, Daniel	Oil & Gas	Expert Witness	6/1/99	6/30/00	\$25,000	Small Purch. (R&A)
Ruddy, et al.	Environmental	Legal Services	7/1/97	12/31/99	\$43,000	Single Source
Sam, Christine M.	DA Volunteer Coordinator	DA Volunteer Coordinator	3/1/99	2/28/00	\$5,000	Small Purch. (R&A)
Simpson, Tillinghast	Constitutional	Legal Services	6/5/98	1/1/15	\$130,000	Limited Comp (RFP)
Stanley, Michael	State's Rights	Legal Services	9/12/97	1/1/15	\$30,000	Emerg. (GS approved)
Stanley, Michael	State's Rights	Legal Services	4/12/99	6/30/00	\$35,000	Small Purchase (R&A)
Statewide Appraisal	Real Estate	Expert Witness	3/23/98	6/30/00	\$7,000	Exempt (Expert Witness)
SunGard Shareholders	Commercial	Expert Witness	10/23/98	6/30/00	\$65,000	Exempt (Expert Witness)
Susan M. Reiter	Collections	Legal Services	3/3/98	6/30/00	\$5,000	Small Purchase (R&A)
Travis Environmental	Construction Claims	Expert Witness	9/19/97	6/30/00	\$16,200	Exempt (Expert Witness)
Travis/Peterson Env.	Oil & Gas	Expert Witness	3/25/99	6/30/00	\$60,000	Exempt (Expert Witness)
Tucker Alan, Inc.	Construction Claims	Expert Witness	7/2/98	6/30/00	\$100,000	Exempt (Expert Witness)
Tucker Alan, Inc.	Construction Claims	Expert Witness	7/2/98	6/30/00	\$105,000	Exempt (Expert Witness)
Tundra Women's Coal.	DA Volunteer Coordinator	DA Volunteer Coordinator	3/1/99	2/28/00	\$5,000	Small Purch. (R&A)
Van Muers & Assoc.	Oil & Gas	Expert Witness	4/19/99	6/30/00	\$20,000	Exempt (Expert Witness)
Vincent M. Rue, PhD	Abortion Statute Challenge	Expert Witness	9/15/97	1/1/15	\$10,000	Exempt (Expert Witness)
Washburn, Briscoe	State's Rights	Legal Services	3/15/82	1/1/15	\$2,134,000	Pre-dates Code
Williams & Tinkham	Collections	Legal Services	8/17/99	6/30/00	\$25,000	Small Purch. (R&A)
Williams, Kastner	Real Estate	Legal Services	9/18/97	9/30/99	\$25,000	Small Purch. (RFP)
Wohlforth, et al.	Bond/Investment Counsel	Legal Services	11/1/93	10/31/99	\$900,000	Formal RFP
Wohlforth, et al.	Commercial	Legal Services	7/1/94	8/31/99	\$740,206	Formal RFP
Wohlforth, et al.	Bond/Investment Counsel	Legal Services	3/1/96	2/20/00	\$500,000	Formal RFP
Wohlforth, et al.	Bond/Investment Counsel	Legal Services	4/1/96	3/31/00	\$330,000	Formal RFP
Wohlforth, et al.	Bond/Investment Counsel	Legal Services	11/26/96	11/30/99	\$500,000	Formal RFP
Wohlforth, et al.	Real Estate	Legal Services	11/5/98	6/30/00	\$75,000	Small Purch. (RFP)
Wohlforth/Hawkins	Bond/Investment Counsel	Legal Services	7/25/97	6/30/00	\$50,000	Formal RFP
Westmann & Assoc.	PROMIS Maintenance	Software Support	1/15/97	12/31/99	\$35,000	Small Purch. (Single)

Department of Law - Open* Case Files by Section by Type

Section:	02	22	26	28	30	33	44	55	66	70	75	77	88	99	Total
ANC-Collections & Support	0	225	220	3	0	503	186	0	71	0	0	0	0	2	1,210
ANC-Commerical	0	141	12	0	0	1	2	0	125	0	0	0	0	0	281
ANC-Enviromental Affairs	0	23	0	0	4	0	0	0	69	0	0	0	0	6	102
ANC-Fair Business Practices	0	109	0	0	0	0	11	0	128	0	0	0	0	12	260
ANC-Gas, Oil & Mining	0	143	0	0	0	0	0	0	103	0	0	0	0	5	251
ANC-Govt Affairs & Contr	0	164	0	0	0	5	12	0	284	0	0	0	0	8	473
ANC-Human Services	0	518	0	0	0	39	1,788	0	84	0	0	0	0	0	2,429
ANC-Natural Resources	0	141	6	0	0	4	1	0	237	0	0	1	0	12	402
ANC-Special Litigation	0	2	0	0	199	0	0	0	146	0	0	0	0	0	347
ANC-Transportation	0	44	0	0	0	0	0	0	132	0	0	0	0	2	178
ANC-Welfare Fraud	0	36	11	0	0	4	0	36	10	92	0	0	0	0	189
Barrow Office	0	0	0	0	0	0	94	0	0	0	0	0	0	0	94
Bethel AGO	0	0	0	0	0	0	155	0	2	0	0	0	0	0	157
FAI-Collections & Support	0	31	0	0	0	257	11	0	1	0	0	0	0	0	300
FAI-General Civil	0	17	0	0	1	4	5	0	13	0	0	0	0	0	40
FAI-Human Services	0	20	0	0	0	7	355	0	24	0	0	0	0	0	406
FAI-Natural Resources	0	8	0	0	0	0	0	0	107	0	0	0	0	1	116
FAI-Special Litigation	0	9	0	0	23	0	1	0	36	0	0	0	0	0	69
FAI-Transporation	0	58	0	0	8	0	2	0	175	0	0	0	0	0	243
Jun-Commercial	0	142	15	0	0	0	0	0	65	0	0	0	0	27	249
Jun-Govt Affairs & Contr	1	157	0	0	2	0	0	0	195	0	0	0	0	4	359
Jun-Human Services	0	90	0	0	0	66	186	0	254	0	0	0	0	32	628
Jun-Legis/Regs	0	0	0	0	0	0	0	0	8	0	0	2	1	13	24
Jun-Natural Resources	0	53	0	0	0	0	0	0	111	0	0	0	0	7	171
Jun-Oil, Gas & Mining	0	100	0	0	0	2	0	0	37	0	0	0	0	1	140
Jun-Special Litigation	0	5	0	0	44	1	0	0	14	0	0	0	0	0	64
Jun-Transportation	0	45	0	0	5	0	0	0	40	0	0	0	0	2	92
Total	1	2,281	264	3	286	893	2,809	36	2,471	92	0	3	1	134	9,274

*Open Case Files - For the purposes of this report an "Open" case file is any case file that is currently open in Javelan timekeeping and billing purposes, and does not indicate or imply the legal status of a particular matter.

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FY99 Billable Hours by Client

<u>Client ID</u>	<u>Client Name</u>	<u>Billable Hours</u>	<u>Bill Value</u>
0100	GOV/EXEC OFFICE	1,799.60	155,801.80
0102	GOV/OMB	192.30	16,842.32
0103	GOV/GOV COORDINATION	1,607.30	144,428.47
0105	GOV/D.C. OFFICE	6.80	610.27
0199	GOV/OTHER	1,192.10	100,918.26
0201	LT GOV/ELECTIONS	1,658.90	145,108.81
0299	LT GOV/OTHER	97.20	8,637.68
0300	APOC	2,176.00	189,559.51
0400	ADMIN/RET&BENEFITS	980.50	85,115.19
0402	ADMIN/GEN SVC SUPPLY	752.70	66,843.89
0403	ADMIN/PERSONNEL	341.50	30,086.53
0404	ADMIN/LABOR RELATIONS	739.80	64,863.06
0405	ADMIN/FINANCE	23.50	2,151.93
0406	ADMIN/INFO SERVICES	54.20	4,854.96
0407	ADMIN/SENIOR SERVICES	163.20	13,740.97
0411	ADMIN/O&G CONS COMM	1,028.10	90,477.14
0412	ADMIN/LONGEVITY	49.50	4,441.11
0413	ADMIN/DIV OF MOTOR VEHICLE(DMV	18.80	1,644.98
0499	ADMIN/OTHER	235.90	21,115.86
0501	CED/Div. of Banking, Securities & Corporations	663.60	59,271.08
0502	CED/Occupational Licensing	4,225.20	375,923.44
0505	CED/INSURANCE	2,500.70	231,713.22
0507	CED/AIDEA	695.50	63,989.72
0509	CED/INVESTMENTS	492.80	44,684.50
0512	CED/DEVELOPMENT	17.90	1,232.39
0516	CED/SCIENCE&TECH FOUNDATION	16.30	1,436.73
0599	CED/OTHER	229.10	19,718.85
0600	Regulatory Commission of Alaska	3,243.80	299,253.63
0900	CED/(formerly C&RA)	505.00	43,214.38
1004	EDUC/EXECUTIVE ADMINISTRATIVE	1,144.00	103,580.58

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FY99 Billable Hours by Client

<u>Client ID</u>	<u>Client Name</u>	<u>Billable Hours</u>	<u>Bill Value</u>
1005	EDUC/SCHOOL FINANCE	864.50	75,127.97
1006	EDUC/SCHOOL FACILITIES	140.30	12,637.66
1007	EDUC/TEACHING&LEARNING SUPPORT	317.50	28,186.88
1008	EDUC/ALYESKA CENTRAL SCHOOL	38.00	3,523.36
1009	EDUC/AK ST COUNCIL ON THE ART	7.00	649.04
1010	EDUC/ AK VOC TECHNICAL CENTER	12.10	945.68
1011	EDUC/MT EDGE CUMBE BOARDING SCH	2.40	222.52
1012	LABOR/ VOC REHABILITATION	110.60	9,513.05
1013	EDUC/ AK LIB, ARCH & MUSEUMS	74.90	6,851.99
1020	EDUC/ADAK REG SCH DIST	2.50	231.80
1030	PROF TEACHING PRACTICES COMM	215.10	19,943.78
1049	EDUC/OTHER	193.10	17,845.40
1050	POST SEC ED COMM	2,767.60	229,526.77
1100	ENV CONS/HQ	11,031.10	971,247.64
1200	F&G/COMML FISH	781.60	70,477.31
1201	F&G/SPORT FISH	869.20	76,790.46
1202	F&G/SUBSISTENCE	128.20	11,681.30
1203	F&G/BD OF FISH	794.20	69,777.92
1204	F&G/BD OF GAME	605.10	53,488.86
1205	F&G/ FUND	635.60	58,018.01
1206	F&G/TRUSTEE COUNCIL	4.60	404.23
1299	F&G/OTHER	4,424.90	393,014.57
1300	CFEC	694.40	61,053.73
1401	CORRECTIONS	1,997.10	173,247.52
1402	H&SS/CINA	28,478.48	2,401,747.79
1403	H&SS/MENTAL	1,211.60	102,511.63
1404	H&SS/GUARDIANSHIPS	18.90	1,561.05
1406	H&SS/FAM & YOUTH SVC	1,036.30	88,184.58
1407	H&SS/PUB ASSIST	401.20	35,405.98
1408	H&SS/ALC & DRUG	250.30	22,324.62

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FY99 Billable Hours by Client

<u>Client ID</u>	<u>Client Name</u>	<u>Billable Hours</u>	<u>Bill Value</u>
1409	H&SS/PUB HEALTH	341.10	28,195.54
1410	H&SS/MEDICAL ASSIST	6,158.20	547,004.09
1411	H&SS/WELFARE FRAUD	2,250.60	185,327.35
1412	H&SS/JUV DELINQ	4,107.20	354,008.38
1413	H&SS/LICENSING	339.40	30,428.90
1499	H&SS/OTHER	672.90	59,688.40
1500	HUMAN RTS COMMN	1,005.80	89,312.69
1701	LABOR/ESD	760.10	70,423.60
1702	LABOR/OSHA	1,578.80	143,141.07
1703	LABOR/WG&HR	318.00	29,478.22
1704	LABOR/WORK COMP	242.80	21,919.82
1799	LABOR/OTHER	112.50	10,049.01
1800	MILITARY AFFAIRS	1,563.90	142,452.09
1801	MILITARY AFFAIRS EMERG/SVCS	80.20	7,436.12
1902	DNR/OIL & GAS	8,398.00	697,668.59
1903	DNR/PARKS	418.80	36,920.49
1904	DNR/PIPELINE COORD	827.00	74,990.83
1906	DNR/NAVIGABILITY	1,303.90	116,055.61
1907	DNR/FORESTRY	117.10	8,107.19
1914	DNR/MINING	1,427.40	123,278.20
1915	DNR/AGRICULTURE	1,041.60	95,051.74
1916	DNR/LAND	5,467.20	479,920.02
1917	DNR/WATER	196.30	17,348.24
1918	DNR/ RS 2477	128.80	11,942.10
1999	DNR/OTHER	1,524.50	126,304.88
2001	PUB SAF/TROOPERS	16.20	1,428.96
2002	PUB SAF/FIRE PREV	11.90	1,066.24
2099	PUB SAF/OTHER	165.80	14,201.27
2108	DOT/STATEWIDE	609.20	54,975.05
2109	DOT/MARINE HWY SYS	2,172.40	190,128.78

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FY99 Billable Hours by Client

<u>Client ID</u>	<u>Client Name</u>	<u>Billable Hours</u>	<u>Bill Value</u>
2110	DOT/SOUTHEAST REGION	1,312.20	114,679.27
2111	DOT/CENTRAL REGION	4,635.10	414,351.24
2112	DOT/NORTHERN REGION	4,829.20	446,797.36
2113	DOT/INTERNATL AIRPORTS	2,190.70	201,858.34
2201	REV/INCOME&EXCISE TAX	1,908.50	162,393.41
2202	REV/ABC BD	910.70	81,715.61
2203	REV/CSFD	12,845.49	1,111,206.52
2204	REV/PERM FUND CORP	92.70	8,567.30
2205	REV/AHFC	3,309.70	303,532.72
2206	REV/OIL&GAS AUDIT	6,554.80	539,788.68
2207	REV/TREASURY	437.60	38,175.76
2209	REV/PERM FUND DIVIDEND	889.80	80,954.05
2211	REV/GAMING	35.10	3,254.47
2299	REV/OTHER	424.20	37,913.48
2301	LAW/ANTI-TRUST	1,229.60	106,529.44
2302	LAW/CONS PROT	3,125.90	250,272.02
2303	LAW/CRIM DIV	2.20	201.90
2304	LAW/EXEC ETHICS ACT	1,033.90	79,629.27
2305	LAW/PROVIDER FRAUD	270.30	15,008.11
2312	LAW/ OIL & GAS	5,691.60	449,568.93
2313	LAW/ COLLECTION	354.39	25,085.88
2314	LAW/REGULATIONS	2,760.40	200,687.88
2315	LAW/LEGIS DRAFTING	1,601.80	124,592.57
2316	LAW/LEGIS REVIEW	492.60	43,122.08
2317	LAW/EXXON	3,075.60	266,180.57
2318	LAW/NATIVE SOVEREIGNTY	536.20	49,716.34
2399	LAW/OTHER	3,705.59	296,469.05
3100	LEGISLATURE	85.30	7,453.72
3200	LEGISLATIVE AFFAIRS	1.50	139.08
4100	COURT SYSTEM	786.20	61,514.67

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FY99 Billable Hours by Client

<u>Client ID</u>	<u>Client Name</u>	<u>Billable Hours</u>	<u>Bill Value</u>
5100	UNIVERSITY OF ALASKA	93.70	8,524.65
7777	INS TENDERS/TORT	26,034.50	2,232,318.96
<u>Grand Total:</u>		<u>219,574.85</u>	<u>18,917,861.16</u>



RECOMMENDATIONS OF THE SUBCOMMITTEE

Recommendation 1. The Legislative Finance committees should hold hearings to develop criteria and a process to assess the feasibility of contracting functions currently performed by the Office of Special Prosecutions and Appeals. In particular, the handling of appeals and the issuance of opinion letters should be examined.

The Office of Special Prosecutions and Appeals is a component of the Department of Law, Criminal Division. Its functions were described to the Subcommittee as handling all appeals in criminal cases, prosecuting special categories of criminal offenses and providing legal opinions to the clients regarding the legality of laws both existing and prospective. Some of these functions seemed particularly suited for privatization. However, the information provided to the Subcommittee was not sufficient to make a solid recommendation on the appropriateness of such privatization.

The Criminal Division of the Department of Law described the functions of the Office of Special Prosecutions and Appeals to the Subcommittee. In so doing, the Division took the position that OSPA, like all activities of the Criminal Division, was not appropriate for consideration for privatization. However, a number of the functions of OSPA seemed to the Subcommittee open to consideration for privatization. Foremost among those were the major function of OSPA, handling appeals, and its function as provider of opinion letters when requested.

Criminal appeals handled by the State are brought to OSPA after the State or, as more frequently happens, the Defendant, appeals the case. At that point the attorney who is assigned to the case is not the trial attorney but an attorney who is new to the case. That attorney has to familiarize themselves with the case by reviewing the record on appeal. After familiarizing themselves with the issues, facts and law in the case, the attorney would prepare the appeal paperwork and arguments. The fact that the OSPA attorney must familiarize themselves with each new case means that privatization of this function would not mean a different, or extra step for the private attorney involved. Like the OSPA attorney, a private attorney contracted to handle an appeal would have to familiarize themselves with the issues, facts and law in the case before preparing the appeal. If this could be contracted at a lower per hour rate than the cost of an OSPA attorney, the State could save considerable amounts money on criminal appeals.

The same situation exists in the area of opinion letters. The requesting agency presents a new set of issues and questions to the attorney in each request. Therefore, a private attorney and an OSPA attorney would be starting from the same place, with each having to review and understand the question and do the research before writing the opinion. Again, if the contract rate for a private attorney to handle this work could be set lower than the cost to of an OSPA attorney, the State would save money.

These seem particularly fertile areas for privatization in the Criminal Division because there are no issues of prosecutorial discretion. Assuming the Department of Law itself would make all decisions on when the State wished to file an appeal in a criminal case, the contract attorneys would have no discretion on whether to proceed with a case or not, and would be hired only to do the appeal. This is so because, other then when the State appeals a case, all other appeals are brought by the Defendant and the State must respond. The same is true in the opinion letter area, as it is the State agency making the request, and the contract attorney would merely be providing the information.

A possible drawback of privatization of this function would be loss of institutional memory of each individual OSPA attorney. Although this would occur, it would seem that this could be lessened by requiring the contractors to have a certain base knowledge of Alaska criminal law. It could also be controlled by providing the contractors with access to prior work done by the State criminal appeals attorneys, whether OSPA or contract. Again the same logic applies to the opinion letters area.

Concurring views of Scott Brandt-Erichsen: Concerning the handling of criminal appeals, I favor contracting out of appeals on an hourly rate which is equivalent to or less than the in-house rate. Because the appellate counsel currently begins fresh and is confined to the record, there does not appear to be any inherent advantage to in house services. Thus, with qualified counsel, the less expensive alternative would presumably be the preferred alternative.

I do not favor contracting out issuance of opinion orders as I feel that such letters are closely related to the prosecutorial decision-making function. The advice given to law enforcement personnel can impact the ability of the trial counsel to prepare and present the best case for the state.

Recommendation 2. The Legislative Finance committees should hold hearings to develop criteria and a process to assess the feasibility of contracting the misdemeanor prosecution function after intake screening.

Misdemeanor criminal prosecution involves, for the most part, simple fact patterns and simple statutory violations. The major characteristic of misdemeanor prosecution is the large number of cases. It seems, therefore, that contract attorneys could handle the prosecution of State misdemeanor charges more economically than the District Attorney's Office if the State could contract with private attorneys at a rate less than the rate of a District Attorney.

In the fiscal year ending July, 1999, the State of Alaska handled almost 20,000 misdemeanor prosecutions and felony probation revocations statewide. Historically the issues raised in misdemeanor cases are not complicated and often entail a small portion of the misdemeanor code. This work seems particularly appropriate for privatization if the private attorneys could be contracted at a lower rate than the hourly rate for a District Attorney.

Of concern in this area, as in privatization of any criminal prosecutions, is whether contract attorneys might choose to pursue or not pursue certain criminal cases for reasons other than the public interest. This concern could be addressed by having the screening function remain with the Department of Law, and the remainder of the case work be handled by contract attorneys.

Of additional concern is the availability of private attorneys in various parts of the State to contract for these services. However, both the Public Defenders Office and the Office of Public Advocacy have had to address these concerns and have successfully contracted the services of attorneys to handle criminal cases in remote locations. The example of these agencies could serve as a model.

Another concern is the amount of discretion which should be given to any attorney who handles misdemeanor prosecutions. Issues will undoubtedly come up after a case is screened in which might impact continuation of a prosecution. This concern might be addressed by having someone at the Department of Law be authorized as a contact person for the contracting attorneys. That person would have the power to make decisions on dismissing a prosecution if the facts and/or law dictated.

The Office of Public Advocacy contracts with private attorneys at a rate far below the prevailing rate in the private sector, and far below the hourly rate quoted by the Department of Law for the cost to the State of an attorney with the Department of Law. The work of the Criminal Division could, very well, be done as effectively, but more economically, if the private sector is allowed to participate in misdemeanor prosecutions after the screening stage. More information is necessary to determine just how much could be saved.

The Subcommittee discussed that privatization could pose problems with coordinating trial schedules with those of police. This matter would need to be considered in connection with this recommendation.

Recommendation 3. The Subcommittee recommends that the Legislature conduct specific hearings on the issue of the allocation of the costs and responsibilities for criminal prosecution between the State and local governments. Such hearings could and perhaps should be expanded to address the provision of police services. The Subcommittee believes that the goal of these hearings should be to develop a consistent statewide approach to the delivery of criminal justice functions which recognizes the varying level of resources available to local governments.

To the knowledge of the Subcommittee, no framework currently exists which allocates the powers and financial responsibility for criminal justice functions among State and local governments in Alaska. In some communities, local police are maintained, in many communities law enforcement responsibility is left to the Alaska State Troopers. Even where local police exist, those officers may charge offenders under State law, with the resulting prosecution carried out by the District Attorney's offices. In some communities, violations may be violations of local ordinances and the local government undertakes the prosecution function. Another very major component of this issue is the costs of incarceration. The statewide overall public safety costs are great. Public Safety costs (police, fire and prosecution) in Anchorage are probably the largest single item in the municipal budget.

The Subcommittee believes that one viable approach to the present situation would be to link classification of a local government for the purposes of Title 29 to the assumption of public safety functions. For example, a first class municipality would be given the statutory power to hire police, but would thereby assume responsibility for prosecution. At some threshold level, a community which desired to have certain local government powers would have to assume public safety responsibility.

The Subcommittee does not necessarily see this process as one intended to shift costs to local governments - but rather focused on providing some rationality and framework for the distribution of public safety powers and financial responsibilities.

Views of Scott Brandt-Erichsen: I oppose any increase in the burden on local governments through transfer of either policing or prosecution of functions to local governments. While I endorse the concept of equitable treatment as between municipalities, I do not believe that forcing municipalities to take on more law enforcement or prosecution functions is in the state's best interests where the effect is merely a shifting of costs from the state general fund to the local taxpayers.

Recommendation 4. The Subcommittee believes that it should be the policy of the Legislature that all privatization efforts which are undertaken regarding the Department of Law should result in commensurate reductions in staff.

As noted in the introduction to this Report, the Subcommittee did not engage in a component-by-component examination of the operating budget of the Department. With the exception of a small administrative group, each division of the Department renders either civil or criminal legal services to the State. In short, increased appropriations will permit the rendering of more legal services, reduced appropriations will require a reduced level of legal services. The Subcommittee sees little value in attempting to substitute the views of the Subcommittee for those of the Legislature on aggregate appropriations for the Department.

The Subcommittee does believe, however, that each change in the delivery of services should be evaluated from a budgetary standpoint. If the State is able to obtain legal services more efficiently from the use of outside counsel, corresponding reductions to the staff of the Department are necessary.

Recommendation 5. The Subcommittee recommends that the Legislature develop and enact additional measures to ensure that the selection of legal services contractors by the State is as objective as possible. The Subcommittee believes that the use of the of a pre-qualified list of potential providers would be a useful tool.

The Subcommittee received written material and oral descriptions from Department of Law staff regarding the existing practices for making decisions on whether to contract out for legal services and how to select a legal services provider. These materials and statements also included information regarding the practices of the Department of Law in monitoring existing legal services contracts.

In the course of Subcommittee discussion, several themes were addressed. Regarding the effectiveness and accountability of outside counsel, the comparison between in-house counsel and contracted counsel with respect to cost effectiveness or efficiency in achieving client objectives is difficult to evaluate without certain data. Regarding cost effectiveness, accurate data concerning the total cost of legal services both in-house and on a contract basis on a comparable indices is needed. This concern is also addressed in item 7 below.

Additionally, evaluation of the qualitative efficiency and effectiveness of legal representation (objectives versus outcome of specific cases) requires adequate information about those objectives and outcomes to determine the overall effectiveness of in-house versus contract counsel. The contracting procedures provided by the Department of Law include identification of the litigation plan and objective as part of the contract monitoring process. This definition of the litigation objective may be an appropriate requirement in each case (whether in-house or outside counsel) and would provide a measure which legislative audit or any other audit or oversight body might utilize to evaluate the effectiveness of both the department of law and contract counsel.

The fairness in contractor selection was an area of particular concern. Subcommittee members commented that the existing contractor selection process is largely subjective. With respect to legal services which are routine and could be adequately performed by a broad range of counsel in the relevant practice area (such as criminal appeals, collections, worker's compensation or other similar routine matters), committee members felt that a more objective contractor selection system from among a pool of qualified contractors would be more likely to serve the public interest in avoiding favoritism in the award of public contracts. One method suggested was the maintenance of pools or lists of qualified contractors for various categories of work. Contractor selection within the practice area of a particular pool would look to the name at the top of the list with new service providers being added to the bottom of the list and previously selected contractors rotating to the bottom of the list. Additionally, there was some discussion of utilizing a method whereby the state sets a maximum contract compensation rate for routine matters at or below the determined in-house rate for providing legal services. Subcommittee members commented that such a system could be used for specialized litigation needs as well.

The Subcommittee recognizes that in some instances there may be justifications for deviation from a pool type objective contractor selection system, and agrees that exceptions should be permissible. However, the Subcommittee feels that where exceptions to an objective award method are utilized, the justification for the exception should be documented in writing against a standard criteria to provide a basis for oversight and evaluation of the fairness of the selection process.

Recommendation 6. The Subcommittee recommends that the Legislature require the Department to develop in consultation with the Division of Legislative Audit a pilot project to test the feasibility of the use of an outside audit firm to assess the costs incurred in litigation. Such firms are presently utilized in the private sector. The Subcommittee believes that the pilot project may be best tested in tort cases.

During the course of meetings with the Department, Subcommittee members noted that it is becoming increasingly commonplace in the private sector for clients, particularly insurers, to utilize the services of an outside auditor to ascertain the reasonableness of charges for legal services rendered by attorneys to clients. The Department acknowledged that the Division of Risk Management had been approached by these types of service providers in the past.

Some Subcommittee members believe that this type of review could be of benefit to the State in lowering the costs of representation. Other Subcommittee members expressed strong doubt that the use of this type of review contractor would either improve litigation outcomes or lower costs.

The Subcommittee obtained from the Department a copy of a solicitation from one of these types of review services. On balance, the Subcommittee believes that it may be useful to test the feasibility of the use of these types of services on a limited, experimental basis and recommends that a pilot project be developed by the Department and

the Division of Legislative Audit. The Subcommittee does not endorse a particular outcome for this pilot project, but believes that it may be useful to explore whether the State should consider this matter further.

Recommendation 7. The Subcommittee recommends that the Legislature direct the Division of Legislative Audit to determine the full and fair value per billable hour of legal services rendered by the Department of Law and ensure that the rates are consistently applied in the budgeting process pertaining to the Department. Following completion of this task, the Subcommittee recommends to the Legislature that it examine whether legal services rendered by the Department should be billed at different rates for different services. The Subcommittee is generally of the view that the Department's costs of service should distinguish between routine and complicated legal services.

During the course of Subcommittee deliberations, a discrepancy was noted in the hourly rate charged by the Department of Law to client agencies and the rate that the Department utilizes when making presentations to the courts on the costs of litigation.

Any discussion on potential privatization of services will at some point consider and compare the cost of contracting representation out to private attorneys and the costs of retaining the matter in-house. The Subcommittee generally believes that fully comparable data regarding such costs is needed and further that the Division of Legislative Audit is best equipped to gather, analyze and compare this information.

There are widely differing views in the legal community, among Subcommittee members and the Department on the rates which are and should be paid for legal services. The Department sincerely believes that many types of cases are more economically handled in-house. Some Subcommittee members believe that the Departmental costs are understated and that quality private counsel is available for less than the rate utilized by the Department in assessing the feasibility of the use of outside counsel.

In addition to the above, the Subcommittee questions whether it is appropriate for the Department to charge client agencies the same uniform rate for all types of legal services. Clearly there is a wide disparity in the complexity of legal tasks. As a general proposition, the Subcommittee is of the view that the development of multiple rates for particular types of legal services could produce a savings for the State.

One Subcommittee member expressed before the Subcommittee that an audit could also determine the percentage of time and money the Department expends on assisting persons and agencies which are not part of the State. The same commenter noted that a difference may be arising between the "public interest", "State interest", and "bureaucratic interest." An audit could also determine how much public resources are expended defending the latter at the expense of the first. Finally the member noted that Department may be developing an in-house bureaucratic culture and that the use of private attorneys and other litigation support services can save Alaska money as well as diversify the departmental culture.

Recommendation 8. The Subcommittee recommends that the Legislature develop and enact measures to prohibit the linkage between contributions to political campaigns and selection to perform legal services on behalf of the State. The American Bar Association has engaged in several studies on this matter, which it refers to as the "pay to play" issue, and has drafted specific policies to address the matter. The Subcommittee believes that the centralized nature of the delivery of legal services for the State of Alaska justifies additional controls in this area.

There was broad support on the Subcommittee for action by the Legislature on the "pay-to-play" issue. The American Bar Association has appointed a task force to consider this issue and the task force has forward proposed amendments to the rules of professional responsibility to the ABA House of Delegates. These materials are included with this Report. The Department told the Subcommittee that it was aware of this issue but did not

elaborate as to what steps, if any, it may have taken to address the issue. In general, the Department has expressed confidence in the existing procurement rules and process.

The Subcommittee believes that the process for selection of outside counsel by the Department would be enhanced by the adoption of proposals comparable to the ABA task force proposal. In part, this view is based on the fact that in Alaska all outside legal service providers to the State, with the exception of conflict counsel by the Office of Public Advocacy, are selected by the Department of Law. In addition, the Subcommittee is mindful that virtually all professional employees of the Department of Law are either exempt or partially-exempt employees, and serve at the pleasure of the Governor. The centralization of procurement authority in the Department of Law and the subjective nature of outside counsel selection gives rise to the danger of favoritism in the selection process. Adoption of the "pay to play" rules could install additional safeguards into the process. At a minimum, the Legislature should hold hearings on this issue, which has attracted national attention.

Some members of the Subcommittee believe that the "pay to play" issue should involve broader considerations than simply the making of campaign contributions by attorneys and should encompass long-standing personal or professional relationships of attorneys to candidates.

Other Subcommittee members have commented that the Department of Law should be pro-active regarding this issue and develop protective measures for recommendation to the legislature using a "disclosure" approach rather than waiting for mandatory requirements to be imposed with the Department of Law in a reactive posture.

Recommendation 9. The Subcommittee recommends that the Legislature develop additional tools to review and provide advice to the Department for litigation where the potential for significant financial liability exists. As presently arranged the roles of client and attorney are blurred, with the Department being charged with conducting litigation and being viewed by agencies as having superior knowledge as to the goals of litigation. Additional oversight is needed to protect and enhance the wishes of the ultimate client.

While qualified and competent, the legal staff of the Department is by no means infallible and may, at times lack all the expertise which may be desirable for particular types of cases which pose the risk of significant financial liability to the State. At the same time those in supervisory roles are also advising or actually making decisions on litigation strategy including the decision to retain specialized counsel verses keeping the litigation "in house". The Subcommittee believes that it may be prudent to install mechanisms which permit and perhaps even require the Department to review cases with major liability exposure to assure the highest quality representation is considered in timely manner.

The Subcommittee lacked the time to further develop suggestions on how to accomplish this result. One idea was to establish a consultation process through the Division of Legislative Audit.

The contracting procedures provided by the Department of Law include identification of the litigation plan and objective as part of the contract monitoring process. This definition of the litigation objective may be an appropriate requirement in each case and would provide a measure which legislature audit or any other audit or oversight body might utilize to evaluate the effectiveness of both the department of law and contract counsel. Such a plan and objective may not be necessary or appropriate for routine cases.

Recommendation 10. The Subcommittee recommends that the Legislature review and consider changes to statutes setting forth the powers and duties of head of the Department, the Attorney General. The Attorney General is not specifically provided for in the Alaska Constitution, but rather is but one of the heads of executive departments. Present statutes provide, and the Supreme Court has thus held that the Attorney General may exercise the powers of an attorney general at common law. The Subcommittee believes that such an arrangement may be incompatible with the concept of limited, constitutional government and may be in need of amendment.

The Subcommittee posed a series of questions to the Department regarding the settlement process, and the Department responded in correspondence which is part of the Report. The Subcommittee urges that this response be examined closely by the Commission. Continued efficient delivery of government services by the Department of Law requires an ongoing appreciation of the limited resources available to the State of Alaska. The Subcommittee believes that the power to settle cases poses unique dangers since the Department of Law stands in a position to acquiesce to an incredible variety of claims and assertions that the Department would never make on behalf of the State. A restrictive view of the authority to settle cases is consistent with the notion of limited state resources. As a practical matter, attorneys with an expansive view of their authority to act on behalf of their client may be more inclined to agree to settlement terms which would not be available if the client alone was jealously guarding the checkbook.. Such considerations are all the more important in the case of non-financial terms of settlement. If legal services are to be delivered effectively and efficiently by the Department, as an institution it should very carefully husband the exercise of those powers. It is in this spirit that the Subcommittee examined settlement practices and authority.

In the response to the Subcommittee, the Department, after a description of the internal process utilized in evaluating proposed settlements, stated that the local case assessment committee will

...forward a recommendation to the Attorney General, or his designee, as appropriate, for consideration and action. All settlement decisions include the input of the state agency implicated by the settlement decision.

Final settlement authority rests with the Attorney General, who may delegate final approval based on departmental policy. (Emphasis added)

Thus, unlike the typical situation in which the client decides whether to accept or reject a proposed settlement, it is the attorney who makes this judgment on behalf of the State of Alaska. The Subcommittee believes that this arrangement poses considerable danger for the State when it is combined with the Department's broad view of the powers of the Attorney General.

Status of the Attorney General

It is important to note that the Attorney General is not specifically provided for in the Alaska Constitution. Rather, the Attorney General by statute is but one of the heads of the departments of state government appointed by the Governor. At the Constitutional Convention, the following was said about the status of the Attorney General:

Now it is my thought on the basis of the bill that we have here that probably what we want to decide is whether we want a constitutional attorney general or not. It seems to me on the executive department, as we have outlined in here so far, that we probably don't want a constitutional attorney general at all; that the matter should be left to the legislature as to whether we do or don't and to what his powers are when the legislature decides to set up an attorney general, and accordingly it seems to me pointless to discuss as to how the attorney general is be selected.

Alaska Constitutional Convention Proceedings, Page 2221, comments of Delegate Davis. (Emphasis added)

In this respect, the Attorney General holds no greater status than that of the head of any other executive department. From a constitutional perspective, the Attorney General derives power from the Governor under Article III, Section 16, who is charged with the responsibility for the faithful execution of the laws. The Legislature has granted certain powers to the Attorney General by statute, AS 44.23.020.

The 1991 Opinion

The Department of Law has added to the above framework. In responding to the Subcommittee's inquiry regarding settlement authority, the Department provided what it apparently believes is the best statement of the powers of the Attorney General as stated in a 1991 memorandum opinion to the Legislative committees examining the Exxon Valdez settlement authored by then Attorney General Charles Cole. This Opinion is included with this report.

The Subcommittee recommends that the 1991 Opinion be examined by the Commission but with reference to the statement of Delegate Davis regarding the status of the Attorney General. In the hands of the Department, the office

of Attorney General is expanded from a statutorily created office into a broadly based¹ office with additional common law powers² which may not be limited.³ Fortunately, the 1991 Opinion cannot supercede the Alaska Constitution or rewrite the Alaska Statutes. The Alaska Supreme Court in *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950-51 (Alaska 1975) notes that the basis for the Attorney Generals common law powers is statutory, AS 44.23.020 and that such common law powers exist "... except where they are limited by statute or conferred upon some other state official." *Id.*

As embodied in the 1991 Opinion, the views of the Department may be at odds with the Alaska Constitution and the intent of the founders. The Subcommittee recommends that Legislature hold hearings on potential amendments to AS 44.23.020. The purpose of these hearings and potential amendments would be to discover ways to restore the balanced view of the authority of the Department envisioned by the framers of the Alaska Constitution.

The Subcommittee subscribes to the proposition that the duties and powers of the Attorney General should derive solely from the Alaska Constitution and legislative enactments. In the view of the Subcommittee, the effective, efficient and responsive delivery of governmental legal services will be obtained by reemphasizing the legislative basis for the Department's acts and the limited nature of the State's resources.

The Subcommittee has drafted legislation to achieve this purpose, or, at a minimum, serve as the starting point for review. It is included with this report.

¹ See Opinion at page 13: "The Attorney General is the State officer charged with implementing the executive branch's policies with respect to execution of the law." The authority cited for this proposition is not particularly helpful in understanding the basis for the statement. The Subcommittee is unaware of any constitutional or statutory provision which vests more authority for implementing the law in the hands of the Attorney General than any other executive department.

² See Opinion at page 13-14: "In that respect, the Attorney General has broad common law powers and responsibilities;" and page 15: "Alaska takes a similarly expansive view of the Attorney General's common law powers." These statements appear to be flawed. To the extent that the Alaska Attorney General has common law powers, they are granted by the Legislature in AS 44.23.020 (b)(7).

³ See Opinion at page 24-25: "Given the absence of any such express prohibition it is unnecessary to speculate concerning the issue whether and to what extent the Legislature might prohibit the Attorney General from so settling the litigation. However, it is clear that the separation of powers doctrine would restrict any legislative attempt to intrude on the executive branch's discretionary authority to conduct litigation in the State's interest." Contrast this view with the limited view of the Attorney General expressed by Delegate Davis during the Constitutional Convention. The Opinion's statement might be correct if it is referring to the Governor's constitutional power, but the issue is the Attorney General's power, not the Governor's. The Subcommittee does not believe it is as "clear" as the Department suggests. See also page 26, footnote 27: "Some courts have held that the legislature may not restrict the attorney general's common law powers." The Opinion cites *Gust K. Newberg, Inc. v. Ill. St. Toll Hwy.*, 456 N.E.2d 50 (Ill. 1983) and *Murphy v. Yates*, 348 A.2d 837 (Md. 1975) for this last proposition. The Subcommittee read the cases and found the results revealing.

In the *Newberg* case, the Illinois courts found that the constitutionally created attorney general held common law powers. Unlike the Alaska Constitution, the Illinois Constitution has established the elected office of Attorney General and declared that he is "...the legal officer of the State...". Once again, compare the comments of Delegate Davis, set out above.

In the *Murphy* case, the appeals court in Maryland determined that the constitutionally established State's attorney could not have his powers restricted by the legislature. Interestingly enough, when the 1991 Opinion was written it failed to mention that the voters of Maryland in 1976 overturned the effect of the *Murphy* case by amending the Maryland Constitution. *Go lberg v. State*, 519 A.2d 779 (Md. App. 1987): "The likely effect of the 1976 amendment to Art. V, Sec. 9 was to make valid, once again, the proposition that the duties and powers of the State's Attorney derive solely from the constitution and legislative enactments. *Id.*, footnote 4, at 783. Under these circumstances, it is fair to say that the precedential value of the *Murphy* case is extremely limited.



STATE OF ALASKA

DEPARTMENT OF LAW

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November 15, 1999

Commission on Privatization and Delivery
of Government Services
Alaska State Legislature
716 W. 4th Ave., Ste. 320
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Dear Commission Members:

The Department of Law appreciates the opportunity to respond to the recommendations of the citizen volunteer subcommittee that reviewed our operations. Our responses address the subject matter in each recommendation.

Recommendation 1. The Legislative Finance committees should hold hearings to develop criteria and a process to assess the feasibility of contracting functions currently performed by the Office of Special Prosecutions and Appeals. In particular, the handling of appeals and the issuance of opinion letters should be examined.

The department strongly opposes contracting the functions of the Office of Special Prosecutions and Appeals (OSPA) to the private sector.

The department has previously expressed its view that the prosecution function is an inherently governmental activity that is not appropriate for privatization for both ethical and public policy reasons. In appellate work, it is extremely important for the state to be uniform in the interpretation of the criminal laws and in presenting the state's legal position in the appellate courts. Indeed, this is the precise reason that the

appellate function was centralized: before OSPA, district attorney offices often took varying and sometimes contradictory legal positions in writing appeals.¹

Maintaining a consistent legal position is just one reason why it is best to have one criminal division office handle the vast majority of the state's criminal appellate work. In addition, similar issues can be assigned to the same attorney, thereby avoiding duplication of research. Moreover, because OSPA appellate attorneys devote full time to criminal appeals, they develop a high level of expertise. OSPA enjoys a good reputation and a high level of credibility with the appellate judges and justices. This is precisely why the United States Department of Justice utilizes a centralized office of the solicitor general, which handles all federal cases in the United States Supreme Court.

The OSPA appellate attorneys are also called upon daily to provide advice to prosecutors and police agencies. They must be available to immediately respond to telephonic and e-mail inquiries that often need answers in a matter of hours or even minutes. For example, trial attorneys frequently contact OSPA appellate attorneys during a 10-15 minute recess in trial to seek advice on a legal issue that has just arisen. In addition, OSPA attorneys often work jointly with prosecutors to prepare briefs in serious or complicated trials. This on-call function is not well suited for privatization. OSPA appellate attorneys rarely issue formal, written legal opinions. They do not issue "letter opinions."

Recommendation 2. The Legislative Finance committees should hold hearings to develop criteria and a process to assess the feasibility of contracting the misdemeanor prosecution function after intake screening.

The department strongly opposes contracting the misdemeanor prosecution function to the private sector.

Although the Public Defender Agency and Office of Public Advocacy do have private contracts for criminal *defense* work, that does not present a model the department can follow. The ethical obligation of a criminal defense attorney is to advocate what is best for *that particular client*, regardless of how others might be affected. A public prosecutor, on the other hand, has broader obligations to the public as a whole, to victims, to law enforcement agencies, and to other similarly situated criminal defendants.

¹ The department would note that the report includes little, if any, examination of performance as measured through such means as client and court interviews and input. We believe that such an examination is one necessary component in determining whether privatization of legal services, criminal or civil, would be in the best interests of the state.

As noted above, the department has previously expressed its view that the prosecution function is an inherently governmental function that is not appropriate for privatization for both ethical and public policy reasons. In addition, the department believes that the administration of criminal justice can best be served by observing statewide policies designed to promote uniformity in the application of the criminal law and in the state's legal position taken in case screening and case resolution. For these reasons, the department strongly believes that its District Attorney offices should handle misdemeanor prosecutions.

In response to the department's points, the subcommittee has suggested that the Department of Law continue to review and screen the 20,000 misdemeanor cases that it now handles each year, and only then refer the cases to private counsel. The subcommittee also suggests that the Department of Law retain supervisory review over all those cases, and approve any dismissals of charges. For the same reasons, we presume the subcommittee would also recommend the department supervise and review all reductions in charges and plea bargains.

The subcommittee's suggested procedure thus requires department attorneys to spend essentially the same amount of time handling misdemeanor cases as they presently do, because the majority of the effort in those cases (aside from complying with victim's rights laws) goes into initial screening and analyzing possible negotiated resolutions. This duplication of effort would not only remove any cost savings, but would make misdemeanor prosecution much more costly, much more time consuming, and much less efficient than it is today.

Recommendation 3. The Subcommittee recommends that the Legislature conduct specific hearings on the issue of the allocation of costs and responsibilities for criminal prosecution between the State and local governments. Such hearings would and perhaps should be expanded to address the provision of police services. The Subcommittee believes that the goal of these hearings should be to develop a consistent statewide approach to the delivery of criminal justice functions, which recognizes the varying level of resources available to local governments.

Ever since the decline of oil revenues in the mid- to late-1980s, there has been considerable discussion about the role of municipalities in the criminal justice system, particularly in providing police protection, jails, and prosecution of misdemeanor offenses. The Alaska statutes provide that the attorney general shall prosecute cases involving violation of state law. AS 44.23.020(b)(3). In addition, Title 29 allows, but does not require, certain municipal governments to adopt and prosecute misdemeanor criminal ordinances. Indeed, earlier this year the criminal division provided testimony on

this subject before the House Finance Subcommittee. The Department of Law will continue to participate in any legislative review of whether this statutory scheme should be changed to require municipalities to prosecute some cases, and how that could be done equitably.

Recommendation 4. The Subcommittee believes that it should be the policy of the Legislature that all privatization efforts which are undertaken regarding the Department of Law should result in commensurate reductions in staff.

The department certainly supports reducing government expenditures when possible. However, the department does not believe the subcommittee should recommend that the legislature automatically cut its budget if further efficiencies are achieved. Instead, each year's budget must be based on the department's current workload, any new duties that might be imposed by law, and an analysis of the work that the department is not now able to do with its current staffing levels. Moreover, whether budget cuts take the form of "reductions in staff" or reductions in other non-staff costs should depend on a more complete analysis of the department's activities.

Recommendation 5. The Subcommittee recommends that the Legislature develop and enact additional measures to ensure that the selection of legal services contractors by the State is as objective as possible. The Subcommittee believes that the use of a pre-qualified list of potential providers would be a useful tool.

The department agrees that fairness and objectivity in the selection of outside counsel is necessary; however, we do not agree with the subcommittee's premise that the current system is flawed.

Formal avenues are in place for complaints about procurement violations. Legislative Audit, the Ombudsman, and the State Procurement Code itself provide the means for such complaints to be investigated and, if necessary, resolved. Individual legislators are often the first to hear from constituents who feel they have been wronged by a state agency. Yet, our office has rarely received a complaint or protest concerning the award of a legal services contract.

When the legislature adopted its own version of the Model Procurement Code in 1986 it established procedures that mirrored those in use by many other states, counties, and local governments. In adopting the code, the legislature set into place a wide range of procurement procedures that acknowledged the need for flexibility and the fact that the objective measures used in purchasing commodities and equipment are different from the subjective criteria that must be considered in hiring professional

service providers. Subsequent revisions to the code have sought to streamline these procedures even further, in part to stem the growth of a "procurement bureaucracy" within state government and to better meet the needs of both state agencies and private vendors.

Regardless of whether an agency is attempting to secure the services of a medical doctor, engineer, architect, accountant, economist, or attorney, the factors that are considered *most* heavily in the selection process are those that have to do with the knowledge, experience, and skills of each professional. Assessing which prospective provider's unique combination of knowledge, experience, and skill is best suited to the circumstances of a particular case, project, or body of work must be at the heart of any selection process.

In adopting the Procurement Code, the legislature acknowledged the inherent difference involved in securing professional services, and it established procedures by which those services are to be procured. In our view the need for any additional legislation seems unwarranted; however, if the legislature chooses to pursue changes to the code it would be advisable to continue to address the procurement of "professional services" as a whole and not to single out any one profession.

The approach the subcommittee recommended the legislature take is the use of a "pre-qualified list of potential providers" for classes of matters which may be more "routine" in nature. Contracts would then be awarded on a rotating basis through the list. Specific examples provided by the subcommittee include criminal appeals, collections, and workers' compensation cases. Past experience has shown that such a rotating system does not work.

The idea of rotating through a list of pre-qualified law firms for workers' compensation and certain tort cases was tried by the Division of Risk Management. They had initially identified seventeen different categories of work and requested that firms submit separate proposals outlining their qualifications and proposed hourly rate for each category for which they wished to be considered. The entire procurement process turned out to be *very* time consuming for both the agency and the prospective contractors. Because the categories of work were based on previous caseloads and given the uncertainty of future work, there was no guarantee that any work would ever be assigned to a particular category or that each firm in that category would be reached during the contract period. As a consequence there was little incentive for firms to significantly lower their rates and the costs of contracting out significant amounts of the tort caseload proved to be exorbitantly high. In addition, the process of rotating through the list, while it may have seemed to be the fairest method of doling out work, proved to be less than

satisfactory when factors such as trial skills or related experience should have entered into the selection decision.

Because of this experience, when these contracts expired, the Division of Risk Management decided that it would prefer to bolster the in-house staff within the Department of Law to handle the bulk of the state's tort litigation, at a greatly reduced rate, and turn over to the department responsibility for procuring the services of outside legal counsel on an as needed basis.

If the state hopes to gain the services of qualified and capable outside counsel at rates that are equal to or less than the cost of in-house counsel, the "rotating-list" concept is clearly self-defeating. Without the assurance of a consistent level and high volume of work, which is simply not possible with a rotating list, it is extremely doubtful (and has never been achieved in the past by this department) that the state could ever expect to obtain the services of outside counsel at comparable rates.²

Recommendation 6. The Subcommittee recommends that the Legislature require the Department to develop in consultation with Division of Legislative Audit a pilot project to test the feasibility of the use of an outside audit firm to assess the costs incurred in litigation. Such firms are presently utilized in the private sector. The Subcommittee believes that the pilot project may be best tested in tort cases.

The department has no objection to the concept of a legal auditing firm providing additional review of outside counsel bills, provided funding is appropriated to pay any additional cost. Such a firm can help deflect potential criticism as a quasi-independent reviewer of outside counsel bills. We believe, however, that we are doing an excellent job of managing contracts and that no legal auditing firm could find sufficient items to cut out of our outside counsel bills to pay its own fees, let alone provide a savings.

² The FY 2000 hourly rate for a department civil division attorney, including all overhead costs, is \$92.49. We question whether the state can contract with private counsel for less than this amount, given that our actual experience shows that the hourly rate for contract counsel, with discounts provided to the state, is typically between \$125 to \$200 per hour, and higher for non-Alaska attorneys retained for specialized expertise. We discussed the issue of in-house and outside counsel rates in our letter to the subcommittee dated August 31, 1999. We discussed the issue of performance/effectiveness of in-house as compared to outside counsel in tort litigation, using examples from actual case experience, in our memorandum on tort litigation attached to our September 30, 1999, letter. These materials are all included in the subcommittee's attachments provided to the commission. See also our response to recommendation 8.

In 1997, the Division of Legislative Audit performed an audit of the department's contract management. The audit found in most cases the contracts were properly managed, and where the auditors found problems, they attributed them to a lack of training and clear directives for project managers. The exceptions resulted in an audit recommendation for contract management guidelines. The department developed a manual on contract management, which has been provided to the Commission on Privatization and the Delivery of Government Services by the subcommittee as an appendix to the subcommittee's report.

Based on other states' experience, we conservatively estimate the cost of contracting with a legal auditing firm for all legal services contracts would have been at least \$150,000 in FY 1999. A pilot project for torts cases would have cost about \$20,000. The department is not funded for this additional cost.

Recommendation 7. The Subcommittee recommends that the Legislature direct the Division of Legislative Audit to determine the full and fair value per billable hour of legal services rendered by the Department of Law and ensure that the rates are consistently applied in the budgeting process pertaining to the Department. Following completion of this task, the Subcommittee recommends to the Legislature that it examine whether legal services rendered by the Department should be billed at different rates for different services. The Subcommittee is generally of the view that the Department's costs of service should determine between routine and complicated services.

The Department of Law implemented full timekeeping and billing for the Civil Division in the final quarter of FY 1996. The decision to implement full timekeeping grew out of concerns expressed in a legislative audit that resulted in a monetary assessment imposed on the department by the federal government. The findings from that audit did not arise because the department had unfairly or inconsistently allocated costs to federal programs, but because, at the time, the department could not show that it had not.

Since the implementation of full timekeeping for the Civil Division, annual reviews of the division's rates are performed by a number of entities:

- The Division of Legislative Audit's annual statewide single audit examines the rate-setting methodology for financial soundness and consistency. Legislative Audit's annual audit report for the fiscal year ending June 30, 1998, did not include any findings regarding the Department of Law's timekeeping and billing rate, or any other aspect of the department's business, for that matter.

- The state also contracts with a consulting firm to assist the department in the development of its federally approved cost allocation plan, which includes approval of the department's timekeeping and billing methodology. This review assures that the methodology is consistent from year to year and is in compliance with OMB Circular A-87 governing what costs government entities may allocate to federal programs. Again, no findings, exceptions, or disallowed costs have resulted from this review.
- In addition, the Office of the Governor's Office of Management and Budget conducts a review of the rates. The Department of Law's ability to implement proposed rates in any fiscal year is subject to this approval process.
- The department is also required to submit the annual timekeeping and billing rates for similar scrutiny by the heads of the administrative divisions of each department. Questions arising from this review could result in a revision to the rates.

All of these governing bodies have accepted the rates and methodology proposed by the Department of Law. As a consequence of these reviews and audits, the department's rates receive fully adequate review to ensure consistency, accuracy, and fairness.

The department has no incentive to understate costs in the development of its rates. Such an understatement would lead to a shortfall situation tantamount to insolvency. In such a situation, the department would be forced to seek supplemental funding from the legislature in order to make up the shortfall. While an error in the rate calculation or some set of unforeseen circumstances may result in a need for supplemental funding, the department does not approach setting its rates by intentionally excluding some of its costs. Such practices would be at the very least unethical, and perhaps even illegal.

The Department of Law's "clean bill of health" with respect to its timekeeping and billing rates is in part due to its simple and straightforward methodology and the consistency with which it is applied from year to year. In the world of rate setting, once an acceptable rate-setting methodology has been established, it is inadvisable to seek a new methodology without the most compelling circumstances, *i.e.*, some fundamental shift in the underlying business process makes the previous methodology unacceptable or unworkable. Such a shift has not occurred in the Department of Law.

It may seem that different timekeeping rates should be applied depending on the complexity of the work, however adopting such a change would be unwise for the following reasons:

- The current rate methodology is highly objective. In its simplest terms, costs are divided by billable hours to produce a rate. What the subcommittee seems to imply is that an objective process be replaced with a subjective one. That suggestion appears to conflict with other subcommittee recommendations that seek to diminish subjectivity in the contract award and other discretionary arenas.
- A more subjectively applied rate is likely to expose the department to the risk that a monetary assessment or loss of federal funds may result - bearing in mind that it is not necessary for an audit to find that an agency inappropriately applied costs, only that it could not prove otherwise.
- No savings can occur from a multiple rate structure. Whatever rate structure is used, it must recover all costs or the department will be in budget shortfall at the end of the fiscal year.
- Implementation of a more complex rate application system will result in an administrative burden that will in turn result in higher administrative costs. This outcome by itself is a compelling reason to continue with the simple approach developed by the department.

Finally, the subcommittee expressed concern over a discrepancy between the rates charged the department's client agencies and the rates claimed in motions for the recovery of legal fees and costs before the courts. The department requests reimbursement of attorneys' fees based on the prevailing market rate, not based on its interagency billing rate. The attached Memorandum of Law, which is in the form most commonly used by the department's attorneys when requesting attorneys' fees and costs, describes the legal basis for this claim. The superior court in that case awarded the requested market rate, as have the trial courts in numerous other cases.

Recommendation 8. The Subcommittee recommends that the Legislature develop and enact measures to prohibit the linkage between contributions to political campaigns and selection to perform legal services on behalf of the state. The American Bar Association has engaged in several studies on this matter, which it refers to as the "pay to play" issue, and has drafted specific policies to address the matter. The Subcommittee believes that the centralized nature of the delivery of legal services for the State of Alaska justifies additional controls in this area.

At the outset the department states again, as we did in our testimony to the subcommittee, that no "pay-to-play" system exists in the Department of Law for the retention of outside counsel. There simply is no pay-to-play problem that needs to be

addressed. Moreover, Alaska's State Procurement Code, the Executive Branch Ethics Act, and the campaign finance laws, together provide very adequate controls and standards to prevent against any such system.

We have reviewed the American Bar Association's pay-to-play materials. These materials relate to the issue of lawyers making political contributions or soliciting political contributions for the purpose of obtaining or being considered for a government legal engagement. We note that the ABA House of Delegates voted, at its meeting in August 1999, to *not* adopt the model rule of professional conduct on pay-to-play that was proposed by the ABA committee.

As discussed in the background report by the ABA committee that considered the pay-to-play issue, while lawyers and their political contributions are an important component in pay-to-play, lawyers are not the most important players. Rather, the issue is primarily one of campaign finance practices and laws, and uniform procurement procedures. (See pages 2-3 of ABA committee background report included in the attachments to the Law Subcommittee's report.)

The ABA committee background report states that consistent and diligent enforcement of statutory provisions governing fair campaign finance practices and the conduct of public officials is the "most fundamental method" of addressing the issue of pay-to-play. In this regard, it should be noted that the Alaska Legislature enacted a comprehensive campaign finance reform law in 1996. The Alaska Public Offices Commission enforces this law. The department would of course participate in any legislative process to consider further campaign finance reform measures. At this time, however, we do not see a justification or need to specifically single out lawyers for special treatment in the campaign finance laws. Also, the conduct of public officials in the executive branch is regulated in detail in the Executive Branch Ethics Act, AS 39.52.

The ABA committee background report notes that the second method of protecting against a pay-to-play system is the use of uniform procurement procedures for placement of legal engagements by government entities. We previously addressed for the subcommittee the procurement procedures used by the department when outside counsel is retained by the department. The entire procurement and contracting process is directed and supervised by the department's contracting officer within the Administrative Services Division. The department adheres to the requirements spelled out in the State Procurement Code (AS 36.30) and the corresponding administrative regulations (2 AAC 12) whenever we secure the services of outside counsel. We set out the procurement procedures and step-by-step process used by the department in our letter to Mr. Mark Johnson dated August 31, 1999, a copy of which is included in the subcommittee's

attachments, and we provided testimony to the subcommittee on our procurement procedures as well.

As mentioned above, the ABA House of Delegates recently voted down the pay-to-play rule proposal. Opponents of the measure contended that a professional conduct rule of this nature would be unconstitutional under the First Amendment and an inappropriate infringement on the right of lawyers to participate in the electoral process. According to press reports on the debate at the annual meeting, a past chair of the ABA ethics committee pointed out there is need for campaign finance reform, "but not reform disguised as an ethics rule, only for lawyers."

See, www.abanet.org/journal/oct99/10ahouse.html

Recommendation 9. The Subcommittee recommends that the Legislature develop additional tools to review and provide advice to the Department for litigation where the potential for significant financial liability exists. As presently arranged, the roles of client and attorney are blurred, with the Department being charged with conducting litigation and being viewed by agencies as having superior knowledge as to the goals of litigation. Additional oversight is needed to protect and enhance the wishes of the ultimate client.

The attorney general serves as the chief legal officer for the state executive branch. AS 44.23.020. As such, the attorney general plays a major role in articulating the powers and duties of the agencies of state government through appropriate legal interpretation. The attorney general is by law responsible for the conduct of litigation in which the state is a party. The attorney general is responsible for ensuring consistency and uniformity in the state's legal policy.

The attorney general does in fact have more knowledge with respect to the goals of litigation and matters of legal interpretation than the agencies he or she represents. Indeed, the provision of legal expertise, advice, and representation to state agencies and officers is the very function of an attorney general. It is through this advice and representation that the attorney general, in daily consultation with state agencies and officers, is able to establish consistency and uniformity in the state's legal policy. These concepts of the role of the attorney general are certainly not unique to Alaska. See, State Attorneys General, Powers and Responsibilities, National Association of Attorneys General, Second Printing 1998.

There are clearly differences between government attorneys and their private counterparts, and this is true whether the government be federal, state, or local. Attorneys general, while representing the state agencies, also are (and should be)

concerned with the public interest in any given situation. This is different from the private attorney, who generally represents only the interests of a particular individual client. This difference does not mean that with the attorney general the roles of client and attorney are "blurred" or that the wishes of the client are somehow not being "protected." What it means is that in advising and consulting with the client agency or officer as to legal interpretations, or a possible step in litigation, or a proposal to resolve an issue in dispute, or other matters, the attorney general in providing advice will carefully consider the law, the interests and position of the agency, and the public interest. It is a delicate and important blend, and a part of the responsibility of a government lawyer. By the same token, the agencies are also concerned with the public interest in carrying out their various functions, so the blend here is natural and generally not problematic.

As the department explained to the subcommittee in our written responses to questions and in testimony, cases that we are handling in which there is a potential for significant financial liability undergo close scrutiny through reviews by settlement committees and case status meetings at appropriate supervisory levels. For instance, often a settlement committee will be convened at the request of the assistant attorney general handling the matter even when a particular settlement proposal is not on the table - the purpose instead being to lay out and discuss case status and strategy in anticipation of further developments, be they motion practice, court rulings, discovery proceedings, or settlement negotiations. Reports on those sessions are prepared for the attorney general to seek direction or to advise him on the status of the case and the strategy being pursued, as appropriate. And, we are fortunate to be able to draw upon legal expertise in a variety of substantive areas in the department in assembling committees with the necessary experience to effectively and critically consider any particular matter.

We understand from the subcommittee's written discussion on recommendation 9 that the subcommittee did not have time to fully develop suggestions on this recommendation. However, one idea mentioned in the report is to establish a "consultation process through the Division of Legislative Audit" presumably for some sort of oversight of the attorney general's conduct of litigation. We do not think such oversight is necessary or appropriate for the following reasons:

- First, as discussed above, supervisory work within the department of the representation provided to state agencies is professional, competent, ongoing, and provided at several levels up to and including the attorney general.
- Second, we believe such oversight would, depending on the specifics of the consultation idea, violate the separation of powers. The governor is constitutionally charged with the responsibility of executing and enforcing the laws. Alaska Const.,

Art. III, Sec. 16. The attorney general, appointed by the governor, is the state officer charged with implementing the executive branch's policies with respect to execution of the law. AS 44.23.020. It is the attorney general, in consultation with the state agencies, who decides how to proceed in litigation, not the legislative branch.

- Third, the legislative branch of government already has an important tool that may be used to review action of the attorney general in cases in which financial liability to the state is determined - the power of appropriation. Let's say the attorney general settles an employment case and the state is obligated under the settlement to pay the plaintiff \$100,000 in damages. The settlement would be entered subject to appropriation by the legislature, and the matter would be presented to the legislature for its consideration during the next session. If the funds are not appropriated, the case would go back into litigation mode for some other resolution, whether by court decision or new settlement amount (which would again be presented to the legislature). Our letter to Mr. Mark Johnson dated September 30, 1999, included in the attachments to the subcommittee's report, sets out this process in detail. *See also*, AS 09.50.270.

Recommendation 10. The Subcommittee recommends that the Legislature review and consider changes to statutes setting forth the powers and duties of head of the Department, the Attorney General. The Attorney General is not specifically provided for in the Alaska Constitution, but rather is one of the heads of executive departments. Present statutes provide, and the Supreme Court has thus held that the Attorney General may exercise the powers of an attorney general at common law. The Subcommittee believes that such an arrangement may be incompatible with the concept of limited, constitutional government and may be in need of amendment.

The department strongly questions the wisdom of eliminating or limiting the common law powers of the attorney general in Alaska. The common law powers of the office of attorney general have evolved over literally hundreds of years of Anglo-American law and are entirely appropriate to the fulfillment of an attorney general's responsibilities.

The common law is the fountainhead of the Attorney General's authority to represent, defend, and enforce the legal interests of state government and the public. Notwithstanding relatively recent constitutional and statutory enumerations of Attorney General powers, traditionally recognized prerogatives of the state's chief legal officer continue to shape and expand the role of the modern

Attorney General. Contemporary experience convincingly demonstrates that the common law is a vital source of power for Attorneys General who seek to protect public interests in recently developing areas of the law.

State Attorneys General, Powers and Responsibilities, National Association of Attorneys General, Second Edition 1998, page 27.

An examination of the common law powers of the attorney general, as articulated by the Alaska Supreme Court as well as courts all over the United States, demonstrates that these powers are complementary and incidental to the functions of the office of attorney general, and are not inconsistent in the least with the duties and powers of the attorney general as set out in the Alaska statutes, AS 44.23.020. *See also*, AS 09.50.300.

The National Association of Attorneys General, in its comprehensive review of the case law on the common law powers of attorneys general, describes the common law roles of the attorney general as follows:

- The attorney general has the duty to appear for and to defend the state and its agencies.
- The attorney general has the right to control litigation and appeals.
- The attorney general has the right to intervene in legal proceedings on behalf of the public interest.
- The attorney general has the power to determine the state's legal policy.
- The attorney general has the authority to prosecute criminal activity, in the absence of express legislative restriction.

State Attorneys General, Powers and Responsibilities, at pages 37-38.

The common law functions of the attorney general were recognized by the Alaska Supreme Court in *Public Defender Agency v. Superior Ct., Third Judicial Dist.*, 534 P.2d 947 (Alaska 1975). In *Public Defender*, our court held that it would violate the separation of powers for the judicial branch to order the attorney general to prosecute an action for civil contempt for nonsupport; while the attorney general had the power to prosecute such an action, the court did not have the power to control the exercise of the attorney general's discretion as to whether he will take action in particular cases. "Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. The discretionary control over

the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases." 534 P. 2d at 950 (citations omitted).

The attorney general's common law powers, as well as statutory powers, are not incompatible with the Alaska Constitution. The subcommittee is correct that the Alaska attorney general is not a constitutional officer. The attorney general is appointed by the governor and serves as the chief legal officer for the governor and the executive branch of state government. Alaska Constitutional Convention Proceedings 2193-2201; 2215-23.³

However, this does not mean that the Alaska attorney general does not properly have common law powers - as discussed above, our Supreme Court has held that under current Alaska law the attorney general does have such powers, consistent with the Alaska Constitution. In other words, whether the duties and responsibilities of the attorney general are spelled out in constitution or in statute or both, the long-recognized common law powers of the attorney general still apply unless specifically limited by law. "In most states, the modern-day office retains common law authority, as well as the powers and duties that specifically are assigned by constitutions and statutes." State Attorneys General, Powers and Responsibilities, at page 38.

Both the common law powers and the statutory authority of the Alaska attorney general are important in ensuring that the public interest can be protected as new laws are enacted, new law enforcement issues arise, and technology advances. The removal of the attorney general's common law powers could have unintended consequences. We could easily find ourselves spending our limited legal resources litigating whether or not the attorney general had the authority to bring some particular action. For example, consider the participation by the Alaska attorney general in the 50-state action against the tobacco industry brought on a variety of new consumer fraud, antitrust, and Medicaid reimbursement theories. Do we want the attorney general spending state resources litigating his authority to bring such a case because the common law powers of the office were removed? As you know, this case brought in hundreds of millions of dollars for the State of Alaska.

Recommendation 10 again discusses the authority of the attorney general to settle litigation on behalf of the state. For purposes of this response, we note that we

³ We would note that an expansion of the role of the attorney general from legal advisor of the governor and other state officers to legal advisor of the "state, including the" governor and other state officers, as suggested by the subcommittee in its proposal concerning AS 44.23.020, would be inconsistent with the intent of the framers of the Alaska Constitution.

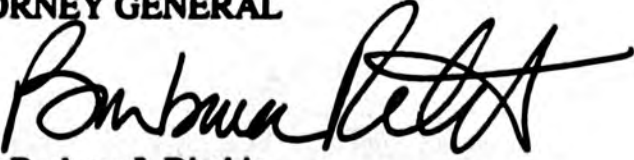
disagree with many of the subcommittee's characterizations of the opinion of former Attorney General Charlie Cole on the issue of the governor's and the attorney general's settlement authority under Alaska law. 1991 Inf. Op. Att'y Gen. (April 2). Be that as it may, we believe it would be disastrous for the state to allow its approach to litigation and settlements to be fragmented from agency to agency as suggested by the subcommittee.

The subcommittee would apparently have one believe the attorney general goes out on his own, without the benefit of consultation and involvement of the client agency, to settle cases, without taking into account the state's limited resources or the needs and desires of the agency. Nothing could be further from the truth. The relationship between the attorney general and our clients is one of constant communication, sharing of information and viewpoints, discussion and consultation, and ultimately decision on what course of action is in the best interests of the State of Alaska. And the best interests of the state and the zealous guarding of its limited resources are always of paramount concern.

In conclusion, thank you for this opportunity to provide the Department of Law's response to the subcommittee's report and we appreciate your consideration of our comments. Please let us know if you have questions or would like further information.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL


By: Barbara J. Ritchie
Deputy Attorney General - Civil


By: Cynthia M. Cooper
Deputy Attorney General - Criminal

Attachments

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

GREGORY A. SHAPLEY,

Plaintiff,

DAVID E. JOHNSON, and STATE OF
ALASKA, DEPARTMENT OF
HEALTH & SOCIAL SERVICES,
DIVISION OF FAMILY & YOUTH
SERVICES,

Defendants.

Filed in the Trial Courts
STATE OF ALASKA, FIRST DISTRICT
KETCHIKAN

DEC 21 1998

Clerk of the Trial Courts
By S M/K Deputy

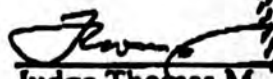
Case no. 1KE-97-117 CI

ORDER GRANTING ATTORNEY'S FEES

THE COURT having considered the State of Alaska's Motion for Attorney's Fees, supporting documents, and any response thereto, and being fully advised in the premises,

HEREBY ORDERS that the motion is GRANTED. The court finds that the defendant State of Alaska, Department of Health & Social Services, Division of Family & Youth Services (the state) is a prevailing party in this case, and the state's attorney's and paralegal fees of \$12,443.40 are reasonable and were necessarily incurred. Under Civil Rule 82(b), the state shall be awarded \$ 2488.68 in fees from plaintiff Gregory A. Shapley.

DATED: 12/21/98


Judge Thomas M. J. Baker


This is to certify that on September 30, 1998, a copy of the foregoing was mailed to the attorney or party of record:
Gregory A. Shapley, Pro Se
PO Box 85
Craig, AK 99921

Michael Lesameier, Esq.
Lesameier & Winters
124 W. 5th Street
Juneau, AK 99801

(Attorney for Dr. Johnson)

Pamela Credo-Hayes

CERTIFICATION

Copies Distributed

Date 12-21-98

To G. Shapley

M. Lesameier

S. M/K

By S M/K

DATED: September 30, 1998

DEC 21 1998

ATTORNEY GENERAL, STATE OF ALASKA
DIAMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3800

pages

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

GREGORY A. SHAPLEY,
Plaintiff,

vs.

DAVID E. JOHNSON, M.D. and
STATE OF ALASKA, DEPT. OF
HEALTH AND SOCIAL SERVICES,
DIVISION OF FAMILY AND YOUTH
SERVICES,
Defendants.

Filed in the Trial Courts
STATE OF ALASKA, FIRST DISTRICT
KETCHIKAN

SEP 1 4 1998

Clerk of the Trial Courts
By _____ Deputy

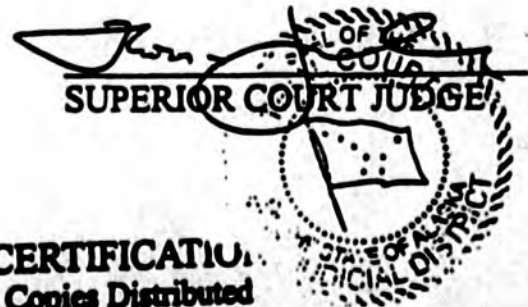
CASE NO. 1KE-97-117 CI

FINAL JUDGMENT

This case, having been dismissed with prejudice by granting summary judgment motion in favor of David E. Johnson, on August 10, 1998 and the court having examined the documents on file herein and otherwise being fully advised;

IT IS HEREBY ORDERED that final judgment is entered on the summary judgment motion in favor of David E. Johnson against Gregory A. Shapley. David E. Johnson shall receive after proper application an award of costs in the amount of \$1544⁰⁴ and attorney fees in the amount of \$4576⁰⁰, plus interest accruing on said amounts at 10.5% per annum from August 10, 1998 until paid. ^{12/21/98}

DATED this 11th day of Sept, 1998 at Ketchikan, Alaska.



Approved/Disapproved as to form:

Gregory A. Shapley, Pro Se

CERTIFICATION

Copies Distributed

Date 10-21-98

To G. Shapley

M. Lessmeier

S. Johnson

By CW/1

Final Judgment

LESSMEIER & WINTERS
LAWYERS - LLC
124 WEST 5TH STREET
JUNEAU, ALASKA 99801
TELEPHONE (907) 586-5912
FACSIMILE (907) 463-3020

AUG 17 1998

Approved as to form:


Michael L. Lessmeier, Attorney for Defendant
ABA #7910082

The undersigned hereby certifies that on
the ~~17th~~ 21st August, 1998, a copy of the
foregoing document was mailed to:

Susan D. Cox, Chief Asst. A.G.
Attorney General's Office
P.O. Box 110300
Juneau, AK 99811-0300

Gregory A. Shapley, Pro Se
P.O. Box 85
Craig, AK 99921


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LESSMEIER & WINTERS
LAWYERS - LLC
124 WEST 5TH STREET
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TELEPHONE (907) 586-5912
FACSIMILE (907) 463-3020

CERTIFICATION
Copies Distributed

Date 9.21.98

By Gregory Shapley
Michael Lessmeier
Susan Cox

By 2

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

GREGORY A. SHAPLEY,

Plaintiff,

DAVID E. JOHNSON, and STATE OF
ALASKA, DEPARTMENT OF
HEALTH & SOCIAL SERVICES,
DIVISION OF FAMILY & YOUTH
SERVICES,

Defendants.

Case no. 1KE-97-117 CI

STATE OF ALASKA'S MOTION FOR AWARD OF ATTORNEY'S FEES

Pursuant to Rule 82 of the Alaska Rules of Civil Procedure, the defendant State of Alaska, Department of Health & Social Services, Division of Family & Youth Services (the state), as prevailing party in the above captioned action, hereby moves for an award of attorney's and paralegal fees. The state requests an award of 20 percent of its fees, for a total award of \$2,488.68. Civ. R. 82(b)(2).

This motion is supported by the accompanying memorandum of law, affidavit of counsel, and the attached exhibit.

DATED: 9/30/98

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Susan D. Cox
Susan D. Cox
Assistant Attorney General

This is to certify that on September 30, 1998, a copy of the foregoing was mailed to the attorney or party of record: Gregory A. Shapley, Pro Se, PO Box 85, Craig, AK 99921; Michael Lessmeier, Esq., Lessmeier & Winters, 124 W. 5th Street, Juneau, AK 99801, (Attorney for Dr. Johnson)

Pamla Credo-Hayes
Pamla Credo-Hayes

DATED: September 30, 1998

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

GREGORY A. SHAPLEY,

Plaintiff,

DAVID E. JOHNSON, and STATE OF
ALASKA, DEPARTMENT OF
HEALTH & SOCIAL SERVICES,
DIVISION OF FAMILY & YOUTH
SERVICES,

Defendants.

Case no. 1KE-97-117 CI

**MEMORANDUM OF LAW IN SUPPORT OF STATE OF ALASKA'S
MOTION FOR AWARD OF ATTORNEY'S FEES**

On August 10, 1998, this court granted defendant State of Alaska's Motion for Summary Judgment, dismissing the above captioned case against the State of Alaska, Department of Health and Social Services, Division of Family and Youth Services (the state) with prejudice. The state is therefore the prevailing party in this action and, as such, moves for an award of attorney's fees pursuant to Civil Rule 82.¹

**I. THE STATE OF ALASKA IS ENTITLED TO AN AWARD OF 20 PERCENT
OF NECESSARILY INCURRED ATTORNEY FEES**

Alaska Civil Rule 82(b)(2) provides that defendants who are prevailing parties are automatically entitled to an award of 20 percent of their actual reasonable fees for judgment without trial, 30 percent with a trial.

In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case . . . resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

The purpose of Civil Rule 82 in providing for the allowance of attorney's fees is to partially compensate a prevailing party for the expense of litigation. City of Valdez v. Valdez Development Co., 523 P.2d 177, 184 (Alaska 1974).

¹ Final Judgment in favor of the state was distributed by the clerk on September 21, 1998.

1
2 Although the Attorney General, as counsel for the state, bills client agencies
3 at a rate far below the market rate of attorneys in private practice, it is well settled that when
4 the state is the prevailing party, it may request reimbursement of attorney's fees at a
5 reasonable market rate. The Attorney General is not limited to recovering fees based on the
6 Department of Law's inter-agency billing rate.² There is clear authority for awarding
7 attorney's fees under Civil Rule 82 based on market rates instead of the department's
8 overhead rate. Atlantic Richfield Co. v. State, 723 P.2d 1249, 1251-52 (Alaska 1996)
9 (Alaska Supreme Court ruled it appropriate to use average of hourly billing rates charged
10 by private attorneys to calculate fee award for legal work performed by assistant attorneys
11 general); Amfac Hotels v. State. Dept. of Transportation, 659 P.2d 1189, 1194 (Alaska
12 1983) (approved fee award based on "the average private billing rate" -- \$75 per hour, 14
13 years ago); Morrison-Knudsen Co., Inc. v. State, 519 P.2d 834, 844 (Alaska 1974) (Alaska
14 Supreme Court specifically rejected argument that state could not recover attorney's fees
15 at a rate higher than hourly salary of highest paid assistant attorney general who worked on
16 the case).

17 The Attorney General has worked to identify a uniform reasonable market
18 rate upon which to base attorney fee requests that will more fairly reimburse the State of
19 Alaska for its fees as a prevailing party. See Affidavit of Counsel. This was necessary
20 because the department's historic rate formulae and the newer universal blended rate
21 formula all produce figures far below the market rate and value of the services rendered,
22 and because Civil Rule 82 provides for only 20 percent reimbursement of actual fees where
23 there is no trial or money judgment and 30 percent where the case goes to trial. Based on
24 the recommendations of a working group tasked with assessing the Department of Law's
25 policy on attorney fee requests, the Attorney General established in 1997 a policy to request
26 \$150 per hour as the market rate for journey level attorneys (Attorneys III and above). Id.
This decision was based on the working group's review of attorney billing rates statewide,
a similar policy in the U.S. Attorney's Office, and the fact that the average rate (typically
reflecting a discount for the state) that the Department pays experienced private

² The Department of Law has formulated a blended attorney "overhead rate" for any
assistant attorney general (regardless of years of practice), which was \$94.72 per hour for Fiscal
Year 1998. This is a uniform rate used to bill client agencies for legal services, regardless of the
experience level or salary range of the individual assistant attorney general who actually handled
the legal matter.

1 practitioners to provide legal services to the state under contract exceeds \$150 per hour.
2 Id. The rate of \$125 per hour was approved for less experienced attorneys. Id.

3 In the case at bar, the court granted all defendants summary judgment,
4 dismissing the case with prejudice. In pursuing its defense, the state's attorney's fees,
5 calculated using the market rates described above, amount to \$8,325.00. Affid. Of Counsel.
6 A copy of the billing print-out detailing the work done and time spent relative to this case
7 is attached as Exhibit A. The state's counsel of record in this case, Susan Cox, holds an
8 Attorney VI position, and has been practicing law over 15 years. She consulted as needed
9 with Assistant Attorney General Shannon O'Fallon, who handled the guardianship
10 proceeding that was at issue in this case; her hours are also reflected in Exhibit A. The
11 attorney hours expended in defending this action total 56.1 hours: 52.5 for AAG Cox and
12 3.6 for AAG O'Fallon. The billing print-out reflects an attorney hourly billing rate of \$150
13 per hour for AAG Cox, and \$125 for AAG O'Fallon. The totals are 52.5 hours at
14 \$150/hour or \$7,875.00, and 3.6 hours at \$125/hour, or \$450.00, for the combined total of
15 \$8,325.00.

16 Also included in Exhibit A are the hours billed by paralegal assistants who
17 worked on this case. The paralegals performed tasks delegated to them by AAG Cox,
18 which would customarily be done by an attorney. The paralegals spent 57.2 hours
19 performing legal work necessary to this case, amounting to a cost of \$4,118.40, at the
20 overhead billing (non-market) rate of \$72 per hour.

21 Under Civil Rule 82(b)(2), prevailing defendants who do not recover a money
22 judgment are entitled to 20 percent of their reasonable attorney's fees, including fees for
23 legal work delegated to a paralegal. The State of Alaska prevailed in this case without trial.
24 Therefore, under Civil Rule 82 the state is entitled to recover 20 percent of its fees. As
25 indicated in Exhibit A, the state's legal (attorney and paralegal) fees incurred in this action,
26 at appropriate hourly rates, total \$12,443.40. The state is entitled to an award of 20 percent
of that amount, or \$2,488.68, in fees.

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ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

1
2 **II. CONCLUSION**

3 For the reasons set out above, the State of Alaska respectfully requests that
4 this court award it attorney's fees in the amount of \$2,488.68.

5 DATED: 9/30/98

6 **BRUCE M. BOTELHO**
7 **ATTORNEY GENERAL**

8 By: Susan D. Cox
9 Susan D. Cox
10 Assistant Attorney General
Alaska Bar No. 8611136

11 This is to certify that on September 30, 1998, a copy of the foregoing was mailed to the attorney or party of record: Gregory A.
12 Shapley, Pro Se, PO Box 85, Craig, AK 99921; Michael Lessmeier, Esq., Lessmeire & Winters, 124 W. 5th Street, Juneau, AK
13 99801 (Attorney for Dr. Johnson)

14 Pamla Credo-Hayes
15 Pamla Credo-Hayes

16 DATED: September 30, 1998

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**MEMORANDUM OF LAW IN SUPPORT
OF STATE OF ALASKA'S MOTION FOR
AWARD OF ATTORNEY'S FEES**

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

GREGORY A. SHAPLEY,

Plaintiff,

DAVID E. JOHNSON, and STATE OF
ALASKA, DEPARTMENT OF
HEALTH & SOCIAL SERVICES,
DIVISION OF FAMILY & YOUTH
SERVICES,

Defendants.

Case no. 1KE-97-117 CI

AFFIDAVIT OF COUNSEL

STATE OF ALASKA

FIRST JUDICIAL DISTRICT

ss.

I, Susan D. Cox, having been duly sworn, hereby state as follows:

1. I am an assistant attorney general employed by the Department of Law, and attorney of record in the above captioned action on behalf of the State of Alaska, Department of Health and Social Services, Division of Family and Youth Services (the state). I submit this affidavit in support of the state's motion, as prevailing party, for attorney's fees.

2. Legal fees (representing attorney and paralegal assistant time) in the amount of \$12,443.40 were incurred on behalf of the state through August 1998 in defense of this case. This amount represents a total of 56.1 hours of attorney time, and 57.20 hours of paralegal time, broken down as follows:

Susan D. Cox	52.5 hours @	\$150/hr = \$ 7875.00
Shannon O'Fallon	3.6 hours @	125/hr = \$ 450.00
Paralegals	<u>57.2 hours</u> @	72/hr = \$ <u>4118.40</u>
TOTAL	113.3 hours	\$12,443.40

Exhibit A contains an itemized listing of the dates, descriptions of work accomplished and by whom, and the time expended. I have reviewed this report for accuracy and applicability.

AFFIDAVIT OF COUNSEL

1

1
2 3. I have determined both that the information presented in Exhibit A is
3 correct, and that the time listed was necessarily spent in defending this matter. I do not
4 believe that any of the work performed in this case was unnecessary or duplicative. I do
5 believe the total amount of time and money expended on behalf of the state is reasonable.

6 4. The attorney time set forth above was billed, for the purposes of this
7 motion, at market rates approved by the Attorney General. Although the state bills client
8 agencies at a rate far below the market rate of attorneys in private practice (the uniform
9 overhead billing rate was \$94.72 per hour in fiscal year 1998), the Attorney General
10 established in 1997 a policy which would more fairly reimburse the state for its fees as a
11 prevailing party. To that end the Attorney General approved the hourly rate of \$150 as the
12 market rate for journey level attorneys (Attorneys III and above). This rate was based on
13 the recommendations of a working group tasked with assessing the Department of Law's
14 policy on attorney fee requests. After reviewing attorney billing rates statewide, the policy
15 in place at the U.S. Attorney's Office, and the fees paid by the state to experienced private
16 practitioners who provide legal services to the state, the working group determined that
17 \$150 per hour was a reasonable rate which would more fairly reimburse the state for its
18 legal services. The rate of \$125 per hour was approved for less experienced attorneys.

19 5. While the purpose of the department's uniform overhead billing rate
20 is to track and recover the costs of legal services provided to the state's client agencies,
21 there is legal authority for awarding attorney's fees under Civil Rule 82 based on market
22 rates rather than the department's overhead billing rate. Atlantic Richfield Co. v. State, 723
23 P.2d 1249, 1251-52 (Alaska 1996); Amfac Hotels v. State, Dept. of Transportation, 659
24 P.2d 1189, 1194 (Alaska 1983); Morrison-Knudsen Co., Inc. v. State, 519 P.2d 834, 844
25 (Alaska 1974).

26 6. I was responsible for all facets of the defense of this case. I prepared
all of the written discovery on behalf of the state. I also consulted as needed with Assistant
Attorney General(AAG) Shannon O'Fallon, who had personally handled the underlying
guardianship matter that was at issue in this case.

7. I have been practicing law in Juneau for over 15 years and with the
Attorney General's office for more than 14 years; I am an Attorney VI. I have been aware
of rates charged by private practitioners over the years through state procurements for legal
services, attorney fee requests in cases, and personal conversations with private attorneys.
In my professional judgment, a request for reimbursement for my time spent on this case
at a rate of \$150 per hour is reasonable.

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

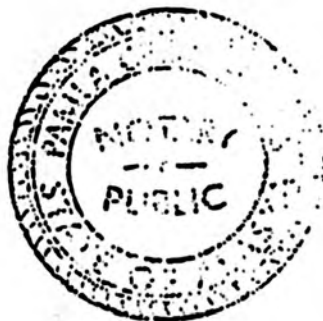
1
2 8. The paralegal time is billed at the actual, non-market rate of \$72 per
3 hour. The paralegals worked on discovery, coordinating witness lists, and performing other
4 legal tasks that I delegated to them and that would customarily be done by an attorney.

5 Further your affiant sayeth naught.

6 DATED: 9/30/98

7
8 Susan D. Cox
9 Susan D. Cox

10 SUBSCRIBED AND SWORN to before me this 30th day of September 1998.



27 Don E. Cook-Hedges
28 Notary for the State of Alaska
My Commission expires: 2000

COLLECTIONS FUNCTIONS OF THE DEPARTMENT OF LAW

Prepared by Joan Kasson

The Commission on Privatization and the Delivery of Government Services requested additional information on the collection functions performed by the Department of Law. The specific areas identified were agricultural revolving loan collections, student loan collections, and the collection of criminal fines for the court system. The first two types of collections are handled by the Commercial section. The Collections unit in the Collections and Support section handles the collection of criminal fines.

Commercial section:

The Alaska Commission on Post-secondary Education (ACPE) pays for the legal services of approximately two-thirds of an attorney position, and a half-time paraprofessional. The ACPE has unusual administrative powers to collect defaulted Alaska student loans. Those powers provide for an improved administrative process for denial of renewals of occupational licenses, an improved administrative process for permanent fund dividend seizures, and administrative garnishment of wages. The administrative processes permit in-state collections without the need to seek judgments from the court. Computer notices and computer matches are instead used to handle these collections.

The Department of Law primarily advises the commission on procedures and answers legal questions. In addition, the last "warning" letter before a loan goes into default is sent out on Department of Law letterhead in the belief more attention and credence will be given to the letter by borrowers. As a result of this warning letter, the department now fields many more phone calls from borrowers.

The subcommittee on the Department of Natural Resources stated that the collection of ARLF bad loans and court judgments was "almost nonexistent." This is incorrect. The Agricultural Revolving Loan Fund (ARLF) pays for the legal services of one full-time attorney. Collection activities comprise an estimated one-third of that attorney's time. In addition, contract outside counsel are retained, if necessary, when debtors reside outside of Alaska.

Over the last two years, numerous collection judgments have been successfully resolved and delinquent loan payments recovered by the Department of Law without court action. In addition, the department works closely with ARLF loan officers during the application process to minimize the number of bad loans. The department also assists the ARLF and Division of Agriculture on land disposals and protection of state property obtained due to foreclosures and bankruptcies.

In addition to these two collection activities, the Commercial section provides collection-related legal services to the Division of Investments, the Alaska Housing Finance Corporation, and the Employment Security Division of the

Department of Labor. Legal services performed for these agencies and the ARLF, as well as the ACPE to some extent, include converting defaulted loans to a judgment, initiating foreclosures, representing the agencies in bankruptcies, and doing bank sweeps, permanent fund dividend executions, and judgment debtor exams, as appropriate. Assistant attorneys general also represent the agencies in administrative appeals before the Alaska courts.

Experience has shown that using in-house counsel is much more cost efficient than using outside counsel. The FY00 hourly rate for Department of Law Civil Division attorney is \$92.49. This rate includes all normal overhead items such as clerical support, data processing, lease space, etc. The overhead portion of the rate also includes any clerical overtime, faxes, copies, telecommunications costs, and postage – items that are often used as cost centers by private law firms, or at a minimum, billed at cost on top of the hourly rate.

The department typically pays from \$125 to \$200 per hour for the services of private Alaska counsel to handle cases for the state. The rates paid will usually include a discount of ten to twenty percent from any given firm's standard billing rate.

The department also has the advantage of being a statewide firm with offices in the three major cities of the state. Computer networking and faxing court filings, affidavits, and other casework saves the state money. There are also more intangible benefits to having in-house legal staff. Department of Law attorneys work with their client agencies on a daily basis providing advice and assistance to insure consistency in treatment of individuals and reduce the potential for state liability.

As government attorneys, assistant attorneys general will often have other advantages. In dealing with foreign judgments, those in other states, the attorney general's office in that state will often assist Alaska with its collection activities, making the hiring of local outside counsel unnecessary. Sheriff's departments have been known to serve debtors without charge because we are a government agency. These interstate networks developed by having in-house, agency attorneys are invaluable. And in-house attorneys are motivated to resolve cases, not by fees. Their salaries remain the same, no matter how many hours they bill.

Collections unit:

- ***Background***

The Collections unit was formed in response to legislative intent language in the FY88 budget. The legislature requested the Department of Law and the Alaska Court System establish a system for collecting unpaid court fines. The language

directed the two agencies to consider all alternatives in developing a plan, including contracting out the service.

The response of the Department of Law was: "In view of the variety of collections to be handled, and the requirement for in-depth knowledge of the many state administrative processes involved, it is the department's recommendation that these collections can be accomplished more effectively in-house. Similar Department of Law collections efforts for certain revolving loan programs, such as the Division of Investments and the Agricultural Revolving Loan Fund, have proven both cost efficient and effective."

A budget increment to establish the Collections unit was requested in the FY89 budget. The increment request described the need for a mechanized system to handle the volume of small debts the unit would handle. The unit was funded by the legislature at the requested amount, and it began with 3,600 cases. In the intervening ten years, the Collections unit caseload has grown to more than 100,000 cases.

- *Current Collections Process*

The Collections unit in the Collections and Support section collects criminal fines, cost of appointed counsel, cost of incarceration, forfeited bonds, civil judgments (including legal fees and costs for state attorneys), and OSHA and APOC penalties.

Collection sources include voluntary payments, garnishment of wages, writs of execution against other assets (bank sweeps), and, the most common source for criminal fines and related costs, permanent fund dividend attachments.

Two paralegals, two legal secretaries, and two administrative clerks staff the Collections unit. The unit is supervised by an attorney, but uses little attorney-provided legal assistance. The collection function is highly automated.

Information on over 100,000 civil and criminal judgments owed to the state is housed on the collections database, an Oracle system located in Anchorage. Judgment information from 66 state courts is provided to the Collections unit and loaded into the database. Using the database, over 20,000 inquiries a year from debtors and from the courts can easily be answered.

The collections database is used to track voluntary payments, to prepare Writs of Execution to obtain court approval to garnish PFDs, to match those who owe debts to the state with those who are eligible for the dividend, and produce a final list of PFD applicants whose dividends will be attached. After the dividend is attached, each individual's record is adjusted to show the payment to their debt, and a receipt is automatically generated. The database is also used to generate refunds, if necessary, and to report to client agencies on payments, *i.e.*, the

Public Defender on cost of appointed counsel payments, and the Department of Corrections on payments toward cost of incarceration.

The automation of the process saves a considerable amount of time and money. For example, when dividend seizure time arrives, the database is used to generate a list of debts for each of four judgment types for every one of the 66 state courts.¹ Each of the 264 lists includes a Writ of Execution for all debts on the list. Because of the number of cases involved and the time limitations inherent in seizing dividends, this process would not be possible without the database.

The table below lists the revenue generated by the Collections unit, in thousands, for each of the past three fiscal years:

	FY97	FY98	FY99
Criminal fines ²	\$790.8	\$999.1	\$1,330.0
Cost of counsel	\$661.3	\$751.8	\$888.9
Cost of incarceration	\$767.9	\$624.3	\$741.6
Civil judgments ³	\$12.0	\$18.4	\$49.2
Unposted collections ⁴	\$46.5	\$76.3	\$101.4
Total	\$2,278.5	\$2,469.9	\$3,111.1

Actual expenditures to pay for the unit were \$198.0 in FY97, \$206.7 in FY98, and \$210.3 in FY99. The average return over the three-year period was almost \$13 for each dollar spent, or average costs were just 8 percent of the total revenues generated by the unit.⁵

As the table above illustrates, criminal fines, cost of appointed counsel, and cost of incarceration represent the bulk of the funds collected by the unit. Between 80 and 90 percent of the amount collected each year comes from PFD attachments, and the remainder from voluntary payments. By definition, people

¹The four judgment types include cost of appointed counsel, cost of incarceration, fines established by statute, and forfeited bonds. Sorting by judgment type is necessary because AS 43.23.065 prioritizes the order in which a dividend may be seized, *i.e.*, child support obligations and monies owed to the IRS take precedence over other types of debt, and criminal fines have a higher priority than cost of appointed counsel.

²Includes collection of forfeited bonds.

³Includes collection of OSHA and APOC penalties.

⁴Payments received during a fiscal year, which cannot be posted to an individual's case before the year changes. For example, if a voluntary payment is made before a judgment is received from the court, the payment cannot be posted to a case. These are reconciled during subsequent years, but recorded as miscellaneous in the year payment was made to avoid duplicate income reporting.

⁵The amount collected from year to year varies depending on a number of factors including: number of judgments transferred by the court system, number and value of voluntary payments, size of the Permanent Fund Dividend, number of defendants who apply for a dividend, number of defendants who are eligible for the dividend (while incarcerated, felons are not eligible), other money owed with a higher statutory authority for dividend seizure (child support, IRS taxes).

receiving court appointed counsel are indigent. And if an individual is in jail, they are not making a large salary, and may have other higher priority obligations as well, such as child support or restitution. If they are incarcerated for a felony conviction, they will not be getting a dividend to garnish until release. This is generally not a population with a lot of funds at their disposal, and we expect PFDs will continue to be the source of most of the collection revenue generated.

In conclusion, the Department of Law does a cost-effective and efficient job of handling thousands of collections matters for the state in a wide variety of areas. We think it unlikely a private firm would be willing to handle this service for the state at less cost.

	02	22	26	30	33	44	55	66	70	75	77	88	99	Total
Jun-Human Services														
ENV CONS/HQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.00	0.50
F&G/BD OF GAME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.00	4.00
GOV/EXEC OFFICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.80	0.00	0.00	0.00	45.60	0.00	53.40
GOV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	32.90	0.00	0.00	0.00	0.00	0.00	32.90
H&SS/ALC & DRUG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	22.10	0.00	0.00	0.00	0.00	0.00	22.10
H&SS/CINA	0.00	40.90	0.00	0.00	0.00	3,473.70	0.00	51.90	0.00	0.00	0.00	0.00	0.00	3,566.50
H&SS/FAM & YOUTH SVC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	327.40	0.00	0.00	51.30	0.00	4.40	383.10
H&SS/GUARDIANSHIPS	0.00	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10
H&SS/JUV DELINQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.20	0.00	0.00	0.00	0.00	0.00	2.20
H&SS/LICENSING	0.00	56.60	0.00	0.00	0.00	0.00	0.00	2.90	0.00	0.00	35.60	0.00	0.20	95.30
H&SS/MEDICAL ASSIST	36.80	836.90	0.00	0.00	0.00	0.00	0.00	652.60	0.00	0.00	0.00	0.00	426.50	1,952.80
H&SS/MENTAL	0.20	114.10	0.00	0.00	0.00	0.00	0.00	307.10	0.00	0.00	20.10	0.00	10.50	452.00
H&SS/OTHER	2.30	24.90	0.00	0.00	0.00	0.00	0.00	143.80	0.00	0.00	2.20	0.00	1.40	174.60
H&SS/PUB ASSIST	0.30	70.40	0.00	0.00	0.00	0.00	0.00	228.70	0.00	0.00	28.00	0.00	45.10	372.50
H&SS/PUB HEALTH	0.00	40.30	0.00	0.00	0.00	0.00	0.00	201.90	0.00	0.00	0.00	0.00	82.10	324.30
HUMAN RTS COMMN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	1.50
INS TENDERS/TORT	0.00	0.00	0.00	2.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.10
LABOR/ VOC REHABILI	0.00	25.50	0.00	0.00	0.00	0.00	0.00	77.30	0.00	0.00	0.00	0.00	4.60	107.40
LABOR/ESD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LABOR/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.40	0.00	0.00	0.00	0.00	0.00	4.40
LABOR/WG&HR	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.60	0.00	0.00	0.00	0.00	0.00	0.60
LAW/EXEC ETHICS ACT	0.00	43.80	0.00	0.00	0.00	0.00	0.00	9.20	0.00	0.00	0.00	0.00	0.00	53.00
LAW/LEGIS REVIEW	0.00	0.00	0.00	0.00	0.00	0.00	0.00	25.50	0.00	0.00	0.00	0.00	0.00	25.50
LAW/NATIVE SOVEREIGN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.30
LAW/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	75.60	0.00	0.00	0.00	0.00	0.00	75.60
LEGISLATURE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.50	0.00	0.00	0.00	0.00	0.00	6.50
LT GOV/ELECTIONS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	1.50
PROF TEACHING PRACTI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.50	0.00	0.00	0.00	0.00	0.00	6.50
REV/CSED	0.00	392.10	0.00	0.00	452.50	0.00	0.00	640.60	0.00	0.00	0.00	0.00	0.00	1,485.20
REV/INCOME&EXCISE TA	0.30	53.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	54.00
REV/PERM FUND CORP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.90	0.00	0.00	0.00	0.00	0.00	0.90
Total	49.90	2,879.90	0.00	2.10	452.50	3,473.70	0.00	4,136.50	0.00	0.00	145.70	45.60	817.30	12,003.20
Jun-Legis/Regs														
CED/BK SEC & CORP	0.00	1.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.30
CED/OCC LICENSING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.10	4.10
CED/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	182.60	182.60
CFEC	0.00	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00
DNR/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	25.70	25.70
ENV CONS/HQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	503.70	503.70
F&G/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	55.70	55.70
F&G/SPORT FISH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	28.60	0.00	0.00	0.00	0.00	0.00	28.60
GOV/EXEC OFFICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	165.80	0.00	165.80
GOV/GOV COORDINATION	37.60	23.00	0.00	0.00	0.00	0.00	0.00	240.60	0.00	0.00	0.00	0.00	13.20	314.40
H&SS/MEDICAL ASSIST	0.00	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	73.10	73.60
H&SS/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	130.90	130.90
H&SS/PUB HEALTH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.10	0.00	0.00	0.00	0.00	0.00	1.10
LAW/LEGIS DRAFTING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,594.90	0.00	0.00	0.00	1,594.90
LAW/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	191.50	0.00	0.00	0.00	0.00	478.40	669.90
LAW/REGULATIONS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,758.00	2,758.00

		02	22	26	30	33	44	55	66	70	75	77	88	99	Total
Jun-Legis/Regs	PUB SAF/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43.20	43.20
	REV/INCOME&EXCISE TA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.30	4.30
	REV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	65.80	65.80
	Total	37.60	26.00	0.00	0.00	0.00	0.00	0.00	461.80	0.00	0.00	1,594.90	165.80	4,339.50	6,626.40
Jun-Natural Resources	CED/(formerly C&RA)	0.00	6.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.30
	CED/OCC LICENSING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.30
	CED/OTHER	1.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50
	CFEC	21.70	176.40	0.00	0.00	0.00	0.00	0.00	30.50	0.00	0.00	134.30	0.00	22.20	385.10
	CORRECTIONS	0.00	5.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.20
	DNR/FORESTRY	10.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.60
	DNR/LAND	9.50	175.00	0.00	0.00	0.00	0.00	0.00	0.70	0.00	0.00	0.00	0.00	0.00	185.20
	DNR/OIL & GAS	0.00	84.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	84.10
	DNR/OTHER	7.90	5.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13.30
	DNR/PIPELINE COORD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.00	0.00	0.00	0.00	0.20
	DNR/WATER	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50
	DOT/MARINE HWY SYS	0.00	1.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50
	DOT/STATEWIDE	0.00	13.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13.70
	EDUC/EXECUTIVE ADMIN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	EDUC/OTHER	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.00	0.00	0.00	0.00	0.70
	EDUC/SCHOOL FACILITI	0.00	16.60	0.00	0.00	0.00	0.00	0.00	8.00	0.00	0.00	0.00	0.00	0.00	24.60
	ENV CONS/HQ	68.30	346.30	0.00	0.00	0.00	0.00	0.00	849.40	0.00	0.00	0.00	0.00	0.00	1,688.90
	F&G/ FUND	1.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.70
	F&G/BD OF FISH	59.90	1.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	39.20	0.00	277.50	378.00
	F&G/COMML FISH	32.00	47.50	0.00	0.00	0.00	0.00	0.00	118.90	0.00	0.00	0.00	0.00	7.10	205.50
	F&G/OTHER	65.20	55.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00	122.80
	F&G/SPORT FISH	38.70	0.00	0.00	0.00	0.00	0.00	0.00	2.60	0.00	0.00	0.00	0.00	0.00	41.30
	F&G/SUBSISTENCE	0.00	2.90	0.00	0.00	0.00	0.00	0.00	46.60	0.00	0.00	0.00	0.00	0.00	49.50
	GOV/EXEC OFFICE	1.10	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	30.40	8.20	0.00	40.00
	GOV/GOV COORDINATION	200.30	64.70	0.00	0.00	0.00	0.00	0.00	749.80	0.00	0.00	0.00	0.00	248.10	1,262.90
	GOV/OTHER	39.90	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	40.90
	H&SS/ALC & DRUG	0.00	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10
	H&SS/PUB HEALTH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.80	0.00	0.00	0.00	0.00	0.00	7.80
	LABOR/OSHA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	LAW/EXEC ETHICS ACT	3.10	0.00	0.00	0.00	0.00	0.00	0.00	48.70	0.00	0.00	0.00	0.00	0.00	51.80
	LAW/LEGIS REVIEW	2.00	0.00	0.00	0.00	0.00	0.00	0.00	50.70	0.00	0.00	0.00	0.00	0.00	52.70
	LAW/NATIVE SOVEREIGN	92.00	253.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	345.50
	LAW/OTHER	236.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	236.70
LEGISLATURE	2.50	0.00	0.00	0.00	0.00	0.00	0.00	32.50	0.00	0.00	0.00	0.00	0.00	35.00	
LT GOV/ELECTIONS	0.00	5.00	0.00	0.00	0.00	0.00	0.00	2.50	0.00	0.00	0.00	0.00	0.00	7.50	
LT GOV/OTHER	1.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.80	
MILITARY AFFAIRS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.50	0.00	0.00	0.00	0.00	0.00	2.50	
RCA	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	
REV/AHFC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.00	0.00	0.00	0.00	0.00	0.00	5.00	
	Total	897.70	1,261.20	0.00	0.00	0.00	0.00	1,965.20	0.00	0.00	203.90	8.20	902.20	5,318.40	
Jun-Oil, Gas & Mining	ADMIN/GEN SVC SUPPLY	0.00	35.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	35.50
	ADMIN/LABOR RELATION	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	1.50
	ADMIN/O&G CONS COMM	0.00	33.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	33.20

		02	22	26	30	33	44	55	66	70	75	77	88	99	Total
Jun-Oil, Gas & Mining	ADMIN/RET&BENEFITS	1.50	3.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.80
	DNR/OIL & GAS	10.00	959.30	0.00	0.00	0.00	0.00	0.00	57.90	0.00	0.00	6.10	0.00	0.00	1,033.30
	DNR/PIPELINE COORD	0.50	66.40	0.00	0.00	0.00	0.00	0.00	749.60	0.00	0.00	0.00	0.00	0.00	816.50
	DOT/CENTRAL REGION	0.00	0.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40
	DOT/INTERNATL AIRPOR	4.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.70
	DOT/MARINE HWY SYS	0.00	52.30	0.00	0.00	0.00	0.00	0.00	9.00	0.00	0.00	0.00	0.00	0.00	61.30
	DOT/SOUTHEAST REGION	0.00	10.30	0.00	0.00	0.00	0.00	0.00	5.70	0.00	0.00	0.00	0.00	0.00	16.00
	EDUC/EXECUTIVE ADMIN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.00	0.00	0.00	0.00	0.00	0.00	8.00
	EDUC/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.10	0.00	0.00	0.00	0.00	0.00	6.10
	GOV/EXEC OFFICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13.20	0.00	0.00	0.00	4.10	0.00	17.30
	GOV/GOV COORDINATION	0.00	5.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.90
	GOV/OTHER	0.00	1.50	0.00	0.00	0.00	0.00	0.00	159.30	0.00	0.00	0.00	0.00	0.00	160.80
	H&SS/ALC & DRUG	0.00	10.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.10
	H&SS/CINA	0.00	10.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.50
	H&SS/FAM & YOUTH SVC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.30	0.00	0.00	0.00	0.00	0.00	1.30
	H&SS/GUARDIANSHIPS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	H&SS/MEDICAL ASSIST	0.00	141.60	0.00	0.00	0.00	0.00	0.00	3.50	0.00	0.00	0.00	0.00	0.00	145.10
	H&SS/MENTAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16.10	0.00	0.00	0.00	0.00	0.00	16.10
	H&SS/PUB HEALTH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.00	0.00	0.00	0.00	0.20
	INS TENDERS/TORT	0.00	0.00	0.00	3.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00
	LABOR/OSHA	0.00	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00
	LAW/OIL & GAS	0.00	2,835.70	0.00	0.00	0.00	0.00	0.00	8.40	0.00	0.00	0.00	0.00	0.00	2,844.10
	LAW/CONS PROT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	12.80	0.00	0.00	0.00	0.00	0.00	12.80
	LAW/EXEC ETHICS ACT	0.00	250.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	250.30
	LAW/LEGIS REVIEW	12.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	12.10
	LAW/OTHER	1.00	25.20	0.00	0.00	0.00	0.00	0.00	20.00	0.00	0.00	0.00	0.00	0.00	46.20
	PUB SAF/OTHER	0.00	2.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.50
	REV/AHFC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	70.90	0.00	0.00	0.00	0.00	0.00	70.90
	REV/INCOME&EXCISE TA	0.00	665.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	665.90
	REV/OIL&GAS AUDIT	0.00	70.20	0.00	0.00	0.00	0.00	0.00	10.10	0.00	0.00	0.00	0.00	0.00	80.30
	REV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.40	0.00	0.00	6.40
	Total	29.80	5,182.10	0.00	3.00	0.00	0.00	0.00	1,153.60	0.00	0.00	12.50	4.10	0.00	6,385.10
Jun-Special Litigation	ADMIN/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	49.60	0.00	0.00	49.60
	CORRECTIONS	0.00	1.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.90
	DOT/MARINE HWY SYS	0.00	50.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50.90
	GOV/EXEC OFFICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	21.10	0.00	21.10
	H&SS/FAM & YOUTH SVC	0.00	0.00	0.00	4.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.30
	INS TENDERS/TORT	91.70	0.00	0.00	3,687.30	0.00	0.00	0.00	95.90	0.00	0.00	0.00	0.00	0.00	3,874.90
	LAW/EXEC ETHICS ACT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.30
	PUB SAF/FIRE PREV	0.00	0.00	0.00	0.00	0.00	0.00	0.00	11.90	0.00	0.00	0.00	0.00	0.00	11.90
	REV/INCOME&EXCISE TA	0.00	1.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.10
	Total	91.70	53.90	0.00	3,691.60	0.00	0.00	0.00	108.10	0.00	0.00	49.60	21.10	0.00	4,016.00
Jun-Transportation	ADMIN/GEN SVC SUPPLY	0.00	154.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	154.00
	CORRECTIONS	0.00	30.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	30.00
	DNR/PIPELINE COORD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.00	0.50
	DOT/CENTRAL REGION	0.00	44.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	11.50	55.50
	DOT/MARINE HWY SYS	0.00	1,198.30	0.00	0.00	0.00	0.00	0.00	339.00	0.00	0.00	0.00	0.00	44.50	1,581.80

	02	22	26	30	33	44	55	66	70	75	77	88	99	Total
un-Transportation DOT/NORTHERN REGION	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.00	0.00	0.00	0.00	0.00	0.00	8.00
DOT/SOUTHEAST REGION	0.00	1,047.40	0.00	0.00	0.00	0.00	0.00	89.00	0.00	0.00	0.00	0.00	0.00	1,136.40
DOT/STATEWIDE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	114.00	0.00	0.00	58.50	0.00	41.50	214.00
EDUC/EXECUTIVE ADMIN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	24.50	0.00	0.00	0.00	0.00	0.00	24.50
EDUC/TEACHING&LEARNI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13.50	0.00	0.00	0.00	0.00	0.00	13.50
F&O/ FUND	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.20	0.00	0.00	0.00	0.00	0.00	1.20
GOV/EXEC OFFICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43.00	0.00	43.00
GOV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	181.10	0.00	0.00	181.10
H&SS/ALC & DRUG	0.00	151.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	151.00
H&SS/MEDICAL ASSIST	0.00	599.90	0.00	0.00	0.00	0.00	0.00	22.40	0.00	0.00	0.00	0.00	0.00	622.30
INS TENDERS/TORT	0.00	0.00	0.00	14.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	14.50
LABOR/WG&HR	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.90	0.00	0.00	0.00	0.00	0.00	3.90
LAW/CONS PROT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	236.80	0.00	0.00	0.00	0.00	0.00	236.80
LAW/EXEC ETHICS ACT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	155.50	0.00	0.00	0.00	0.00	0.00	155.50
LAW/OTHER	0.00	0.30	0.00	0.00	0.00	0.00	0.00	48.40	0.00	0.00	0.00	0.00	0.00	48.70
LT GOV/ELECTIONS	41.00	2.00	0.00	0.00	0.00	0.00	0.00	16.50	0.00	0.00	0.00	0.00	0.00	59.50
POST SEC ED COMM	0.00	3.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.50
REV/AHFC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	175.30	0.00	0.00	0.00	0.00	0.00	175.30
REV/CSED	0.00	15.50	0.00	0.00	0.00	0.00	0.00	6.80	0.00	0.00	0.00	0.00	0.00	22.30
REV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.30	0.00	0.00	0.00	0.00	0.00	2.30
Total	41.00	3,245.90	0.00	14.50	0.00	0.00	0.00	1,257.60	0.00	0.00	239.60	43.00	97.50	4,939.10
otal	5,803.50	75,191.70	2,549.20	23,617.00	7,412.00	32,941.40	638.10	52,658.00	1,265.30	148.50	3,486.10	741.10	13,118.20	219,570.10

**File Types - 02 Oral Advice; 22 General Litigation; 26 Executions; 30 Insurance Tenders; 33 CSE Proceedings; 44 Children's Proceedings; 55 Welfare Fraud Investigations; 66 Aid to Agency; 70 Welfare Fraud Litigation; 75 Medicaid Provider Fraud Invest; 77 Legislative Drafting; 88 Legislative Review; and 99 Regulation Review.

11/26/99

Section	Client	02	22	26	30	33	44	55	66	70	75	77	88	99	Total
NC-Collections Support	ADMIN/DIV OF MOTOR V	0.00	0.00	2.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.90
	ADMIN/SENIOR SERVICE	0.00	0.50	2.10	0.00	0.00	0.00	0.00	29.20	0.00	0.00	0.00	0.00	0.00	31.80
	APOC	0.00	0.00	49.60	0.00	0.00	0.00	0.00	31.80	0.00	0.00	0.00	0.00	0.00	81.40
	CED/(formerly C&RA)	0.00	0.00	0.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.60
	CED/INSURANCE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	CED/OCC LICENSING	0.00	3.00	2.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.10
	CORRECTIONS	0.00	0.00	243.00	0.00	0.00	0.00	0.00	2.30	0.00	0.00	0.00	0.00	0.00	245.30
	COURT SYSTEM	0.00	1.50	3.00	0.00	0.00	0.00	0.00	565.60	0.00	0.00	0.00	0.00	0.00	570.10
	DNR/AGRICULTURE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.30
	DNR/FORESTRY	0.00	0.00	2.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.70
	DNR/OTHER	0.00	0.00	9.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.40
	DOT/CENTRAL REGION	0.00	0.00	28.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	28.10
	DOT/INTERNATL AIRPOR	0.00	0.60	1.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.80
	ENV CONS/HQ	0.00	0.00	4.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.60
	F&G/ FUND	0.00	0.00	0.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.80
	F&G/OTHER	0.00	0.00	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00
	H&SS/CINA	0.00	0.00	0.00	0.00	0.00	1,144.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,144.20
	H&SS/FAM & YOUTH SVC	0.00	0.00	4.40	0.00	0.00	0.00	0.00	139.00	0.00	0.00	0.00	0.00	0.00	143.40
	H&SS/GUARDIANSHIPS	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00
	H&SS/JUV DELINQ	0.00	0.00	0.00	0.00	0.00	27.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	27.80
	H&SS/LICENSING	0.00	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10
	H&SS/MENTAL	0.00	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50
	H&SS/WELFARE FRAUD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.00	0.00	0.00	0.00	0.40
	INS TENDERS/TORT	0.00	0.00	46.40	0.00	0.00	0.00	0.00	0.10	0.00	0.00	0.00	0.00	0.00	46.50
	LABOR/OSHA	0.00	28.70	0.00	0.00	0.00	0.00	0.00	30.50	0.00	0.00	0.00	0.00	0.00	59.20
	LABOR/WORK COMP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.00	0.00	0.00	0.00	0.20

		02	22	26	30	33	44	55	66	70	75	77	88	99	Total
ANC-Commerical	DNR/OIL & GAS	0.00	786.70	0.00	0.00	0.00	0.00	0.00	613.30	0.00	0.00	0.00	0.00	30.60	1,430.60
	DOT/CENTRAL REGION	0.00	1.30	0.00	0.00	0.00	0.00	0.00	1.10	0.00	0.00	0.00	0.00	0.00	2.40
	DOT/INTERNATL AIRPOR	0.00	21.10	0.00	0.00	0.00	0.00	0.00	13.80	0.00	0.00	0.00	0.00	0.00	34.90
	GOV/EXEC OFFICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	GOV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.40
	H&SS/ALC & DRUG	0.00	25.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	25.20
	H&SS/CINA	0.00	0.00	0.00	0.00	0.00	10.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.60
	H&SS/GUARDIANSHIPS	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00
	H&SS/JUV DELINQ	0.00	0.00	0.00	0.00	0.00	3.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.30
	H&SS/MEDICAL ASSIST	0.00	18.90	0.00	0.00	0.00	0.00	0.00	26.90	0.00	0.00	0.00	0.00	0.00	45.80
	LABOR/ESD	0.00	358.20	0.00	0.00	0.00	0.00	0.00	146.80	0.00	0.00	0.00	0.00	0.00	505.00
	LABOR/OSHA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.00	0.00	0.00	0.00	0.40
	LAW/OIL & GAS	0.00	62.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	62.80
	LAW/ANTI-TRUST	0.00	430.70	0.00	0.00	0.00	0.00	0.00	605.90	0.00	0.00	0.00	0.00	0.00	1,036.60
	LAW/CONS PROT	14.00	113.00	0.00	0.00	0.00	0.00	0.00	2,130.00	0.00	0.00	0.00	0.00	0.00	2,257.00
	LAW/EXEC ETHICS ACT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00	0.00	0.00	0.00	0.00	0.00	3.00
	LAW/LEGIS REVIEW	0.00	0.00	0.00	0.00	0.00	0.00	0.00	44.90	0.00	0.00	0.00	0.00	0.00	44.90
	LAW/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	26.70	0.00	0.00	0.00	0.00	0.00	26.70
	PUB SAF/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.00	0.00	0.00	0.00	0.20
	RCA	0.00	31.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	31.30
	REV/AHFC	0.00	1,409.90	0.60	0.00	0.00	0.00	0.00	1,622.30	0.00	0.00	0.00	0.00	0.00	3,032.80
	REV/CSFD	0.00	3.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.60
	REV/OIL&GAS AUDIT	0.00	7.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.60
	REV/PERM FUND DIVIDE	0.00	7.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.30
Total		14.00	3,858.30	130.90	0.00	0.00	13.90	0.00	5,723.10	0.00	0.00	0.00	13.70	39.20	9,793.10
INC-Enviromenta Affairs	ADMIN/GEN SVC SUPPLY	0.00	176.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.10	185.40
	APOC	0.00	113.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	113.60
	CORRECTIONS	0.00	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00
	DNR/LAND	0.00	61.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	41.90	0.00	0.00	103.70
	DNR/OIL & GAS	0.00	18.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	18.10
	DNR/PARKS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.30
	DOT/CENTRAL REGION	0.00	16.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16.40
	DOT/INTERNATL AIRPOR	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.00	0.50
	DOT/NORTHERN REGION	0.00	23.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	23.20
	DOT/STATEWIDE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.50	3.50
	EDUC/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.60	0.60
	ENV CONS/HQ	952.10	1,737.50	0.00	0.00	0.00	0.00	0.00	2,770.90	0.00	0.00	0.00	0.00	0.00	6,243.00
	GOV/EXEC OFFICE	0.00	110.50	0.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	0.00	15.70	0.00	130.20
	H&SS/GUARDIANSHIPS	0.00	1.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50
	H&SS/MEDICAL ASSIST	0.00	0.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.70
	H&SS/MENTAL	0.00	6.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.00
	INS TENDERS/TORT	0.00	0.00	0.00	274.10	0.00	0.00	0.00	50.30	0.00	0.00	0.00	0.00	0.00	324.40
	LAW/EXXON	0.00	2,762.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,762.20
	LAW/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.60	0.00	0.00	0.00	0.00	0.00	7.60
	LT GOV/ELECTIONS	0.00	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00
	POST SEC ED COMM	0.00	5.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.40
	RCA	0.00	7.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.50
	REV/OIL&GAS AUDIT	0.00	42.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	42.30

		02	22	26	30	33	44	55	66	70	75	77	88	99	Total
NC-Gas, Oil & Mining	LAW/CONS PROT	0.00	4.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.50
	LAW/EXXON	0.00	10.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.50
	LAW/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	66.10	0.00	0.00	0.00	0.00	0.00	66.10
	RCA	0.00	4.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.00
	REV/AHFC	0.00	2.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.30
	REV/CSFD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	REV/INCOME&EXCISE TA	0.00	41.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	41.70
	REV/OIL&GAS AUDIT	0.00	3,388.90	0.00	0.00	0.00	0.00	0.00	424.00	0.00	0.00	0.00	0.00	2,315.90	6,128.80
	REV/OTHER	0.00	274.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	275.60
	Total	0.00	12,832.40	0.00	269.70	0.00	13.50	0.00	2,085.80	0.00	0.00	1.00	51.90	2,819.10	18,073.40
VC-Govt Affairs Contr	ADMIN/LABOR RELATION	9.30	75.20	0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	184.50
	ADMIN/O&G CONS COMM	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	1.50	1.80
	ADMIN/OTHER	0.00	41.10	0.00	0.00	0.00	0.00	0.00	33.50	0.00	0.00	0.00	0.00	0.00	74.60
	ADMIN/PERSONNEL	17.20	68.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	85.70
	APOC	8.60	1,305.10	0.00	0.00	0.00	0.00	0.00	421.20	0.00	0.00	0.00	0.00	0.00	1,735.50
	CED/(formerly C&RA)	0.00	33.10	0.00	0.00	0.00	0.00	0.00	249.70	0.00	0.00	1.50	0.00	0.00	284.30
	CED/AIDEA	0.00	88.50	0.00	0.00	0.00	0.00	0.00	382.10	0.00	0.00	85.20	0.00	0.00	555.80
	CED/INSURANCE	0.00	3.40	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.00	0.00	0.00	0.00	3.80
	CED/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	1.00
	CORRECTIONS	0.10	1,018.20	0.00	0.00	0.00	0.00	0.00	10.70	0.00	0.00	0.00	0.00	0.00	1,029.00
	COURT SYSTEM	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.00	0.00	0.00	0.00	0.40
	DNR/AGRICULTURE	0.00	0.00	9.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.90
	DNR/LAND	0.00	11.40	0.00	0.00	0.00	0.00	0.00	1.90	0.00	0.00	0.00	0.00	0.00	13.30
	DNR/NAVIGABILITY	0.00	8.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.70
	DNR/OIL & GAS	0.00	74.00	0.00	0.00	0.00	0.00	0.00	7.10	0.00	0.00	0.00	0.00	0.00	81.10
	DNR/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	444.60	0.00	0.00	0.00	0.00	0.00	444.60
	DOT/CENTRAL REGION	0.00	105.00	0.00	0.00	0.00	0.00	0.00	11.00	0.00	0.00	0.00	0.00	0.00	116.00
	DOT/INTERNATL AIRPOR	0.00	0.00	0.00	0.00	0.00	0.00	0.00	15.60	0.00	0.00	0.00	0.00	0.00	15.60
	DOT/MARINE HWY SYS	0.00	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20
	DOT/NORTHERN REGION	0.00	44.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	45.10
	ENV CONS/HQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10	0.00	0.00	0.00	0.00	0.00	0.10
	F&G/OTHER	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30
	F&G/TRUSTEE COUNCIL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.60	0.00	0.00	0.00	0.00	0.00	4.60
	GOV/EXEC OFFICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	18.20	0.00	0.00	0.00	21.20	0.00	39.40
	GOV/OTHER	1.80	193.90	0.00	0.00	0.00	0.00	0.00	64.60	0.00	0.00	0.00	0.00	0.20	260.50
	H&SS/ALC & DRUG	0.00	3.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00
	H&SS/CINA	0.00	7.30	0.00	0.00	0.00	327.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	335.00
	H&SS/FAM & YOUTH SVC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.90	0.00	0.00	0.00	0.00	0.00	1.90
	H&SS/GUARDIANSHIPS	0.00	5.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.70
	H&SS/JUV DELINQ	0.00	0.00	0.00	0.00	0.00	31.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	31.00
	H&SS/LICENSING	0.00	64.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	64.20
	H&SS/MEDICAL ASSIST	0.00	2,338.30	0.00	0.00	0.00	0.00	0.00	339.20	0.00	0.00	0.00	0.00	6.90	2,684.40
	H&SS/MENTAL	0.00	3.90	0.00	0.00	0.00	156.70	0.00	57.00	0.00	0.00	0.00	0.00	0.00	217.60
	H&SS/OTHER	4.40	80.50	0.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	0.00	0.00	0.00	88.90
	HUMAN RTS COMMN	0.00	491.60	0.00	0.00	0.00	0.00	0.00	393.10	0.00	0.00	0.00	0.00	0.00	884.70
	INS TENDERS/TORT	0.00	0.00	0.00	329.30	0.00	0.00	0.00	6.00	0.00	0.00	0.00	0.00	0.00	335.30
	LABOR/ESD	0.20	139.80	0.00	0.00	0.00	0.00	0.00	45.00	0.00	0.00	16.50	0.00	0.00	201.50
	LABOR/OSHA	0.00	1,346.10	0.00	0.00	0.00	0.00	0.00	61.40	0.00	0.00	0.00	0.00	72.10	1,479.60

		02	22	26	30	33	44	55	66	70	75	77	88	99	Total	
ANC-Govt Affairs & Contr	LABOR/OTHER	3.00	8.80	0.00	0.00	0.00	0.00	0.00	46.10	0.00	0.00	2.20	0.00	43.80	103.90	
	LABOR/WG&HR	0.00	164.10	0.00	0.00	0.00	0.00	0.00	85.50	0.00	0.00	5.40	0.00	37.60	292.60	
	LABOR/WORK COMP	0.00	100.00	0.00	0.00	0.00	0.00	0.00	88.60	0.00	0.00	0.00	0.00	7.50	196.10	
	LAW/ANTI-TRUST	0.00	73.00	0.00	0.00	0.00	0.00	0.00	48.80	0.00	0.00	0.00	0.00	0.00	121.80	
	LAW/CONS PROT	0.00	0.00	5.00	0.00	0.00	0.00	0.00	497.90	0.00	0.00	0.00	0.00	0.00	502.90	
	LAW/LEGIS REVIEW	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.50	
	LAW/NATIVE SOVEREIGN	0.00	26.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	26.70	
	LAW/OTHER	22.70	0.00	0.00	0.00	0.00	0.00	0.00	484.90	0.00	0.00	0.00	0.00	0.00	507.60	
	LAW/PROVIDER FRAUD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.30	
	LEGISLATURE	0.80	0.00	0.00	0.00	0.00	0.00	0.00	5.10	0.00	0.00	0.00	0.00	0.00	5.90	
	LT GOV/ELECTIONS	12.20	231.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	243.90	
	LT GOV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	55.40	0.00	0.00	0.00	0.00	6.00	61.40	
	MILITARY AFFAIRS	0.90	115.00	0.00	0.00	0.00	0.00	0.00	1,007.10	0.00	0.00	0.00	0.00	0.00	1,123.00	
	MILITARY AFFAIRS EME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	61.50	0.00	0.00	8.40	0.00	0.00	69.90	
	POST SEC ED COMM	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.70	0.00	0.00	0.00	0.00	0.00	1.70	
	PROF TEACHING PRACTI	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00	
	PUB SAF/OTHER	0.00	1.60	0.00	0.00	0.00	0.00	0.00	7.00	0.00	0.00	0.00	0.00	0.00	8.60	
	PUB SAF/TROOPERS	12.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	12.80	
	RCA	1.70	0.00	0.00	0.00	0.00	0.00	0.00	18.60	0.00	0.00	0.00	0.00	0.00	20.30	
	REV/ABC BD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	1.00	
	REV/AHFC	0.00	0.80	0.00	0.00	0.00	0.00	0.00	7.00	0.00	0.00	0.00	0.00	0.00	7.80	
	REV/CSED	0.00	26.60	0.00	0.00	19.70	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.20	48.00	
	REV/OIL&GAS AUDIT	0.00	21.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	143.60	164.60	
	REV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00	0.00	0.00	0.00	0.00	0.00	3.00	
	UNIVERSITY OF ALASKA	0.00	86.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	86.10	
	Total		97.70	8,407.10	14.90	329.30	19.70	515.40	0.00	5,096.60	0.00	0.00	119.70	21.20	319.40	14,941.00
ANC-Human Services	ADMIN/SENIOR SERVICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	47.50	0.00	0.00	0.00	0.00	0.00	47.50	
	H&SS/CINA	0.00	2.00	0.00	0.00	0.00	17,572.50	0.00	4.00	0.00	0.00	0.00	0.00	0.00	17,578.50	
	H&SS/FAM & YOUTH SVC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	28.60	0.00	0.00	0.00	0.00	0.00	28.60	
	H&SS/JUV DELINQ	0.00	0.00	0.00	0.00	0.00	1,993.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,993.50	
	H&SS/LICENSING	0.00	63.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	63.80	
	H&SS/MEDICAL ASSIST	0.00	14.80	0.00	0.00	0.00	0.00	0.00	156.00	0.00	0.00	0.00	0.00	0.00	170.80	
	H&SS/MENTAL	0.00	0.00	0.00	0.00	0.00	438.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	438.60	
	H&SS/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.50	0.00	0.00	0.00	0.00	0.00	2.50	
	LABOR/WORK COMP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	27.00	0.00	0.00	0.00	0.00	0.00	27.00	
	POST SEC ED COMM	0.00	5.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.00	
	PUB SAF/OTHER	0.00	0.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.70	
	Total		0.00	86.30	0.00	0.00	0.00	20,004.60	0.00	265.60	0.00	0.00	0.00	0.00	0.00	20,356.50
	Anc-Medicaid Provider Fraud	LAW/PROVIDER FRAUD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	121.50	0.00	148.50	0.00	0.00	0.00	270.00
Total		0.00	0.00	0.00	0.00	0.00	0.00	0.00	121.50	0.00	148.50	0.00	0.00	0.00	270.00	
ANC-Natural Resources	ADMIN/O&G CONS COMM	0.00	17.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	17.60	
	ADMIN/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.50	0.00	0.00	5.50	
	APOC	0.00	134.00	0.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	0.00	0.00	0.00	138.00	
	CED(formerly C&RA)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.80	0.00	0.00	0.00	0.00	0.00	1.80	
	CED/OCC LICENSING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.60	0.00	0.00	0.00	0.00	1.40	3.00	
	CED/OTHER	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10	

ANC-Natural Resources

	02	22	26	30	33	44	55	66	70	75	77	88	99	Total
CFEC	0.50	233.40	0.00	0.00	0.00	0.00	0.00	4.20	0.00	0.00	69.00	0.00	0.00	307.10
COURT SYSTEM	0.40	12.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	12.90
DNR/ RS 2477	10.20	117.40	0.00	0.00	0.00	0.00	0.00	1.20	0.00	0.00	0.00	0.00	0.00	128.80
DNR/AGRICULTURE	0.00	253.10	0.00	0.00	0.00	0.00	0.00	0.60	0.00	0.00	0.00	0.00	0.00	253.70
DNR/FORESTRY	0.00	9.90	0.00	0.00	0.00	0.00	0.00	66.60	0.00	0.00	15.90	0.00	0.00	92.40
DNR/LAND	91.90	3,494.00	0.00	0.00	0.00	0.00	0.00	796.60	0.00	0.00	206.30	0.00	21.40	4,610.20
DNR/MINING	0.00	4.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.00
DNR/NAVIGABILITY	0.00	494.00	0.00	0.00	0.00	0.00	0.00	801.20	0.00	0.00	0.00	0.00	0.00	1,295.20
DNR/OIL & GAS	0.00	17.20	0.00	0.00	0.00	0.00	0.00	9.00	0.00	0.00	0.00	0.00	0.00	26.20
DNR/OTHER	1.30	53.10	0.00	0.00	0.00	0.00	0.00	934.70	0.00	0.00	0.00	0.00	0.00	989.10
DNR/PARKS	0.00	3.80	0.00	0.00	0.00	0.00	0.00	281.60	0.00	0.00	124.20	0.00	0.00	409.60
DNR/WATER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	187.10	0.00	0.00	0.00	0.00	8.70	195.80
DOT/CENTRAL REGION	0.00	7.60	0.00	0.00	0.00	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	9.10
DOT/INTERNATL AIRPOR	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.70	0.00	0.00	0.00	0.00	0.00	0.70
DOT/SOUTHEAST REGION	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.00	0.00	0.00	0.00	0.40
EDUC/SCHOOL FINANCE	0.00	13.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13.50
ENV CONSHQ	0.20	0.00	0.00	0.00	0.00	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	1.70
F&G/ FUND	0.00	320.00	4.40	0.00	0.00	0.00	0.00	307.50	0.00	0.00	0.00	0.00	0.00	631.90
F&G/BD OF FISH	0.00	18.70	0.00	0.00	0.00	0.00	0.00	7.30	0.00	0.00	0.00	0.00	389.30	415.30
F&G/BD OF GAME	0.00	107.70	0.00	0.00	0.00	0.00	0.00	204.50	0.00	0.00	17.30	0.00	271.60	601.10
F&G/COMML FISH	0.00	360.80	0.00	0.00	0.00	0.00	0.00	195.40	0.00	0.00	0.00	0.00	2.80	559.00
F&G/OTHER	22.50	1,484.40	0.00	0.00	0.00	0.00	0.00	2,521.50	0.00	0.00	89.70	0.00	25.70	4,143.80
F&G/SPORT FISH	0.00	44.60	0.00	0.00	0.00	0.00	0.00	17.00	0.00	0.00	0.00	0.00	17.40	79.00
F&G/SUBSISTENCE	0.00	17.00	0.00	0.00	0.00	0.00	0.00	61.70	0.00	0.00	0.00	0.00	0.00	78.70
GOV/D.C. OFFICE	6.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.60
GOV/EXEC OFFICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	249.50	0.00	0.00	0.00	81.20	0.00	330.70
GOV/GOV COORDINATION	1.80	0.00	0.00	0.00	0.00	0.00	0.00	14.90	0.00	0.00	0.00	0.00	0.00	16.70
GOV/OMB	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	38.90	0.00	0.00	38.90
GOV/OTHER	1.70	59.90	0.00	0.00	0.00	0.00	0.00	1.80	0.00	0.00	0.00	0.00	0.00	63.40
H&SS/CINA	0.00	0.00	0.00	0.00	0.00	104.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	104.50
H&SS/FAM & YOUTH SVC	0.00	53.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	53.20
H&SS/GUARDIANSHIPS	0.00	4.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.50
H&SS/MEDICAL ASSIST	0.00	47.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	47.60
H&SS/MENTAL	0.40	2.40	0.00	0.00	0.00	7.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.30
HUMAN RTS COMMN	0.00	104.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	104.30
INS TENDERS/TORT	0.00	0.00	0.00	6.30	0.00	0.00	0.00	5.10	0.00	0.00	0.00	0.00	0.00	11.40
LABOR/ESD	0.00	23.90	0.00	0.00	0.00	0.00	0.00	0.80	0.00	0.00	0.00	0.00	0.00	24.70
LABOR/OSHA	0.00	28.50	0.00	0.00	0.00	0.00	0.00	4.10	0.00	0.00	0.00	0.00	0.00	32.60
LAW/ OIL & GAS	0.00	3.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.50
LAW/CONS PROT	0.00	41.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	41.20
LAW/CRIM DIV	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	1.50
LAW/EXEC ETHICS ACT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	1.00
LAW/EXXON	0.80	15.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16.20
LAW/LEGIS REVIEW	0.00	0.00	0.00	0.00	0.00	0.00	0.00	216.00	0.00	0.00	0.00	0.00	0.00	216.00
LAW/NATIVE SOVEREIGN	0.00	9.40	0.00	0.00	0.00	0.00	0.00	82.40	0.00	0.00	0.00	0.00	0.00	91.80
LAW/OTHER	4.80	0.00	0.00	0.00	0.00	0.00	0.00	3.30	0.00	0.00	0.00	0.00	0.00	8.10
LEGISLATURE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.40	0.00	0.00	0.00	0.00	0.00	1.40
LT GOV/ELECTIONS	0.00	10.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.00
MILITARY AFFAIRS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.30	0.00	0.00	0.00	0.00	0.00	1.30
POST SEC ED COMM	0.00	544.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	544.90

		02	22	26	30	33	44	55	66	70	75	77	88	99	Total
\NC-Natural Resources	REV/ABC BD	4.40	257.50	0.00	0.00	0.00	0.00	0.00	574.10	0.00	0.00	22.50	0.00	40.90	899.40
	UNIVERSITY OF ALASKA	0.00	7.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.60
	Total	147.60	8,432.10	4.40	6.30	0.00	112.00	0.00	7,566.40	0.00	0.00	589.30	81.20	779.20	17,718.50
\NC-Special Litigation	ADMIN/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	17.30	0.00	0.00	17.30
	APOC	0.00	49.60	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	0.00	49.90
	DOT/CENTRAL REGION	0.00	7.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.80
	DOT/SOUTHEAST REGION	0.00	1.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.40
	ENV CONS/HQ	0.00	1.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50
	GOV/EXEC OFFICE	0.00	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	11.10	0.00	11.30
	INS TENDERS/TORT	0.00	124.90	0.00	14,332.10	0.00	0.00	0.00	1,975.90	0.00	0.00	0.00	0.00	0.00	16,432.90
	LABOR/OSHA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.60	0.00	0.00	0.00	0.00	0.00	2.60
	LABOR/WORK COMP	0.00	1.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.10
	LAW/LEGIS DRAFTING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00	0.00	0.00	3.00
	REV/ABC BD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	1.00
	REV/AHFC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	REV/CSED	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	186.50	0.00	14,332.10	0.00	0.00	0.00	1,979.80	0.00	0.00	20.30	11.10	0.00	16,529.80
	\NC-Transportati on	ADMIN/GEN SVC SUPPLY	0.00	38.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
APOC		0.00	4.20	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.00	0.00	0.00	0.00	4.40
CED/AIDEA		68.20	0.00	0.00	0.00	0.00	0.00	0.00	57.90	0.00	0.00	1.70	0.00	0.00	127.80
CED/INSURANCE		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CED/INVESTMENTS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	1.00
COURT SYSTEM		0.00	0.00	0.00	0.00	0.00	0.00	0.00	111.70	0.00	0.00	0.00	0.00	0.00	111.70
DNR/LAND		0.00	2.60	0.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	0.00	0.00	0.00	6.60
DNR/MINING		0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.10	0.00	0.00	0.00	0.00	0.00	3.10
DNR/OIL & GAS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.00	0.50
DNR/PARKS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.50	0.00	0.00	0.00	0.00	0.00	5.50
DOT/CENTRAL REGION		0.00	2,792.50	0.00	0.00	0.00	0.00	0.00	1,499.20	0.00	0.00	0.00	0.00	22.90	4,314.60
DOT/INTERNATL AIRPOR		0.00	46.40	0.00	0.00	0.00	0.00	0.00	1,838.70	0.00	0.00	57.50	0.00	106.80	2,049.40
DOT/NORTHERN REGION		0.00	116.20	0.00	0.00	0.00	0.00	0.00	100.50	0.00	0.00	0.00	0.00	0.00	216.70
DOT/SOUTHEAST REGION		0.00	102.50	0.00	0.00	0.00	0.00	0.00	55.50	0.00	0.00	0.00	0.00	0.00	158.00
DOT/STATEWIDE		0.00	40.30	0.00	0.00	0.00	0.00	0.00	64.40	0.00	0.00	0.00	0.00	102.60	207.30
ENV CONS/HQ		22.50	577.30	0.00	0.00	0.00	0.00	0.00	179.10	0.00	0.00	0.80	0.00	19.00	798.70
F&G/SPORT FISH		0.00	563.70	0.00	0.00	0.00	0.00	0.00	104.70	0.00	0.00	0.00	0.00	0.00	668.40
GOV/EXEC OFFICE		0.00	8.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.50	0.00	18.90
H&SS/CINA		0.00	0.00	0.00	0.00	0.00	7.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.80
H&SS/JUV DELINQ		0.00	0.00	0.00	0.00	0.00	2.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.30
H&SS/MENTAL		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
H&SS/OTHER		11.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	11.80
INS TENDERS/TORT		0.00	0.00	0.00	87.00	0.00	0.00	0.00	4.00	0.00	0.00	0.00	0.00	0.00	91.00
LABOR/ESD		0.00	18.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	18.70
LAW/EXXON		0.00	286.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	286.70
LAW/LEGIS REVIEW		0.00	0.00	0.00	0.00	0.00	0.00	0.00	13.70	0.00	0.00	0.00	0.00	0.00	13.70
LAW/OTHER		0.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40
MILITARY AFFAIRS		0.00	356.10	0.00	0.00	0.00	0.00	0.00	5.00	0.00	0.00	0.00	0.00	0.00	361.10
RCA		0.00	1.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.20
REV/CSED		0.00	10.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.40

		02	22	26	30	33	44	55	66	70	75	77	88	99	Total
ANC-Transportati on	REV/OIL&GAS AUDIT Total	0.00 102.90	0.00 4,966.00	0.00 0.00	0.00 87.00	0.00 0.00	0.00 10.10	0.00 0.00	0.00 4,048.70	0.00 0.00	0.00 0.00	0.00 60.00	0.00 10.50	8.40 259.70	8.40 9,544.90
ANC-Welfare Fraud	H&SS/WELFARE FRAUD REV/ABC BD Total	0.00 0.00 0.00	164.30 0.00 164.30	0.00 0.00 0.00	0.00 0.00 0.00	0.00 0.00 0.00	0.00 0.00 0.00	638.10 0.00 638.10	182.50 1.50 184.00	1,265.30 0.00 1,265.30	0.00 0.00 0.00	0.00 0.00 0.00	0.00 0.00 0.00	0.00 0.00 0.00	2,250.20 1.50 2,251.70
3ethel AGO	H&SS/CINA H&SS/JUV DELINQ H&SS/MENTAL Total	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	1,381.10 344.10 1.00 1,726.20	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	1,381.10 344.10 1.00 1,726.20
AI-Collections & support	DNR/AGRICULTURE DOT/NORTHERN REGION H&SS/CINA H&SS/JUV DELINQ H&SS/MENTAL INS TENDERS/TORT MILITARY AFFAIRS REV/CSED REV/INCOME&EXCISE TA Total	0.00 0.00 0.00 0.00 0.00 0.00 0.00 19.30 0.00 19.30	0.30 3.40 0.00 0.00 0.40 0.00 5.70 440.40 0.30 450.50	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 0.00 2,098.50 0.00 2,098.50	0.00 0.00 88.50 38.10 0.00 0.00 0.00 0.00 0.00 126.60	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 6.90 0.00 0.00 6.90	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 0.00 2,558.20 0.30 2,701.80	
AI-Human services	ADMIN/SENIOR SERVICE CORRECTIONS COURT SYSTEM DNR/AGRICULTURE DNR/LAND DOT/NORTHERN REGION EDUC/OTHER GOV/D.C. OFFICE GOV/EXEC OFFICE H&SS/ALC & DRUG H&SS/CINA H&SS/FAM & YOUTH SVC H&SS/GUARDIANSHIPS H&SS/JUV DELINQ H&SS/LICENSING H&SS/MEDICAL ASSIST H&SS/MENTAL H&SS/OTHER H&SS/PUB ASSIST H&SS/PUB HEALTH INS TENDERS/TORT LABOR/ESD LABOR/WG&HR LAW/CONS PROT LAW/NATIVE SOVEREIGN	2.70 0.40 0.00 0.00 0.20 0.00 0.00 0.20 0.00 6.90 43.70 27.60 0.00 6.60 10.80 0.10 11.20 0.00 3.00 1.40 0.00 0.00 2.60 0.20 0.00	7.70 0.00 0.20 8.10 0.70 0.00 19.80 0.00 0.00 3.90 54.70 0.00 4.10 23.80 105.20 0.00 3.70 58.50 12.70 3.50 0.00 0.30 13.40 0.00 0.00	0.00 0.00	0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 4,046.80 0.00 0.00 1,630.60 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 1.40 0.00 0.00 0.00 0.00 0.50 4.80 0.00 0.00 0.00 0.00 0.00 0.00 0.00	0.00 0.00	0.00 0.00	0.00 0.00	0.00 0.00	10.40 0.40 68.50 8.10 0.90 0.80 19.80 0.20 2.50 10.80 4,145.20 29.00 1,661.00 116.00 0.10 15.40 63.30 15.70 4.90 0.10 0.30 16.00 0.20 34.70			

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	02	22	26	30	33	44	55	66	70	75	77	88	99	Total	
FAI-Transportation	LAW/ COLLECTION	0.00	0.00	0.00	0.00	0.00	0.00	32.80	0.00	0.00	0.00	0.00	0.00	32.80	
	LAW/NATIVE SOVEREIGN	0.00	9.50	0.00	0.00	0.00	0.00	27.70	0.00	0.00	0.00	0.00	0.00	37.20	
	MILITARY AFFAIRS	0.00	0.00	0.00	0.00	0.00	0.00	10.80	0.00	0.00	0.00	0.00	0.00	10.80	
	PUB SAF/OTHER	0.00	0.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.80	
	REV/AHFC	0.00	2.90	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	3.90	
	REV/PERM FUND DIVIDE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
	Total	24.30	3,557.40	0.00	9.60	0.00	1.10	0.00	1,113.60	0.00	0.00	0.00	5.20	0.00	4,711.20
Jun-Commercial	ADMIN/DIV OF MOTOR V	0.00	15.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	15.70	
	ADMIN/FINANCE	2.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.90	
	ADMIN/PERSONNEL	0.00	65.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	65.40	
	ADMIN/SENIOR SERVICE	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	
	APOC	0.00	3.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.80	
	CED/BK SEC & CORP	234.50	351.60	0.00	0.00	0.00	0.00	20.60	0.00	0.00	25.10	0.00	22.60	654.40	
	CED/DEVELOPMENT	5.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	12.50	17.90	
	CED/INVESTMENTS	14.20	13.50	22.70	0.00	0.00	0.00	7.30	0.00	0.00	0.00	0.00	10.90	68.60	
	CED/OCC LICENSING	1.30	1,573.60	0.00	0.00	0.00	0.00	725.40	0.00	0.00	0.00	0.00	482.20	2,782.50	
	CED/OTHER	1.70	0.00	0.00	0.00	0.00	0.00	4.60	0.00	0.00	0.00	0.00	0.00	6.30	
	CORRECTIONS	0.00	3.90	0.00	0.00	0.00	0.00	6.30	0.00	0.00	0.00	0.00	0.00	10.20	
	DNR/LAND	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.00	0.50	
	DNR/OIL & GAS	0.00	9.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.80	
	DNR/PIPELINE COORD	0.00	6.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.70	
	DOT/MARINE HWY SYS	0.00	6.10	0.00	0.00	0.00	0.00	6.60	0.00	0.00	0.00	0.00	0.00	12.70	
	DOT/STATEWIDE	0.00	41.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	41.50	
	F&G/BD OF FISH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.90	0.90	
	F&G/OTHER	0.00	10.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.00	
	GOV/EXEC OFFICE	4.90	0.00	0.00	0.00	0.00	0.00	0.80	0.00	0.00	0.00	64.80	0.00	70.50	
	GOV/OMB	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	25.60	0.00	0.00	25.60	
	GOV/OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.00	0.00	8.00	0.00	0.00	4.00	
	H&SS/ALC & DRUG	0.00	25.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	25.40	
	H&SS/FAM & YOUTH SVC	0.00	0.00	0.00	1.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.40	
	H&SS/MEDICAL ASSIST	0.00	1.30	0.00	0.00	0.00	0.00	0.00	41.70	0.00	0.00	0.00	0.00	370.80	413.80
	H&SS/MENTAL	0.00	6.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.50
	H&SS/PUB ASSIST	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.90	0.00	10.90
	H&SS/PUB HEALTH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.60	0.00	0.00	0.00	0.00	0.00	2.60
	INS TENDERS/TORT	0.00	0.00	0.00	54.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	54.90
	LABOR/WG&HR	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30
	LAW/ OIL & GAS	0.00	9.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.40
	LAW/CONS PROT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	58.40	0.00	0.00	0.00	0.00	0.00	58.40
	LAW/EXEC ETHICS ACT	100.00	97.70	0.00	0.00	0.00	0.00	0.00	315.10	0.00	0.00	0.00	0.00	0.00	512.80
	LAW/LEGIS REVIEW	4.80	0.00	0.00	0.00	0.00	0.00	0.00	8.00	0.00	0.00	0.00	0.00	0.00	12.80
	LAW/OTHER	62.90	0.50	0.00	0.00	0.00	0.00	0.00	37.90	0.00	0.00	0.00	0.00	0.00	101.30
	LT GOV/ELECTIONS	9.30	13.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	22.70
POST SEC ED COMM	0.00	74.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	74.70	
PUB SAF/OTHER	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50	
REV/AHFC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.50	0.00	0.00	0.00	0.00	0.00	10.50	
REV/GAMING	0.00	35.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	35.10	
REV/INCOME&EXCISE TA	78.30	1,060.20	0.00	0.00	0.00	0.00	0.00	0.70	0.00	0.00	0.00	0.00	0.00	1,139.20	
REV/OIL&GAS AUDIT	0.00	122.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	122.80	

		02	22	26	30	33	44	55	66	70	75	77	88	99	Total
Jun-Commercial	REV/OTHER	0.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	46.20	0.00	0.30	47.20
	REV/PERM FUND DIVIDE	75.30	726.40	0.00	0.00	0.00	0.00	0.00	46.70	0.00	0.00	0.00	0.00	2.40	800.80
	REV/TREASURY	7.60	1.60	1.70	0.00	0.00	0.00	0.00	27.40	0.00	0.00	0.00	0.00	0.00	38.30
	Total	554.10	4,276.90	25.90	56.30	0.00	0.00	0.00	1,325.10	0.00	0.00	96.90	64.80	913.50	7,313.50
Jun-Govt Affairs & Contr	ADMIN/DIV OF MOTOR V	0.00	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20
	ADMIN/FINANCE	20.30	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	20.60
	ADMIN/GEN SVC SUPPLY	87.10	169.30	0.00	0.00	0.00	0.00	0.00	82.60	0.00	0.00	0.00	0.00	0.00	339.00
	ADMIN/INFO SERVICES	10.10	18.30	0.00	0.00	0.00	0.00	0.00	25.80	0.00	0.00	0.00	0.00	0.00	54.20
	ADMIN/LABOR RELATION	153.40	165.50	0.00	0.00	0.00	0.00	0.00	234.90	0.00	0.00	0.00	0.00	0.00	553.80
	ADMIN/LONGEVITY	4.80	0.00	0.00	0.00	0.00	0.00	0.00	41.90	0.00	0.00	1.80	0.00	1.00	49.50
	ADMIN/O&G CONS COMM	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30
	ADMIN/OTHER	25.00	63.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	88.90
	ADMIN/PERSONNEL	104.20	3.90	0.00	0.00	0.00	0.00	0.00	76.60	0.00	0.00	2.70	0.00	3.00	190.40
	ADMIN/RET&BENEFITS	230.10	706.60	0.00	0.00	0.00	0.00	0.00	2.20	0.00	0.00	28.40	0.00	8.40	975.70
	ADMIN/SENIOR SERVICE	4.40	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.60
	APOC	3.50	28.90	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	33.40
	CED/(formerly C&RA)	85.50	71.90	0.00	0.00	0.00	0.00	0.00	45.90	0.00	0.00	0.00	0.00	8.70	212.00
	CED/AIDEA	5.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.90
	CED/BK SEC & CORP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.10	0.00	0.00	0.00	0.00	0.00	1.10
	CED/OCC LICENSING	0.20	0.00	0.00	0.00	0.00	0.00	0.00	3.00	0.00	0.00	0.00	0.00	0.00	3.20
	CED/OTHER	27.30	8.50	0.00	0.00	0.00	0.00	0.00	1.80	0.00	0.00	0.00	0.00	0.00	37.60
	CED/SCIENCE&TECH FOU	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16.30	16.30
	CFEC	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20
	CORRECTIONS	196.70	370.50	0.00	0.00	0.00	0.00	0.00	94.90	0.00	0.00	8.50	0.00	0.00	670.60
	COURT SYSTEM	2.80	19.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	22.60
	DNR/AGRICULTURE	0.50	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	1.50
	DNR/OTHER	13.70	13.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	27.30
	DOT/CENTRAL REGION	0.00	77.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	77.00
	DOT/INTERNATL AIRPOR	69.70	2.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00	0.00	0.00	74.30
	DOT/MARINE HWY SYS	19.30	443.20	0.00	0.00	0.00	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	464.00
	DOT/NORTHERN REGION	0.20	30.30	0.00	0.00	0.00	0.00	0.00	3.60	0.00	0.00	0.00	0.00	0.00	34.10
	DOT/SOUTHEAST REGION	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	DOT/STATEWIDE	43.80	0.00	0.00	0.00	0.00	0.00	0.00	16.70	0.00	0.00	0.00	0.00	0.00	60.50
	EDUC/ AK LIB. ARCH &	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30
	EDUC/ AK VOC TECHNIC	0.00	12.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	12.10
	EDUC/OTHER	1.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50
	EDUC/SCHOOL FINANCE	0.00	8.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.90
	ENV CONS/HQ	7.80	0.00	0.00	0.00	0.00	0.00	0.00	0.70	0.00	0.00	0.00	0.00	0.00	8.50
	F&G/COMML FISH	15.70	1.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16.90
	F&G/OTHER	7.90	54.50	0.00	0.00	0.00	0.00	0.00	3.80	0.00	0.00	0.00	0.00	0.00	65.40
	F&G/SPORT FISH	2.50	46.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	49.00
	GOV/EXEC OFFICE	226.80	177.90	0.00	0.00	0.00	0.00	0.00	183.40	0.00	0.00	2.50	119.80	0.00	710.40
	GOV/GOV COORDINATION	4.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.20
	GOV/OMB	68.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	59.70	0.00	0.00	127.80
GOV/OTHER	8.10	0.00	0.00	0.00	0.00	0.00	0.00	14.50	0.00	0.00	0.00	6.20	25.40	54.20	
H&SS/ALC & DRUG	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	
H&SS/FAM & YOUTH SVC	1.20	150.60	0.00	187.20	0.00	0.00	0.00	50.50	0.00	0.00	0.00	0.00	0.00	389.50	
H&SS/MEDICAL ASSIST	0.00	0.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.70	

	02	22	26	30	33	44	55	66	70	75	77	88	99	Total
Jun-Govt Affairs & H&SS/MENTAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.20	0.00	0.00	1.20
Contr H&SS/OTHER	80.30	112.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	192.80
H&SS/PUB ASSIST	2.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.10
H&SS/PUB HEALTH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.00	0.20
INS TENDERS/TORT	0.00	0.00	0.00	812.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	812.10
LABOR/ VOC REHABILI	3.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.20
LABOR/OTHER	4.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.20
LAW/CRIM DIV	0.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.70
LAW/EXEC ETHICS ACT	2.80	3.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.20
LAW/LEGIS DRAFTING	3.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.90
LAW/LEGIS REVIEW	29.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	29.00
LAW/OTHER	110.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	110.00
LAW/REGULATIONS	1.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.60
LEGISLATIVE AFFAIRS	0.50	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.50
LEGISLATURE	32.20	0.30	0.00	0.00	0.00	0.00	0.00	3.80	0.00	0.00	0.00	0.00	0.20	36.50
LT GOV/ELECTIONS	465.80	615.70	0.00	0.00	0.00	0.00	0.00	191.40	0.00	0.00	30.10	0.00	5.60	1,308.60
LT GOV/OTHER	7.60	21.50	0.00	0.00	0.00	0.00	0.00	4.10	0.00	0.00	0.00	0.00	0.80	34.00
MILITARY AFFAIRS	19.80	14.90	0.00	0.00	0.00	0.00	0.00	24.80	0.00	0.00	0.00	0.00	0.00	59.50
MILITARY AFFAIRS EME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.30	0.00	0.00	0.00	0.00	0.00	10.30
POST SEC ED COMM	0.00	69.80	0.00	0.00	0.00	0.00	0.00	13.00	0.00	0.00	0.00	0.00	0.00	82.80
PROF TEACHING PRACTI	0.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40
PUB SAF/OTHER	27.20	79.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	106.30
PUB SAF/TROOPERS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.30	0.00	0.00	0.00	0.00	0.00	1.30
RCA	0.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.60
REV/ABC BD	0.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.90
REV/AHFC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.20	0.00	0.00	0.00	0.00	0.00	1.20
REV/CSED	0.00	3.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.80
REV/INCOME&EXCISE TA	0.00	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00
REV/OTHER	10.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.00	0.00	0.00	19.30
REV/PERM FUND CORP	64.30	26.50	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	91.80
REV/PERM FUND DIVIDE	0.00	1.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.80
REV/TREASURY	13.00	0.00	0.00	0.00	0.00	0.00	0.00	386.30	0.00	0.00	0.00	0.00	0.00	399.30
Total	2,333.40	3,599.50	0.00	999.30	0.00	0.00	0.00	1,524.80	0.00	0.00	145.10	126.00	69.40	8,797.50
Jun-Human services														
ADMIN/SENIOR SERVICE	0.00	49.60	0.00	0.00	0.00	0.00	0.00	18.00	0.00	0.00	0.00	0.00	0.00	67.60
CED/AIDEA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.00	0.00	0.00	0.00	0.00	0.00	6.00
CED/INVESTMENTS	9.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.00
CED/OCC LICENSING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00	0.00	0.00	0.00	0.00	0.00	3.00
DNR/PIPELINE COORD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.10	0.00	0.00	0.00	0.00	0.00	1.10
EDUC/ AK LIB, ARCH &	0.00	0.00	0.00	0.00	0.00	0.00	0.00	44.20	0.00	0.00	0.00	0.00	30.40	74.60
EDUC/ADAK REG SCH D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.50	0.00	0.00	0.00	0.00	0.00	2.50
EDUC/AK ST COUNCIL O	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.00	0.00	0.00	0.00	0.00	0.00	7.00
EDUC/ALYESKA CENTRAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	38.00	38.00
EDUC/EXECUTIVE ADMIN	0.00	410.30	0.00	0.00	0.00	0.00	0.00	665.40	0.00	0.00	0.00	0.00	28.80	1,104.50
EDUC/MT EDGE CUMBE BO	0.00	2.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.40
EDUC/OTHER	0.00	92.50	0.00	0.00	0.00	0.00	0.00	7.50	0.00	0.00	0.00	0.00	64.40	164.40
EDUC/SCHOOL FACILITI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	93.60	0.00	0.00	8.50	0.00	13.60	115.70
EDUC/SCHOOL FINANCE	0.00	571.80	0.00	0.00	0.00	0.00	0.00	226.80	0.00	0.00	0.00	0.00	44.30	842.10
EDUC/TEACHING&LEARNI	1.00	54.00	0.00	0.00	0.00	0.00	0.00	230.00	0.00	0.00	0.00	0.00	19.00	304.00



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Ritchie, Barbara, Deputy Attorney General, *Letter to Mark Johnson*, August 31, 1999

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Ritchie, Barbara, Deputy Attorney General, *Letter to Mark Johnson*, September 30, 1999

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Legal Invoice/Billing Review and Analysis, Stuart, Maue, Mitchell and James, Ltd

Some Lawyers Have Given New Meaning to the Term 'Legal Fiction.' Now the Profession is Asking How Widespread and How Do We Stop It?, Darlene Ricker, ABA Journal, August 1994

Alaska Constitutional Convention Proceedings

AS 44.23.010 - AS 44.23.020

Mark K. Johnson
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August 6, 1999

Mr. Bruce Botello
Attorney General
State of Alaska
Juneau, Alaska 99811

Dear Attorney General Botello:

As you know, Governor Knowles recently signed into law Chapter 61, SLA 1999, which establishes the Commission on Privatization and Delivery of Government Services. Public and legislative members of the Commission have been appointed and the Commission has conducted an initial organizational meeting.

The legislation requires that the Commission examine a number of aspects of the delivery of services to the public and make recommendations designed to provide for the more efficient and effective delivery of those services, including the transfer of functions to entities outside of government. The legislation also calls for a review state contracting policy and procedures, including competitive bidding procedures;

Chapter 61 SLA 1999 also provides for the formation of advisory councils to assist the Commission in carrying out the tasks assigned by law. I have been appointed by the Commission to chair the Subcommittee to examine the Department of Law.

The Department of Law is somewhat unique among State agencies insofar as a significant number of matters have been assigned to outside counsel over the years.

To assist the Subcommittee in making a quick start on our tasks, we would appreciate a summary of the following information for the past six years:

Matters Assigned to Outside Counsel

Subject	Number of matters	Fees paid
Bankruptcy		
Debt Collection		
Liability		
Natural Resources		
Oil & Gas Taxation		
Other Civil (categorize as appropriate)		
Other		

In order to ease the Department's workload, the Subcommittee would be amenable to reviewing previously produced reports that contain the above data.

In addition to the above, the Subcommittee would like to request the Department's responses to the following questions:

1. What non-legal services does the Department acquire from outside sources?
2. Does the Department have a written selection process for outside counsel? If so, please provide copies.
3. As to legal matters, what criteria are used to determine if civil matters are to be handled by outside counsel?
4. Does the department have written policies setting out those criteria? If so, please provide copies.
5. What safeguards exist to ensure an objective selection process for selection of outside counsel?
6. Has the Department (or reviewing agencies such as OMB) conducted studies on effectiveness of inside and outside counsel?
7. Has the Department analyzed and compared damage awards in cases handled by outside counsel and compared those awards to matters handled in-house?
8. As philosophical matter, Is there any room for the selection of outside counsel for certain criminal matters? If so, would statutes have to be amended?

9. What procedures exist for monitoring work of outside counsel?
(A) As to matters of substance? (B) Financial administration of outside cases.
10. Very significant amounts of money have been expended in past years for the retention of outside counsel for oil and gas taxation matters. What is the approach of this Administration to such matters?
11. Is the Department aware of the "pay to play" issue which has been the subject of an ABA task force?
12. Does the Department perform any functions which would not be considered the rendering of legal services to the State -- that is are there any functions which could be viewed as "general government" services?

The Subcommittee would like to obtain the Department's responses to the above inquiries by the end of August. We may have additional and follow-up questions. We would also invite the Department to submit any other information which it believes may be of assistance to Subcommittee during this process.

The Subcommittee plans on meeting four or five times before issuance of recommendations to the Commission in mid-October. We anticipate two sessions for the taking of testimony. We would appreciate an appearance by a representative of the Department at one or possibly both of those sessions. We have been informed that the State's teleconference network will be available for this purpose and two members of the Subcommittee are from Juneau.

At this writing, most if not all of the members of the Subcommittee are members of the Alaska Bar and I would anticipate that all of our work will reflect the time demands of our membership as well as those of the Department. We expect to spend little, if any, time on specific matters which are the subject of active litigation. Our focus is legislative -- that is most concerned with policy. Your cooperation in making this process both expeditious and smooth will be appreciated.

An organizational meeting of the Subcommittee will occur before the end of August. We look forward to working with the Department in the weeks ahead.

Sincerely,

Mark K. Johnson
Chairman
Subcommittee on the Department of Law

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

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JUNEAU, ALASKA 99811-0300
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August 31, 1999

Mr. Mark K. Johnson
Attorney at Law
13631 Windward Circle
Anchorage, AK 99516

Dear Mr. Johnson:

The Attorney General has asked me to respond to your information request of August 6, 1999. The following information has been compiled by a number of people in the department¹, and I hope it will assist you and the subcommittee in your work.

Joan Kasson is the Attorney General's appointment as Department of Law contact for the subcommittee. She will be attending all meetings to provide what assistance she can. Depending on the nature of the testimony the subcommittee desires, other representatives of the department may be necessary. Cindy Cooper, the Deputy Attorney General for the Criminal Division, and I look forward to providing the subcommittee with an initial overview of the Department of Law, its organization, and functions, at your September 9th meeting.

I would also like to suggest that the members of the subcommittee take the time to look at some of the department's monthly newsletters, posted on our web site at www.law.state.ak.us. They provide snapshots about the kinds of issues we deal with on a daily basis in both the civil and criminal divisions.

The responses to your questions are listed in the same order as your letter posed them. However the first item you requested was a summary of matters assigned to outside counsel by subject, with the total amount of fees paid, for the past six years. A summary is attached which lists, by subject, the number of outside counsel contracts the department entered into between July 1, 1993, and June 30, 1999, and the total amount paid. Contracts are further subdivided by how many are still active and whether the

¹ Cindy Cooper, Deputy Attorney General for the Criminal Division; Barbara Ritchie, Deputy Attorney General for the Civil Division; Dean Guaneli, Chief Assistant Attorney General, Criminal Division; Kathryn Daughhette, Director, Division of Administrative Services; Bob Meiners, Deputy Director, Administrative Services Division; and Joan Kasson, Special Assistant to the Attorney General.

contract was for a single matter, or for multiple cases in a specified legal area (e.g., pipeline tariff cases, or state corporation bond or investment general counsel).

The department's administrative division does not segregate outside counsel payments by fees and costs. Only the total monthly payment to the prime contractor is recorded. A six-year summary of just fees paid would require examining each monthly bill for every contractor, many of which are stored off-premises in archives. This would be a major project, entailing a significant amount of staff time and cost.

In most contract subject areas listed, the amounts paid reflect only legal fees and costs to the law firm directly. Any expert costs, for example, are incidental. In the oil and gas litigation contract issue area, however, services such as expert consultants and witnesses, court reporting, and document handling were subcontracted through the primary law firm managing the case. The amounts paid for those contracts include those costs, which were quite significant, particularly in the early part of the six-year period you asked be covered.

1. What non-legal services does the Department acquire from outside sources?

With only a few exceptions, almost the entire body of non-legal professional services procured by the Department of Law are related to the procurement, installation, and support of the department's computer systems. These include the Javelan Practice Management System (civil case management, timekeeping and billing); CRIMES (adult criminal case tracking system); oil and gas litigation imaging system; and the collections unit database.

- 2. Does the department have a written selection process for outside counsel? If so, please provide copies.**
- 3. As to legal matters, what criteria are used to determine if civil matters are to be handled by outside counsel?**
- 4. Does the department have written policies setting out those criteria? If so, please provide copies.**
- 5. What safeguards exist to ensure an objective selection process for selection of outside counsel?**

In answering questions 2 - 5 above, we will first discuss the issues related to the decision to use outside counsel and then address the process of selecting such counsel.²

It has long been the stated policy of the Department of Law that legal services provided on behalf of the executive branch will *primarily* be provided by the department's own staff attorneys. The use of outside counsel to provide legal services is only considered after it has been determined by the Attorney General that the department's resources are insufficient to meet the need, that it would be inappropriate for the department to provide the services, or that it would not be cost effective.

There are generally five circumstances in which the Department of Law may decide to seek the assistance of outside counsel. Any given matter may actually entail one or more of these circumstances (and quite possibly all five). Under each of the five "circumstances," there are listed some examples of the types of services, the typical areas of legal expertise, and the remote venues that would cause the department to seriously consider calling upon outside counsel.

- A. Staff Limitations Due to Current Workloads (i.e., rush short-term projects or massive long-term projects where in-house resources are insufficient)
 - a) Major Oil & Gas Tax/Royalty/Tariff Disputes
 - b) Regulations Editing and Review
 - c) Tort Defense (i.e., personal injury claims, etc.)
 - d) Workers' Compensation
- B. Conflicts in Representation (i.e., cases where the interests of the state and that of the named defendant may conflict and affect all or part of the representation)
 - a) Special Prosecutors
 - b) Special Assistant Attorneys General
- C. Specialized Expertise
 - a) Investment Counsel
 - b) Bond Counsel
 - c) Constitutional Law (and other areas of academic specialization)
 - d) Technology/Patent Law

² This discussion applies primarily to the Civil Division. Outside counsel has been hired to prosecute criminal cases in a handful of cases where the Attorney General has had a conflict of interest. If an individual prosecutor has a conflict, the case is assigned to another prosecutor in another office, generally, an attorney in the Office of Special Prosecutions and Appeals. *See also* the answer to question number 8.

- e) Professional Malpractice
- f) Environmental Law

D. Jurisdictions Outside of Alaska

- a) State/Federal Relations Matters Requiring a Washington, D.C., Presence
- b) Multi-State or Multi-Party Coalitions
- c) Bankruptcy and Other Collections Efforts
- d) Other State Courts and Federal District Courts
- e) Federal Appeals Court and U.S. Court of Claims
- f) U.S. Supreme Court

E. Private Bar Efficiencies (i.e., those types of matters routinely handled by private attorneys but rarely or only occasionally by state government attorneys)

- a) Real Estate Transactions
- b) Banking and Other Commercial Business Transactions
- c) Complex Insurance Matters
- d) Large-Scale Collections Efforts
- e) Federal Tax Code

Due in part to its small size, the department has a highly centralized management structure. The Attorney General himself or one of the two Deputy Attorneys General approves all requests regarding the retention of outside counsel on substantive matters (i.e., where the costs of legal services will likely exceed \$2,500). The scope and purpose of the retention as well as the procurement method to be employed are also approved at this level. The entire procurement and contracting process is directed and supervised by the department's contracting officer within the Administrative Services Division. In securing the services of outside counsel, the department adheres to the requirements spelled out in the State Procurement Code (AS 36.30) and the corresponding administrative regulations (2 AAC 12). Because of the centralization referred to above, there is no need for additional or duplicative departmental policies and procedures in this area.

Whether or not a particular matter is handled in-house or by outside counsel, it is always the department's overall objective to seek the best possible resolution of legal matters at the lowest practicable cost. Balancing the need for results against cost is at the heart of the selection process when outside counsel is considered. In any competitive solicitation, the factors that are used in evaluating the suitability of counsel to represent the state in a given situation *must be* established in advance of the solicitation effort. In the case of formal RFP solicitation, the evaluation factors that will be used must be listed in the RFP along with the weight that is to be given to each factor in the evaluation process.

In undertaking a solicitation for the services of outside counsel, the department will almost always consider the following criteria in the selection of legal counsel: the firm's understanding, knowledge, and experience in matters similar to those at issue; the firm's proposed organization of responsibilities, work plan, and approach; the experience and capabilities of the individual attorneys who would be providing services under the contract; the firm's proposed fees; and the presence of any potential conflicts of representation.

In further defining these factors and contemplating others, the following areas may also be considered:

- A. The experience of the attorney/law firm in the type of legal work required or expected to be performed: what type of cases does attorney/firm currently handle; what type of cases does attorney/firm have expertise to handle; what type of work does the State expect to direct to the firm; does the attorney/firm practice in state and/or federal court; does the firm have the specialists that may be needed; and does the firm have appellate experience?
- B. The ability of the attorney/firm to handle the volume of work: how large a firm is it; what is the ratio of partners to associates; is the firm departmentalized; how do they coordinate; what are the number and type of support staff available and the policy on their utilization; and what library facilities and legal computer research capabilities does the firm possess?
- C. The reputation of the attorney/firm in the legal profession and in the locality served: the rating in the Martindale Hubbell Directory; the past experience of major clients of the attorney/firm.
- D. Geographic location of attorney/firm: is location pertinent to performance; what are the locations of branch offices?
- E. Are the rates to be charged by the attorney/firm reasonable: is the work routine in nature or more specialized; if the state will be a major client, is it being given a favorable rate structure; will the firm consider and propose alternative billing arrangements; and will the firm prepare a budget on identified matters; and is the firm conscious of overall costs?
- F. Can the attorney/firm make available an adequate number of attorneys to handle related matters of a routine or less important nature at a lower fee rate: identify who will work on particular matters; and who will work on routine or repetitive matters?

- G. Can a high degree of cooperation be expected to exist between the Attorney General's office and the attorney/firm? Will the firm participate in a cooperative or joint effort approach to litigation; will they call upon the state for existing briefs and memoranda as a basis for research; will they supply meaningful status reports; and will they cooperate in following and amending the projected case budget and work plan?
- H. Will the attorney/firm be responsive to the needs of the state to be kept informed? Does the attorney/firm return calls in a timely manner; respond to instructions; complete reports in a timely manner; and provide quality reports?

Although not required by statute or regulation, in undertaking the competitive solicitation of outside counsel the department will typically use an evaluation committee of three to five members (often including client agency representatives) to review proposals received in response to both formal and informal solicitations. These committees review the proposals and then forward their recommendations to the Attorney General for final approval. We believe that this review process and our adherence to the state's procurement statute and regulations provide for the fair and equitable treatment of those firms that may wish to be considered for such contracts.

6. Has the department (or reviewing agencies such as OMB) conducted studies on effectiveness of inside and outside counsel?

Experience has shown that using in-house counsel is much more cost efficient than using outside counsel, particularly in the areas of litigation involving relatively large numbers of similar cases and those areas with considerable pro se litigation. The latter are often frivolous, but very time consuming. In the last 10 to 12 years, the department has made a conscious effort to reduce the number of cases handled by outside counsel, to develop expertise in-house, and to ensure appropriate oversight and consistency in positions taken that impact state policy and public interest.

The FY00 hourly rate for a Department of Law Civil Division attorney is \$92.49. This rate includes all normal overhead items such as clerical support, data processing, lease space, etc. The overhead portion of the rate also includes any clerical overtime, faxes, copies, telecommunications costs, and postage — items that are often used as cost centers by private law firms or, at a minimum, billed at cost on top of the hourly rate.

The department typically pays from \$125 to \$200 per hour for the services of private Alaska counsel to handle cases for the state. The rates paid by the department will usually include a discount of ten to twenty percent from any given firm's standard billing rates. Hourly rates paid for the services of non-Alaska private attorneys will typically run from \$180 to as high as \$400 per hour in major metropolitan areas (this usually involves

counsel with specialized expertise.) Again, the department is often able to obtain significant discounts even in such high cost centers of commerce.

The department also has the advantage of being a statewide firm with offices in the three major cities of the state. Computer networking and faxing court filings, affidavits, and other casework saves the state money. There are also more intangible benefits to having in-house legal staff. Department of Law attorneys work with their client agencies on a daily basis providing advice and assistance to insure consistency in treatment of individuals and to reduce the potential for state liability. These same lawyers have the contacts and experience to effectively defend the state's actions.

7. Has the department analyzed and compared damage awards in cases handled by outside counsel and compared those awards to matters handled in-house?

The department has not performed such a formal analysis. Most damage awards, settlements, judgments, and claims are individually reviewed by both the Office of Management and Budget (OMB) and the legislature during the appropriation process. The exceptions are tort claims, which are funded through the risk management self-insurance pool. The appropriations for this self-insurance program are annually reviewed and approved by OMB and the legislature as well.

8. As a philosophical matter, is there any room for the selection of outside counsel for certain criminal matters? If so, would statutes have to be amended?

Philosophically, the hiring of outside counsel as prosecutors does present potential problems.

First, if counsel is paid on an hourly basis, the arrangement could be criticized by defendants who claim that additional charges were pursued, or possible pretrial resolutions *not* pursued, in order to increase the fees paid to the prosecutor. Such criticisms have been leveled at a practice used in some other states of paying prosecutors for each case in which charges are filed. While we do not believe that carefully selected and supervised private counsel would generate excess fees, our experience has been that it costs a great deal more to hire outside counsel than to prosecute a criminal case in-house.

Second, if private counsel prosecute cases under a fixed-price contract, the arrangement could be criticized by victims and police who claim that short-cuts are taken and the cases are not pursued vigorously, so that more time can be spent on private cases compensated on an hourly basis.

Third, especially in areas outside of Anchorage, Fairbanks, and Juneau, the limited number of local attorneys presents a real potential for conflicts of interest within small communities. Hiring private attorneys from out-of-town greatly adds to the costs of prosecution.

This is not to say that outside counsel have never been hired by the Department of Law to work on criminal cases. On rare occasions outside counsel have been appointed to investigate and/or prosecute certain criminal matters, because of a potential ethical conflict within the Department of Law. The Attorney General can enter into such contracts without additional statutory authority. See *State v. Breeze*, 873 P.2d 627 (Alaska App. 1994). These contracts are, however, expensive and cannot be anticipated in the department's annual budget planning. Special appropriations from the legislature are therefore necessary to cover these costs.

On other occasions outside counsel have been hired to work as prosecutors during times of temporary staff shortages. When that happens, the private attorney does not work under contract, but is hired as a temporary state employee who works within the district attorney's office under the direction of the local district attorney. Because temporary state employees do not receive employee benefits, this is a much more cost-effective method of obtaining periodic assistance from the private bar. Again, no additional statutory authority is required.

Overall, in our experience the hiring of private counsel is not a good long-term cost-saving device.

9. What procedures exist for monitoring work of outside counsel? (A) As to matters of substance? (B) Financial administration of outside cases?

Every professional services contract has a project manager assigned to monitor the contractor's work and approve invoices prior to payment by the Administrative Services Division. The department has developed formal guidelines for managing outside counsel. The guidelines are posted on our internal web site, and used as the basis for training sessions for project managers and their supervisors. A copy of these guidelines is attached.

10. Very significant amounts of money have been expended in past years for the retention of outside counsel for oil and gas taxation matters. What is the approach of this Administration to such matters?

Expenditures for outside counsel in the area of oil and gas litigation have declined considerably in recent years. This is due to changes in the nature of the caseload and the resolution of a backlog of large, complex tax, royalty, and regulatory cases. These

changes have allowed the use of less costly in-house legal resources to manage most of the caseload.

The department's Oil and Gas Litigation appropriation reached its highest point in FY94, at over \$31 million, with most of the funding used for contractual services, including outside counsel, experts, and litigation support. Since that time, the appropriation has decreased annually to the current FY00 level of \$5.5 million, approximately one-half of which is budgeted for outside contractual services.

The significant expenditures in the early and mid-1990s were made as part of a conscious effort to deal with a backlog of major oil and gas tax, royalty, and regulatory cases. Outside counsel were largely relied on to prosecute the backlog of cases due to the cases' size and complexity. The state system cannot respond to the rapid, large-scale fluctuations in personnel required to litigate those types of cases, nor does the state have the structural resources needed to prosecute cases of this size without assistance. However, with the resolution of the backlog, cases changed from large-value, complicated cases to relatively smaller, more routine cases. At the same time, the oil and gas caseload was growing, as ANS producers wanted to have their tax cases heard quickly in response to an increase in the interest rate charged on past due taxes.

The growing caseload could either be assigned to outside counsel, or the department's staff could be increased to handle it. In FY96, the administration requested and the legislature appropriated funding for additional in-house positions in the Oil, Gas and Mining section specifically to bring the growing, more routine caseload in-house.

It is more efficient, and much less expensive, for in-house attorneys to handle most of the litigation. Outside counsel is still necessary in certain instances, but they serve in more of a consultative role, rather than staffing and litigating the cases.

11. Is the department aware of the "pay to play" issue which has been the subject of an ABA task force?

The Attorney General is aware of the issue, but has not participated in the debate before the American Bar Association.

12. Does the department perform any functions which would not be considered the rendering of legal services to the state - that is, are there any functions which could be viewed as "general government" services?

As with all state agencies, and indeed, all large law firms, the department has an administrative unit to handle payroll, personnel, payment of bills, procurement, budgeting, and the other administrative tasks needed to keep the department functioning.

Mr. Mark Johnson

August 31, 1999
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In addition, AS 45.68 requires a charitable organization, with certain exceptions, to register with the Department of Law before it can solicit contributions in Alaska. The Consumer Protection unit handles the registrations. Maintenance of this registry could arguably be considered a "general government" function.

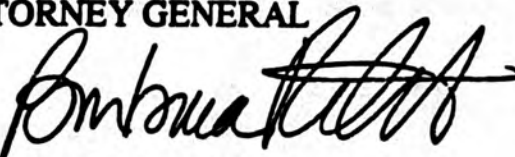
Joan Kasson has relayed Ms. Rollins' request for additional information on the department's staff locations and functions. We will be providing that information under separate cover prior to the September 9 meeting.

If you, or members of the subcommittee, have additional or follow-up questions prior to the September 9 meeting, please let Joan or me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Barbara J. Ritchie
Deputy Attorney General

Enclosures

cc: The Honorable John Cowdery
Betty Rollins
Bill Satterberg
Richard McVeigh
Scott Brandt-Erichsen
William Oberly
Bruce Weyhrauch
Blake Call

MANAGING OUTSIDE COUNSEL CONTRACTS



**Department of Law
September 1998**

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The Big Picture

The MOST IMPORTANT PART OF MANAGING OUTSIDE COUNSEL CONTRACTS IS YOUR ACTIVE INVOLVEMENT AS PROJECT MANAGER IN THE PLANNING AND DAY-TO-DAY MANAGEMENT OF A CASE. In the case of on-going general counsel contracts, a good relationship with the client agency is imperative to ensure that as project manager you know in advance what services the contractor will be providing. As project manager, you must make the commitment to participation.

Fees are by far the largest expense associated with a legal services or expert witness contracts. Work should be agreed upon before it happens. It is difficult to tell a contractor he or she should not have performed certain work and then refuse to pay for the services in a bill received one or two months after the work is performed, unless that work was outside of the parameters you clearly established in advance.

The contractor, wishing to do the best job possible for their client, the state, has the incentive to turn over every legal "rock" as it were. The state, however, wishes to receive the best representation it can, at the least possible cost. Certain work may be nice, but not necessary. It is your job as project manager, to make these decisions in conjunction with the contractor, and the client agency, if necessary, before the work occurs.

To ensure cost effective representation on every matter referred to outside counsel, project attorneys should **READ AND KEEP A COPY OF THE CONTRACT**. This seems simple, but not everyone does. The contract terms clearly set out the state's expectations related to contract management and answer many questions concerning allowable costs. A copy of the department's standard agreement form is appended to this manual for illustrative purposes, but should not substitute for reading the agreement specific to your case as the terms may vary.

General Counsel Contracts - An Extra Step

Outside counsel is sometimes retained to advise the state on specialized matters outside the practical scope of the Department of Law. Investment counsel and bond counsel contracts are examples where specialized expertise located outside of Alaska may be necessary. These types of contracts require extra effort on the part of the project manager, because the work assignments are generally coming from the agency, yet the project manager is ultimately responsible for approving payment of the bills.

The project manager must work with the client agency to establish regular communications regarding the work assignments being given to the contractor. Ideally, the project manager will be working closely with the agency and the contractor on day-to-day legal activities. This is not always practicable, and a mutually agreed upon method of ensuring you, as project manager, are aware of the contractor's work assignments and performance must be formally established and maintained. In addition, but not instead, the client agency must review the contractor invoices concurrently with the project manager, to double check their reasonableness.

Because the Department of Law is ultimately responsible for the legal representation of most executive branch agencies, AS 36.30.015(d) and 2 AAC 12.040 prohibit those agencies from entering into contracts for the services of legal counsel without the prior written approval of the Attorney General. Except in those instances where an agency has been specifically delegated the authority to procure and manage the services of legal counsel, the Department of Law will most likely be the contracting agency and held responsible for the administration of any such agreements. If problems develop over contractor oversight, we are whom the auditors are going to come visit.

Planning Ahead

All contracts regardless of size should have some form of **BUDGET OR WORKPLAN ESTABLISHED AND REGULARLY UPDATED**. They may be incorporated directly into a contract, developed separately after the contract has been executed, perhaps on an annual basis for very large contracts, or, in the case of very small or simple contracts, be an informal understanding between the involved parties.

1. Identify key dates or milestones and develop budget according to the effort needed to reach each point. This is often easiest to do as a month-to-month projection covering one year, keeping in mind court deadlines and the work that is likely to be necessary to meet those deadlines. Questions to ask:

How many attorneys will be assigned at what billing rate, for both prime and co-counsel, if necessary?

What level of expert assistance will be necessary, and at what rates?

What kind of direct case costs might be incurred?

-
2. Establish the level of direct involvement and supervision by the department's attorneys and any other protocols necessary for the management of the case/project.
 3. Clearly establish that it is the contractor's responsibility to monitor his work efforts and to notify the state as early as possible when it becomes apparent that his costs and fees may exceed the budget amounts estimated above. Without such prior notification, the contractor may be required to bear the cost of any services beyond the authorized contract ceiling.

General Contract/Case Management

To ensure cost effective representation on every matter referred to outside counsel, the project attorney should:

1. clearly define the objectives to be achieved by contract counsel;
2. ensure that the contractor has a clear understanding of his role;
3. actively participate with the contractor in developing a case plan and budget;
4. impress upon the contractor the need to discuss and obtain the state's concurrence on any material changes in the case plan or budget;
5. ensure that the state is kept advised of any material developments as they occur; and
6. utilize state resources in order to reduce contract costs whenever possible (staff attorneys, paralegals, research, etc.).

Keep in mind that the state's overall objective is to seek the best possible resolution of legal matters at the lowest practicable cost. Consequently, outside counsel must avoid multiple representation at meetings or depositions, overstaffing, rotating lawyers knowledgeable about state matters and using state projects for purposes of training their personnel.

If it is apparent that multiple representation at a meeting would benefit the state or that staffing changes are necessary, these matters should be discussed in advance. Contractors should be expected to control their time carefully, avoid unnecessary polishing of their work, and to seek cost-effective solutions.

The time and effort devoted to legal research has become a costly element of legal representation. To avoid duplication of research efforts, to obtain benefits of previous research, and to ensure consistency with existing opinion, contractors should be instructed to discuss proposed major research efforts in advance with the project attorney and to check the Attorney General's brief bank/opinion index system for related legal opinions.

Monitoring Contract Performance - Status Reports and Billings

Formal written status reports may be requested on a periodic basis depending on the size and complexity of the contract and/or the degree of active involvement by department attorneys. In some cases the contract billings will be detailed enough to serve as status reports. Status reports should, at a minimum, compare the actual expenses to the previously prepared budget, and discuss any significant differences, so that the budget can be adjusted if necessary, to reflect unanticipated changes in the case.

With the utilization of computerized billing systems by most law firms, mathematical errors in invoices rarely, if ever, occur. As such, the project attorney should concentrate on reviewing billings for, among other things, substantive matters, reasonableness, cost consciousness, and compliance with the terms and conditions of the state's contract, including whether the work was within the scope, period of performance, and total amount of the contract. In reviewing invoices, the project attorney may want to ask the following questions:

1. Did the contractor utilize state resources in order to reduce contract costs whenever possible (staff attorneys, paralegals, research, etc.)?
2. Have we been given credit for the learning curve when the firm shifts attorneys for its own purposes rather than at the state's request?
3. Have there been multiple changes in the lawyers or paralegals working on or responsible for any one matter?
4. Is the case under control? Was there research done early in the case so as to establish a direction for the case?
5. Have we been billed for multiple office conferences?
6. Do the hours for any particular matter reflect the result?
7. Has there been excessive review by senior partners in the firm?
8. Has there been excessive time spent on certain pleadings?

-
9. Has the case been moving?
 10. Have the disbursements and expenses as agreed upon been properly billed? (See discussion on costs, below.)
 11. Do the cumulative fees accurately reflect the status of the case?
 12. Are the rates charged the same as agreed?
 13. Are there excessive reviews of the file, or reviews of pleadings previously reviewed?
 14. Are there excessive status reports or status reviews? Are they calling client agency personnel to provide same or vice versa?
 15. Are there continuances on our side because firm was not ready?
 16. Has there been consultation with in-house staff before embarking on a major research project on state issues?
 17. Are there more attorneys than necessary working on a file, performing research, etc.?
 18. Are there excessive inter-office conferences? (Perhaps a more senior attorney is needed.)
 19. Are they "papering to death" - always writing a letter when a phone call would do?

Allowable Costs

State contracts have limits on reimbursable costs which may be unfamiliar to new contractors in particular. Most limitations are clearly listed out in Appendix D of the contract.

For example, the state will not pay for First Class airfares unless pre-approved by the Attorney General. The contract establishes a maximum level for hotel and meal costs. Tips will not be reimbursed, nor will laundry costs, alcoholic beverages, videotape rentals, or other entertainment expenses. (As a general rule, the state does not pay for costs which would otherwise be considered normal living expenses.)

The contract also establishes maximum rates which may be charged for certain types of costs, (i.e., copies and faxes), but for most direct disbursements, simply limits reimbursement to the actual amount of the cost incurred (i.e., no administrative surcharge or other overhead recovery fee).

Care should be taken on what costs are billed, which perhaps should be included in the contractor's rates as overhead. For example, time spent preparing budgets and invoices for submission to the state should not be billed to the state, unless the preparation is so onerous that pre-approval is obtained. Secretarial overtime is also an overhead cost, unless required by the nature or timing of the assignments made under the contract, and not because of other client work or other firm priorities. Lease costs, insurance (including automobile rental insurance), furniture, equipment, and software are overhead costs, unless pre-approved by the Deputy Attorney General.

Unless specifically modified during negotiations, the department's standard legal services and expert witness contracts do not permit the state to pay for travel time.

As a general rule, receipts should be provided for expenses over \$250.00 at a minimum. Requests for reimbursement for costs should be individually itemized, and costs categories labeled "miscellaneous" should be discouraged.

Costs are a small expense compared to fees; however, they can add up.

Contract Amendments

Nearly all legal services contracts issued by the department contain provisions that allow the contract to be amended under certain circumstances. 2 AAC 12.040 recognizes the rather unique character of legal services agreements and provides for the inclusion of language allowing for the adjustment of price, time of performance, and total dollar amount. In addition, 2 AAC 12.485 assigns the Attorney General authority to approve amendments that exceed the state's \$50,000 small purchase threshold. When a contract amendment is required, project managers shall work directly with the department's administrative services division to execute the amendment and, as necessary, the client agency to ensure sufficient additional funds are made available. Any amendment resulting in a significant change in the scope of a legal services contract, must be approved in advance by the Attorney General.

Role of Administrative Services Division

The role of the department's administrative services division is primarily two-fold. First, the department's contracting officer is responsible for assisting the project manager in procuring the services required in accordance with the State Procurement Code and department policy. He may undertake the solicitation on behalf of the department, prepare all contract documents (including any subsequent amendments), obtain the necessary signatures from all of the parties, and, if necessary, assist in securing RSA funding from the client agency.

Second, the department's fiscal section is responsible for processing all invoices submitted for payment and obtaining reimbursement from our client agencies as may be required. Unless an invoice is in dispute, AS 37.05.285 requires that payment must be made within thirty-days of receipt of a proper billing. Consequently, it is critical that project managers review and submit invoices as quickly as possible. As a rule, in order to stay within the thirty-day requirement fiscal section personnel will pay the oldest bills first when processing contractor payments. Fiscal will review the bill to determine whether it has been duly authorized for payment, if all necessary backup information and receipts are included, whether it falls within the contract's period of performance, and whether there are sufficient funds encumbered to pay for the services. Periodic spot checks will also occur to check for mathematical accuracy.

Frequently, delays in payment may occur as a result of the RSA process. In such instances, project managers may be asked to prompt client agencies to expedite the authorization of RSA's that are required to pay for services for which the department has already been billed.

Managing within a Fiscal Year

In most cases, you as project manager will need to be concerned about managing a contract and an appropriation at the same time. In certain instances, the legislature will make a separate appropriation for specific litigation. Large, complex cases may have a special appropriation to make it easier for the legislature and the governor to monitor them. Oil and gas litigation is an obvious example, as was the *Exxon Valdez* oil spill litigation. Other cases, not anticipated during budget development, may receive a special appropriation. The *Venetie* case required such an appropriation. In many cases, outside counsel and expert contracts are funded by a reimbursable services agreement (RSA) with another agency. These are like separate appropriations because the funds cannot be used for any other purpose than stated in the RSA.

When managing outside counsel on a case within the confines of a special appropriation or an RSA, the project manager must not only be concerned with costs remaining within the amount of the appropriation, but also on timing. All

appropriations have a lapse date, when any unexpended amount lapses back to the state treasury. **FUNDS CANNOT CARRY OVER PAST THE LAPSE DATE OF THE APPROPRIATION.** Most appropriations have a term of one fiscal year. Sometimes the legislature will add an "extended lapse date" to a special appropriation so it can carry over more than one fiscal year, perhaps two. (The State of Alaska fiscal year runs from July 1 to June 30.)

When requesting a special appropriation for an unanticipated, large case like *Venetie*, the department will request an extended lapse date when it is clear the case will not be completed before June 30 of that year. However, for large annual appropriations like Oil and Gas Litigation, the legislature does not normally provide an extended lapse date. This can be problematical, because cases do not necessarily neatly end by June 30, nor stick to the schedule that a budget was built on 18 months before. (For a fiscal year beginning July 1, the budget bill is introduced in the legislature in January.)

With RSAs, the agency providing the funds to Law encumbers the agreed upon amount in the accounting system so they cannot be used for another purpose.

Careful monitoring of expenditures becomes increasingly important under these circumstances. The legislature is the only body with the power to appropriate funds. They usually meet from mid-January to mid-May. If case expenditures are projected to be more than the amount of the appropriation, a decision must be made, preferably early in the legislative session, whether to seek a supplemental appropriation from the legislature, or to rein in expenditures to remain within the appropriation. On the other hand, if it looks like the case will not cost as much as budgeted, perhaps because delays are moving costs into the next fiscal year, the governor and the legislature need to know that as well. This is so that extra money can be released and reappropriated for some other purpose, and the budget request for the next year adjusted to reflect the delay.

The same applies to RSAs, with a slightly different twist. The funding agency has its own appropriation that is paying for the legal services contract. If costs are running above the RSA amount, that agency must agree to the increase and find the funds to pay for the increase either from existing appropriations or through a supplemental appropriation. If costs will be significantly under budget, they need to know about that too in a timely manner so they can use those funds for another purpose, and be aware that additional funds will be necessary in the next fiscal year. If they are not notified, the unused part of the RSA will lapse, and the agency may be startled to find out they are being asked to pay for the same legal services a second time.

Once the legislature is out of session in mid-May, this careful monitoring must continue. Outside counsel bills usually come in a month or more after the work is performed. If you are surprised by a larger than expected bill that blows your

budget, and exceeds your appropriation or RSA level, the funds will need to come from somewhere else in the department. If there are no excess funds elsewhere, the department will be before the legislature during the next session to explain why. This type of mismanagement can have painful consequences.

Disciplining Outside Counsel

If a problem becomes apparent, discuss it with the contractor attorney doing the work; if that does not bring about the desired result, review the matter in specific detail with your immediate supervisor, who should in turn discuss the problem with the responsible partner within the firm.

1. Remember that at one time we thought this was a good firm.
2. Have a meeting, detail the problems you have had or are having, but be willing to listen to the problems the firm may be having with the state.

If this fails, alert the Deputy Attorney General or the Attorney General to the problem in order to discuss available remedies.

STANDARD AGREEMENT FORM

1. Agency Contract Number	2. ASPS Number	3. Financial Coding	4. Agency Assigned Encumbrance Number
5. Vendor Number		6. Alaska Business License Number	

This contract is between the State of Alaska,

7. Department of	Division	hereafter the State, and
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8. Contractor	hereafter the Contractor
---------------	--------------------------

Mailing Address	Street or P.O. Box	City	State	ZIP+4
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9.

ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.

ARTICLE 2. Performance of Service:

2.1 Appendix A (General Provisions), Articles 1 through 14, governs the performance of services under this contract.

2.2 Appendix B sets forth the liability and insurance provisions of this contract.

2.3 Appendix C sets forth the services to be performed by the contractor.

ARTICLE 3. Period of Performance: The period of performance for this contract begins _____, and ends _____.

ARTICLE 4. Considerations:

4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$ _____ in accordance with the provisions of Appendix D.

4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:

10. Department of	Attention: Division of
Mailing Address	Attention:

11. CONTRACTOR		13. CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the variety, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Name of Firm			
Signature of Authorized Representative	Date		
Typed or Printed Name of Authorized Representative			
Title	Employer ID No. (EIN) or SSN		
12. CONTRACTING AGENCY		Signature of Head of Contracting Agency or Designee	Date
Department/Division	Date		
Signature of Project Director			
Typed or Printed Name of Project Director			
Title			

GENERAL PROVISIONS

APPENDIX A

1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspection and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes.

- 3.1 Any dispute concerning a question of fact arising under this contract which is not disposed of by mutual agreement shall be decided in accordance with AS 38.30.620-632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, physical handicap, age, sex, marital status, changes in marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of the contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. The State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law.

This contract is governed by the laws of the State of Alaska. All actions concerning this contract shall be brought in the Superior Court of the State of Alaska.

Article 12. Conflicting Provisions.

As specifically amended and approved by the department of Law the General Provisions of this contract supersede any provisions in other appendices.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, contingent fee, or brokerage except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State

may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

S C

APPENDIX B²
INDEMNITY AND INSURANCE

Article 1. Indemnification

The Contractor shall indemnify, hold harmless and defend the contracting agency from and against any claim of liability for error, omission, or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "contracting agency," as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

Article 2. Insurance

Without limiting contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a 30-day prior notice of cancellation, nonrenewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

2.1. Workers' Compensation Insurance: The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L.&H. and Jones Acts requirements. The policy must waive subrogation against the State.

2.2. Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

2.3. Commercial Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

2.4. Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$300,000 per Occurrence/Annual Aggregate
\$100,000-\$499,999	\$500,000 per Occurrence/Annual Aggregate
\$500,000-\$999,999	\$1,000,000 per Occurrence/Annual Aggregate
\$1,000,000 or over	Refer to Risk Management

APPENDIX C

Article 1. The services to be performed by the Contractor.

Article 1.1. At the specific direction of the Attorney General's Office, the Contractor ([INSERT FIRM NAME]) shall provide legal services to the State of Alaska in connection with the matter, [INSERT CASE NAME]. It is agreed between the parties that the State shall determine the scope of the services to be rendered by the Contractor and that the State has the option to and may perform all or part of the work involved in each matter assigned under this contract. It is further agreed that the State may require a separate contract on any matter which, in its judgment, may be sufficiently complicated or prolonged to justify a separate contract.

Article 2. Contract Management

Article 2.1 The designated contact person and lead attorney for the Contractor will be [INSERT NAME]. The Contractor's services under this contract shall be directed and managed from the Contractor's [INSERT CITY] office. In addition to [INSERT LEAD ATTORNEY], [INSERT OTHER KEY PERSONNEL] shall also provide attorney services under this agreement. The Contractor may assign other attorneys or paralegals to provide services under the contract after providing notice to, and obtaining approval from, the Project Director. All attorneys assigned to provide services under this Contract shall work under the direction and management of the lead attorney listed above.

Article 2.2 The Contractor will maintain the involvement of the individuals identified in Article 2.1 above in advising and representing the State in this matter. In the event of an unforeseeable circumstance that requires substitution for any of those individuals, the Contractor shall notify the State in writing of the proposed substitution. The State reserves the right to accept or reject a proposed substitute.

Article 2.3 In addition to providing notification of proposed substitution for the key individuals listed in Article 2.1, the Contractor is also required to notify the State where substitution of other attorney staff is made. Before substitution of any individual is effected, the State must approve the extent to which transitional time will be billed.

Article 2.4 Within the time period established by the Project Director, the Contractor shall develop an estimate of the time and costs necessary to litigate the matter assigned under this contract.

Article 2.5 The Contractor shall prepare and maintain a workplan and budget approved by the Project Director to accomplish the tasks necessary to defend the State's position in the assigned matter. The proposed workplan and budget shall be prepared by the Contractor within the time period established by the Project Director and shall include:

- a. a summary of the case;
- b. a discussion of the major strategy options including benefits, risks and the potential costs associated with each;
- c. a proposed/recommended strategy;
- d. a list of major tasks to accomplish within the next 12 months to support the recommended approach and strategies;
- e. identification of critical dates and proposed monthly schedule for completion of each task including responsibilities and estimated time and cost to complete; and
- f. a description of staffing roles and responsibilities.

The Project Director will review the proposed workplan and budget, specify any necessary changes, and approve the final plan. During the period of this agreement the Contractor shall continually update the workplan and budget to reflect changes in strategy, timing, cost, etc. and submit all proposed revisions to the Project Director for approval.

Article 2.6 The Contractor agrees to participate in periodic status meetings with the Project Director and others the Project Director shall designate, and to prepare and present at the meeting a summary of the status of the tasks for which the Contractor is responsible.

Article 2.7 BEFORE A COST OVERRUN IS INCURRED, THE CONTRACTOR AGREES TO ALERT THE PROJECT DIRECTOR AS SOON AS IT APPEARS THAT TOTAL EXPENDITURES UNDER THE CONTRACT MAY EXCEED THE CONTRACT CEILING ESTABLISHED UNDER APPENDIX D, ARTICLE 1.3. IN THE EVENT THE CONTRACTOR FAILS TO NOTIFY THE PROJECT DIRECTOR PRIOR TO INCURRING A COST OVERRUN, THE CONTRACTOR SHALL ASSUME LIABILITY FOR ANY EXCESS COSTS AND FEES INCURRED UP UNTIL THE TIME AT WHICH THE CONTRACTOR NOTIFIES THE PROJECT DIRECTOR OF THE OVERRUN.

Article 2.8

For those issues in which the parties determine that professional/expert witness services are needed by subcontract, the State shall set criteria for the Contractor to apply in selecting such experts. The State reserves the right to approve or reject the selection of all expert witnesses, to select the expert witnesses, and to participate in any subcontract negotiations with the Contractor. Generally, the State will require the Contractor to impose upon expert witnesses terms and conditions identical to those contained in this agreement, including the preparation and maintenance of a detailed workplan and budget, clearly establishing liability for cost overruns, and compliance with the billing policies and procedures contained in Appendix D. The Contractor agrees to direct and monitor expert witness performance and to assume responsibility for payment of expert witness invoices and the resolution of any fee disputes. For its part, the State agrees to reimburse the Contractor for all expert witness costs and fees that fall within the scope of an approved workplan and budget or are otherwise allowable under the terms and conditions of an approved expert witness subcontract or letter of agreement.

Article 2.9

At any point during the period of this agreement that the Contractor becomes aware of a potential conflict of representation and wishes to obtain a waiver from the State, the Contractor shall submit a written request to the Deputy Attorney General, with a copy to the Project Director, that contains the following information:

- a. Full disclosure of the scope of the matter the firm and designated lawyers desire to perform for the named entity or individual, and
- b. Statement of the reason why the conflict would not be so substantial as to be deemed likely to interfere with the lawyer's exercise of independent professional judgment or affect the integrity of services which the State expects and the firm and designated lawyers have contracted to perform for the State.

Article 2.10

Copies of any significant briefs prepared by the Contractor shall be sent to the department's Legal Administrator for review and possible inclusion in the state's automated brief bank indexing system. In addition, upon conclusion of this agreement, unless other storage/retention agreements are approved by the Deputy Attorney General, all case files including discovery, other evidentiary materials, and any automated litigation support data shall be forwarded to the department.

Article 2.11

As the demands of the case may dictate, the period of performance, scope and amount of this agreement may be amended in writing at the discretion of the State. In addition, the parties to this agreement acknowledge that work may begin on the date shown in Article 3. ("Period of Performance") and that the foregoing date may precede the date of execution of this agreement because immediate performance is required to serve the best interest of the state.

Article 3.**General Litigation Policies****Article 3.1**

The Contractor shall represent the State in a manner that is consistent with the State's philosophy of pursuing litigation in an aggressive and forthright manner while maintaining the overall objective of resolving litigation in the most expeditious and cost-effective manner.

The Contractor shall avoid taking extreme advocacy positions that are not likely to have a substantive impact on the litigation. Coercive, delaying or obstructive tactics are also to be avoided. In addition, the State discourages engaging in motion practice unless there is some clear, strategic advantage to be gained. Where appropriate, however, motions for judgment on the pleadings or for summary judgment pursuant to applicable rules should be employed to resolve or refine as many issues in dispute as possible.

Lengthy interrogatories or requests for extensive document production solely for the purpose of burdening another party are to be avoided. It is generally recognized that costly delays frequently result from abuses of the discovery process. The Contractor, in consultation with the Project Director, should consider available remedies when another party appears to be abusing the discovery process.

Article 3.2

The Contractor shall identify and consider early in the proceedings, and at each stage thereafter, the settlement possibilities of the dispute in order to achieve the greatest degree of cost-effectiveness. The Contractor should promptly report any and all settlement overtures received to the Project Director to permit his or her involvement in planning and negotiations.

Article 3.3

The Department of Law, Civil Division does not normally have the authority or responsibility for instituting, conducting or disposing of criminal proceedings. The department's policy is that the settlement of civil litigation may not, expressly or by implication, extend to the disposition of any criminal charges or recommendations with respect to such charges. In undertaking any settlement negotiations the Contractor shall not agree either to not disclose or not refer to law enforcement authorities any information relating to a possible criminal violation or investigation.

Article 3.4 The Contractor should be alert to and apprise the State of any opportunities for utilizing non-judicial dispute resolution approaches. Generally speaking, the State does not favor the use of arbitration or other forms of binding alternative dispute resolution; however, certain non-binding approaches, such as mediation or mini-trials, may result in a faster, less expensive resolution of disputes.

Article 3.5 In the event of any adverse ruling, the Contractor must notify the Project Director promptly in order that a decision may be made regarding possible appeals. No appeal may be taken without the prior approval of the Project Director, but the Contractor should protect the state's appeal rights pending a decision to appeal.

Article 3.6 The Project Director or the Attorney General's Office shall be the primary points of contact for all substantive dealings with the media. In the event the Contractor is contacted by media representatives concerning this or other cases being handled on behalf of the state, the Contractor should decline any comment beyond confirming factual matters that are already a matter of public record and refer the individuals to the Project Director.

Article 3.7 Prior to approaching employees of other government agencies for any purpose, including scheduling depositions or requesting documents, the Contractor shall notify the Project Director. In the event that such a contact or request for information is deemed to be of a sensitive nature, it may be coordinated directly by the Project Director.

APPENDIX D

Article 1.

Consideration

Article 1.1 In full consideration of the Contractor's performance under this contract, the State shall pay the Contractor [INSERT HOURLY RATES FOR EACH INDIVIDUAL]. Additionally, the State shall pay the Contractor for the services of other attorneys or paralegals who may be utilized in providing services under this agreement as long as the use of those individuals and their hourly rates are approved in advance by the State's project director.

Article 1.2 The State agrees to reimburse the Contractor for actual out-of-pocket expenses incurred while providing such services. Such reimbursement shall be limited as follows:

<u>Service or Expense</u>	<u>Charge/Rate</u>
Reproduction	\$0.10 per page
Computerized Legal Research (such as Lexis/Nexis, Westlaw/Dialog)	At cost as invoiced
Courier Services	
Automobile Messenger Deliveries	At cost as invoiced
Overnight Deliveries (such as UPS, Federal Express, Express Mail, DHL)	At cost as invoiced
Postage	At cost
Telephone	At cost as invoiced
Telecopier	\$0.75 (local), \$1.50 (domestic), \$2.25 (international) per page to send
Travel and Lodging	
Hotel Accommodations	Not to exceed \$150/night
Air Fare	Not to exceed coach fares
Cab Fare	At cost as invoiced
Meals	Not to exceed \$42.00/day
Litigation Process Disbursements (i.e., filing fees, subpoenas, depositions)	At cost as invoiced

Reimbursement for any of the above shall be limited to actual costs. No reimbursement shall be made for any administrative, surcharge, or other overhead recovery fee. Reimbursement shall not be made for the purchase or lease of office space, furnishings, equipment, or software unless approved in advance by the Deputy Attorney General. Upon conclusion of this agreement, unless other arrangements are approved by the Deputy Attorney General, the ownership of any furnishings, equipment, or software purchased under this contract shall revert back to the State and those items returned to the Department of Law.

Reimbursement for secretarial overtime or other temporary administrative or clerical assistance may be authorized but only if required by the nature or timing of assignments made under this contract (e.g. large projects or court imposed deadlines) and not because of other client work or firm priorities.

Unless otherwise approved by the Project Director, reimbursement for airline travel costs under this contract shall be limited to coach class fares. Contractor will not bill the State for time in travel status, except for that time during which the individual has performed work on the State's matter while in travel status; in that situation the Contractor shall adhere to billing rates provided in Article 1.2 of this appendix.

Reimbursement of hotel costs shall be limited to a maximum of \$150.00 per night unless otherwise approved by the Project Director. The Contractor shall, when possible, utilize moderately priced hotels comparable to those used by Department of Law employees. Reimbursement for meals shall be limited to either a total of \$42.00 per day or partial reimbursement for individual meals not to exceed \$9.00 for breakfast, \$11.00 for lunch, or \$22.00 for dinner. No reimbursement shall be made for alcoholic beverages, entertainment, gratuities, or what might otherwise be considered normal living expenses.

Article 1.3 Unless amended in writing, the total sum expended under this contract shall not exceed \$[INSERT CONTRACT AMOUNT], including out-of-pocket expenses.

Article 2. Billing Procedures

Article 2.1 The Contractor agrees to bill the State on at least a monthly basis and to bill the State within thirty days of the end of the monthly billing period.

Article 2.2 The Contractor's billing statements shall be itemized to show the time spent, a task description and the dates that the tasks were performed by the name and hourly rate of the individual performing the work. Billing statements shall also include an itemization of all costs and copies of invoices for travel and other significant out-of-pocket expenses.

Article 2.3 As applicable, monthly submission of bills shall include a contractor billing summary that shows the original estimated cost of completion as well as the monthly and cumulative total of fees and expenses incurred for each major task identified in the Contractor's workplan. The billing summary shall also provide an explanation for any variances from amounts budgeted for each task (ref. Appendix C, Article 2.6). The State reserves the right to withhold payment of fees and expenses pending satisfactory explanation and authorization to exceed original cost estimates or an approved task budget. As a standard cost control practice, the State may conduct an audit of time and cost records of the Contractor, its employees and expert witness subcontractors. Any such audit may be conducted at the Contractor's offices or a place mutually agreed to by the Contractor and the Project Director.

Article 2.4 Billing rates are capped for one year from date of execution of this Contract. If after one year the Contractor wishes to seek an adjustment of its billing rates, the Contractor shall:

- a. notify the Project Director in writing sixty (60) days before activating any increase in billing rates;
- b. specify the impact the rate adjustment would have on the existing workplan and budget; and
- c. limit the change in any individual billing rate to an amount that does not exceed the percent increase in the Consumer Price Index (CPI) for the locale from which the services are being rendered or obtain the approval of the Deputy Attorney General for any increase above the CPI.

If billing rates are increased under this article, the new rates are capped for one year following the date of the increase.

**LEGAL SERVICES CONTRACTUAL EXPENDITURES
FY94 - FY99**

	# CONTRACTS					FY94-99
SUBJECT	CLOSED		ACTIVE		TOTAL	AMT PAID
	Single Matter	Multi- Matter	Single Matter	Multi- Matter		
Administrative Law (federal)	2	1	0	2	5	\$587,304
Bankruptcy	5	0	2	0	7	\$143,785
Bond/Investment Counsel	1	8	0	10	19	\$9,206,446
Canadian/Admiralty	1	0	0	0	1	\$184,221
Child Protection	0	1	0	0	1	\$4,837
Civil Rights	3	0	0	0	3	\$185,727
Collections	8	0	2	0	10	\$23,493
Commercial	4	1	3	0	8	\$139,229
Constitutional	3	0	1	0	4	\$152,756
Construction Claims	4	2	2	0	8	\$690,626
Consumer Protection/Antitrust	5	0	1	0	6	\$57,990
Criminal Prosecution	3	0	0	0	3	\$185,625
Employment	6	2	3	0	11	\$626,011
Environmental	3	1	3	0	7	\$2,583,945
Investment Contract Litigation	4	0	0	0	4	\$1,352,535
Mental Health Lands	3	0	0	0	3	\$2,251,963
Natural Resources	2	0	0	0	2	\$15,063
Oil & Gas Litigation	6	5	2	5	18	\$78,334,941
Other	2	0	0	0	2	\$40,000
Real Estate	3	2	1	2	8	\$356,456
Regulations	20	0	0	0	20	\$271,011
State's Rights	7	2	4	1	14	\$4,634,808
Technology/Patent	0	3	0	1	4	\$133,256
Tort Litigation	6	2	8	0	16	\$2,720,752
Workers' Comp.	4	0	2	0	6	\$74,790
TOTAL	105	30	34	21	190	\$105,569,574

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**AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS
AND PROFESSIONAL RESPONSIBILITY
SECTION OF BUSINESS LAW
SECTION OF STATE AND LOCAL GOVERNMENT LAW**

**REPORT WITH RECOMMENDATIONS
TO THE HOUSE OF DELEGATES**

Recommendation

RESOLVED, that the ABA Model Rules of Professional Conduct, as amended 1998, be further amended to add a new Rule 7.6, "Political Contributions to Obtain Government Legal Engagements or Appointments by Judges", as follows:

**RULE 7.6. POLITICAL CONTRIBUTIONS TO OBTAIN
GOVERNMENT LEGAL ENGAGEMENTS OR
APPOINTMENTS BY JUDGES.**

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

Comment

[1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain an appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate,

incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term "appointment by a judge" denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for

proposal process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

[4] The term "lawyer or law firm" includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer's firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4(b) is implicated.

Report

Background

The House of Delegates last August decided that the Model Rules should expressly prohibit "Pay to Play" by lawyers as recommended by the Task Force on Lawyers' Political Contributions (the Task Force). See Amended Recommendation 301A. The Standing Committee on Ethics and Professional Responsibility (the Committee) submits the new Model Rule 7.6 and accompanying Comment set forth above to accomplish this goal. The Rule also includes provisions governing lawyers' campaign contributions to judicial candidates that are similar to a recommendation in the Task Force's Part Two Report dealing with judicial campaign financing. A detailed description of the submitted Rule begins at page 10.

The practice commonly known as "pay-to-play" addressed by the Rule is a system whereby lawyers and law firms are considered for or awarded either government legal engagements or appointments by a judge only upon their making or soliciting contributions for the political campaigns of officials who are in a position to "steer" such business their way. As discussed further in this Report, the Rule's prophylactic effect inheres in its subjecting lawyers to possible disciplinary action when they knowingly participate in such a system.

The Committee notes at the outset, however, that although lawyers and their political contributions are an important component of the pay-to-play system, lawyers are not the most important players in such a system. The primary actor in any pay-to-play situation is the public official who, depending upon the style of his or her participation in the system, may be acting in dereliction of official duties. For this reason, the rules of professional conduct governing lawyer behavior should not be relied upon as the primary

method of preventing the practice of pay-to-play. Rather, consistent and diligent enforcement of statutory provisions governing fair campaign finance practices and the conduct of public officials is the most fundamental method of addressing the problem of pay-to-play. The fundamental harm done by a pay-to-play system is the harm that befalls the public when a government official, motivated by campaign contributions, chooses lawyers or law firms that may not be the best qualified to perform legal services on the public's behalf. Thus it is the integrity of a basic governmental process, and not just the integrity of the legal profession, that is undermined when such action by a public official is tolerated.

The Committee also notes that a second method of protecting against the evils of a pay-to-play system exists, and it also lies outside the scope of rules governing lawyer conduct: the use of uniform procurement or acquisition procedures for the placement of legal services engagements by government entities and the granting of appointments by judges. The Association has strongly supported the use by government agencies of such procurement procedures. As recently as August, 1998 it approved a recommendation proposed by the Section of Public Contract Law and the Section of State and Local Government Law supporting fundamental principles of competition in public acquisitions. That recommendation had as its aims both the promotion of the public interest in the integrity and honesty of the public acquisition process and the promotion of competition itself. As such, it is a model to be recommended for use in the area of government legal engagements and appointments by judges.

The Standing Committee therefore notes emphatically that where there is aggressive enforcement of prohibitions against pay-to-play conduct by public officials, and where there is reliance on uniform procurement codes and procedures in the placement of legal engagements and in appointments by judges, the need to focus on lawyer conduct will be diminished. The Committee therefore restates the Association's support for each of these concepts, even as it submits parallel measures of regulation within the Model Rules of Professional Conduct.

BACKGROUND FOR DEVELOPING A MODEL RULE

The Rule proposed by the Committee is the end result of three initiatives this Association has taken since 1997 to resolve the problem of pay-to-play. Following proposals made to the House of Delegates in 1996 and 1997 by the Association of the Bar of the City of New York, at the 1997 Annual Meeting, the House approved Report 10D, condemning the pay-to-play practice. The Report also called for the creation of a task force that would study the problems created by a pay-to-play system and develop appropriate professional standards or rules on the subject.

The second initiative began with the appointment by former President Shestack of the Task Force on Lawyers' Political Contributions. The Task Force collected and reviewed empirical data and extensive media reporting on pay-to-play practices as it considered possible approaches the Association might take to discourage or prevent them. In carrying out its charge, the Task Force expanded the scope of its investigation in two important ways. Initial concerns had focused on the existence of the phenomenon in the area of municipal finance engagements. The Task Force's review revealed at least some evidence that the practice occurs in a wider range of practice areas. Early proposals for a Model Rule limited in application to lawyers engaged in municipal finance work were therefore put aside and the Task Force focused on developing a Rule of wider

application.

The Task Force also discovered that a similar system was sometimes in evidence as well in the context of appointments of lawyers made by judges following the making or soliciting of substantial contributions to the judges' election campaigns.

This second stage of study was concluded when the Task Force presented a two-part Report to the House in August 1998 (filed as Reports 301A and 301B). Part One made recommendations with respect to lawyers' political contributions to public officials who were in a position to influence the award of legal engagements by government agencies. House action on Part One resulted in the Standing Committee on Ethics being directed to prepare and submit to the House in 1999 a Model Rule that would "prohibit lawyers from making or soliciting political contributions for the purpose of obtaining government legal engagements." A Rule formulated strictly according to the language proposed in Paragraph (4) of Amended Recommendation 301A has been drafted by the Standing Committee and is presented following this Report as Appendix A. The Committee does not propose its adoption.

Part Two of the Task Force Report, which contained recommendations for improving judicial campaign finance activities, was not acted upon at that time; instead, those recommendations were referred by President Anderson to an Ad Hoc Committee on Judicial Campaign Finance for further study. The Ad Hoc Committee on Judicial Campaign Finance has submitted a separate Report With Recommendations calling for amendments to the ABA Model Code of Judicial Conduct with respect to fundraising in support of election campaigns for judicial office. It has deferred to the Standing Committee, however, on the subject of an appropriate Model Rule of Professional Conduct governing lawyer contributions to judicial campaigns and their relationship to appointments by judges.

DEVELOPMENT OF THE PROPOSED RULE

The third stage of Association review of pay-to-play occurred this year as the Standing Committee and the Ad Hoc Committee, beginning with the resolutions of the House of Delegates and the two part Task Force Report, studied the many issues necessarily considered when enforceable rules of professional or judicial conduct are to be promulgated. These included separate (although frequently intersecting) review of three types of information: 1) the constitutional implications of such regulations, both with respect to their potential for abridging first amendment freedoms and with respect to their narrowness or breadth and their clarity; 2) regulations, either proposed or currently in existence, dealing with pay-to-play type practices; and most importantly, 3) an analysis of whether and how different proposals might operate effectively -- i.e., how each proposal might provide fair notice to lawyers of what is expected of them and how each would be enforced by disciplinary agency personnel -- to achieve the objective of prohibiting pay-to-play.

The Committee used the Task Force Report, Part One, and additional information it obtained to develop two possible "trial" rules addressing lawyers' roles in the pay-to-play system. One was almost verbatim the recommendation that had been made by the Task Force, prohibiting political contributions when the purpose of such contributions was the obtaining of legal business. Because the Committee questioned the wisdom of basing the restriction solely on a lawyer's purpose for making political contributions, and

recognized the difficulty of proving "purpose," it developed a second rule that approached the pay-to-play problem from a different perspective, prohibiting lawyers from accepting legal engagements where the awarding of the engagements was based upon lawyers' political contributions. Each draft rule was accompanied by extensive commentary that was intended, among other things, to establish criteria whereby a contributing lawyer's "purpose" could be proven.

The Committee circulated these trial drafts widely for comment and answered questions about them at a public hearing in February 1999. Many Association entities, individual members, and a variety of interested organizations outside the Association presented written or oral comments. The Committee also sought comment from the community of constitutional scholars (in particular Prof. William Van Alstyne of Duke University School of Law) in order to become thoroughly familiar with the constitutional implications of any possible Model Rule. Finally, the Committee sought formal and informal input from the community of disciplinary counsel as to the likelihood of either of the trial rules being favorably considered in the jurisdictions and effectively enforced through disciplinary agency proceedings. The following summary of the Committee's findings in each of these areas explains the Committee's ultimate decision to advance the proposed Model Rule presented here, which represents a combination of its two initial alternative proposals with refinements.

Constitutional Issues

Although the Standing Committee has on several past occasions written model rules that implicated First Amendment freedoms (e.g., rules regarding advertising and solicitation, or a rule governing trial publicity), it has not previously directly addressed lawyers' participation in the political process. Directed by the House to develop a Model Rule that involved lawyers' political "speech" in the form of making or soliciting campaign contributions, the Committee undertook a review of recent First Amendment jurisprudence treating legislatively-enacted campaign contribution limits. It found, not surprisingly, that limitations on the making and solicitation of political contributions must be predicated on the need to protect a valid state interest; that they must be narrowly drawn; and that their language must be sufficiently clear as to provide fair notice of when and how they operate, thereby satisfying the requirements of due process.

Although most of the comments received by the Committee concerning the constitutionality of its first two draft proposals suggested that those proposals probably would survive a First Amendment attack, the Committee was advised that its proposals differed from the regulations cited by the commentators as examples of constitutionally permissible restrictions on campaign contributions. Moreover, a lengthy analysis of the proposals by Professor Van Alstyne confirmed that "there are nontrivial First Amendment issues that could be – and indeed have been – raised with respect to both of the draft proposals." He and other constitutional experts agreed, nevertheless, that a narrowly limited rule should pass First Amendment scrutiny.

Enacted or Proposed Regulations

The Committee examined numerous regulations that have been either adopted or proposed in different forums to regulate lawyers' contributions to political campaigns in connection with "pay-to-play"-type problems. They ranged from federal criminal statutes (18 U.S.C. Sec. 201) relating to the most egregious violations (bribery or the giving of illegal gratuities) to a considerably more narrowly-drawn Association of the Bar of the City of New York proposal which, like Municipal Securities Rulemaking Board Rule

GS-37, applicable to municipal finance professionals, would prohibit a lawyer or law firm from undertaking a municipal finance engagement within a certain period of time after having made a contribution in excess of a de minimis amount to a public official capable of influencing the public finance engagement.

The Committee recognizes that in some circumstances, the Model Rules of Professional Conduct already apply to lawyers' participation in pay-to-play. For example, the prophylactic effect of criminal statutes potentially applicable to pay-to-play participation by lawyers already has a parallel in the Model Rules of Professional Conduct: a lawyer whose style of participation in pay-to-play is so egregious as to result in conviction of bribery or a similar serious crime would also violate Model Rule 8.4 ("Misconduct"). Model Rule 7.2 (c), which prohibits a lawyer from giving anything of value to another for recommending the lawyer for employment, may in some pay-to-play circumstances also be applicable, although that provision has traditionally been interpreted to apply to the use of "runners" and similar techniques for obtaining business.

The House has, however, adopted the Task Force's position that the Association should adopt more stringent restrictions on pay-to-play than these Model Rules would afford. The Rule submitted herewith accords with that position.

Enforcement Issues

The Committee received oral comments from officers and members of the National Organization of Bar Counsel with respect to the two draft rules the Committee had circulated. A common and understandable concern of the bar counsel was the number of elements that would need to be proven in order to find that a lawyer's conduct in making political contributions constituted a violation of either draft rule. In this regard, bar counsel comment echoed that of other commentators, both proponents and opponents of either draft rule.

The successful enforcement of each of the draft proposals was considered to depend on the ability of disciplinary counsel to prove an element of purpose, whether it were the purpose of the lawyer making the contribution, or the purpose of the official or judge in giving the engagement or appointment to reward the lawyer's contribution.

It was also noted that any rule that prohibited a lawyer from accepting a legal engagement – no matter what other provisions it contained – would not, as a practical matter, be enforced against those participants in pay-to-play who might have an improper purpose in making contributions, but who do not obtain a legal engagement. The proposed Rule therefore combines the elements of proof of purpose and proof that a lawyer has accepted a legal engagement that the political contributions were intended to influence.

The lawyer's purpose in making or soliciting political contributions was deemed by many commentators to be the most significant test in determining if a Rule violation exists. Hence, it has been retained in the submitted Rule along with carefully crafted standards in the Comments designed to explain how "purpose" will be identified.

Disciplinary counsel who provided comment on the draft proposals also appeared generally unpersuaded that pay-to-play exists as a significant problem. Hence self-enforcement of this Rule to stem pay-to-play practices by lawyers and law firms is an

even more important consideration than it is in enforcement of certain other Model Rules.

The Proposed Model Rule

As a consequence of these considerations and extensive debate within the Standing Committee, we propose the Model Rule presented in the Recommendation. The Committee believes that the Rule and explanatory Comments come as close to achieving the goals described above as a rule of professional conduct on pay-to-play could be expected to come.

The new Model Rule would provide:

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

Although the purpose of making or soliciting contributions is an element under the proposed Rule, it is not implicated until a government legal engagement or appointment by a judge is offered. The inquiry to determine if the Rule would be violated by accepting the work then becomes whether the purpose in making or soliciting contributions is *to obtain or be considered for an appointment by a judge or a government legal engagement of the type that is offered to the lawyer or law firm.*

The rationale for proscribing this conduct appears in Comment [1]: "when lawyers make or solicit political contributions in order to obtain [the engagement or appointment], the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit," and the integrity of the profession is thereby undermined.

A rule designed to limit political contributions and solicitations must, however, be carefully crafted in order to assure, as Comment [1] also says, that lawyers are free "to participate fully in the political process, which includes making and soliciting political contributions...." Accordingly, the Standing Committee strongly urges that guidelines must be provided to assist in identifying the purpose of contributions. This has been done in the Comments to the proposed Rule, particularly Comments [3] and [5].

Two safe harbors are established within the definitions in Comment [3]. The first excludes from government legal engagements and appointments by judges those awarded based on merit in a request-for-proposal ("RFP") process "that is free from influence based upon political contributions." The second excludes awards made on a rotational basis from lists compiled "without regard to political contributions." Also excluded under both definitions are "substantially uncompensated services."

In addition, Comment [5] seeks to explain when the proscribed purpose is or is not present. In formulating this Comment, the Committee became convinced that language was essential that would permit lawyers to make political contributions to personal

friends or clients or to candidates whose causes they support while remaining eligible to accept government legal engagements or appointments by judges. Accordingly, for the proscribed purpose to be found, it must be shown that, "but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions."

Comment [5] also provides an example of facts from which, absent other factors to the contrary, it may be fairly inferred that the proscribed purpose is present: substantial contributions for a candidate who can influence the selection of the lawyer to perform the work, followed by selection of the contributor. Factors weighing against the inference (taken from the Report of the Task Force, Part One pages 26-28) set forth in Comment [5] include the existence of a prior family or professional relationship or the desire to further a political or social cause. Unlike awards made in the circumstances described in Comment [3] that are excluded from the Rule's prohibition, the circumstances in Comment [5] are merely examples of factors that should be taken into account, among all others that are relevant, in order to determine if the proscribed purpose is present.

Comments [2] and [4] contain definitions that are necessary to apply the Rule properly. For the most part, these are the same definitions as appear in the Task Force Report and in the Discussion Drafts the Standing Committee circulated in January for comment. In Comment [2], defining "political contribution," those made to political parties now are specifically included. Comment [4] makes it clear that contributions made through a controlled PAC or other controlled entity used as a conduit to an official's campaign are to be treated the same as if the lawyer or law firm had made them directly. Lastly, Comment [6] notes that when bribery or another serious crime is involved, a violation of Model Rule 8.4(b) occurs.

Respectfully submitted,

M. Peter Moser, Chair

August, 1999

APPENDIX A

RULE 7.6. POLITICAL CONTRIBUTIONS TO OBTAIN GOVERNMENT LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES

A lawyer or law firm shall not make a political contribution or solicit political contributions for the purpose of obtaining or being considered for a government legal engagement or an appointment by a judge.

COMMENT

[1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government official or entity, or to obtain an appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit.

In such a circumstance, the integrity of the profession is undermined.

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term "appointment by a judge" denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

[4] The term "lawyer or law firm" includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer's firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4(b) is implicated.

GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Ethics and Professional Responsibility

Submitted By: M. Peter Moser, Chair

1. Summary of Recommendation(s).

The Model Rules of Professional Conduct (as amended, 1998) should be further amended to include a new Model Rule 7.6, "Political Contributions to Obtain

2. Approval by Submitting Entity.

The Standing Committee on Ethics and Professional Responsibility voted final approval of the proposed Model Rule at a teleconference meeting convened on May 12, 1999.

3. Has this or a similar recommendation been submitted to the House or Board previously?

At the 1998 Annual Meeting, the House of Delegates adopted amended Report 301A, originally submitted by the Task Force on Lawyers' Political Contributions. That report directed the Standing Committee on Ethics to report to the House at the 1999 Annual Meeting a proposed new Model Rule of Professional Conduct declaring that a lawyer shall not make a political contribution to a public official for the purpose of obtaining a government legal engagement.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The House of Delegates in August 1997 approved Report 10D, which condemned the practice known as "pay-to-play," a practice whereby lawyers or law firms are selected for government legal engagements based upon their making or having made political contributions to the government officials responsible for selecting counsel for those engagements.

Model Rule 7.2(c), which prohibits a lawyer from giving anything of value to a person to recommend the lawyer for employment, has been deemed to be related, but not directly applicable, to the problem of "pay-to-play" as it will be addressed by the new Model Rule.

Including a new Model Rule in the Model Rules of Professional Conduct specifically to address the phenomenon of "pay-to-play" gives expression to the Association's condemnation of the practice in the single document that traditionally has served as the model for state professional conduct rules throughout the country.

5. What urgency exists which requires action at this meeting of the House?

During the last several years the legal media have focused their attention on the practice of "pay-to-play." Action by the American Bar Association House of Delegates that will assist state courts and state lawyer discipline agencies with adoption of an effective means to combat the "pay-to-play" practice will help insure the integrity of public acquisition processes in which lawyers and law firms are chosen for government engagements, and bolster respect for and confidence in the legal profession.

6. Status of Legislation. (If applicable.)

Not applicable.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

The Standing Committee's Report With Recommendations will be posted on the website at www.abanet.org/cpr/P2PFINIS.html and mailed to the Chairs and Staff Liaisons of ABA Sections, Divisions, Task Forces, Committees, and Commissions, and to state disciplinary agencies and supreme courts.

10. Contact Person. (Prior to the meeting.)

George A. Kuhlman, Ethics Committee Counsel, at 312-988-5300 or gkuhlman@staff.abanet.org or Center for Professional Responsibility, 541 N. Fairbanks Court, Chicago, Illinois 60611.

11. Contact Person. (Who will present the report to the House.)

M. Peter Moser, Chair, Standing Committee on Ethics and Professional Responsibility, 541 N. Fairbanks Court, Chicago, Illinois 60611 or mmoser@pipermar.com.

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The ABA Model Rules of Professional Conduct (as amended, 1998) would be further amended to add a new Model Rule 7.6 ("Political Contributions to Obtain Government Legal Engagements or Appointments by Judges").

Issue Addressed.

The practice of "pay-to-play", whereby lawyers and law firms are considered for or awarded government legal engagements or appointments by judges based upon their making or having made political contributions to the campaigns of elected officials who are in a position to influence such awards, was condemned by the House of Delegates in August 1997 in House Report 10D. In August 1998 the House of Delegates, in amended House Report 301A, instructed the Standing Committee on Ethics and Professional Responsibility to submit at the 1999 Annual Meeting for House consideration a Model Rule of Professional Conduct that would prohibit lawyers from making or soliciting political contributions for the purpose of obtaining a government legal engagement.

How the Policy Position Will Address the Issue

The proposed Model Rule of Professional Conduct, which is intended to serve as a model for all state jurisdictions in their formulation of rules of conduct, will have the prophylactic effect of subjecting to possible disciplinary action lawyers who make or solicit political contributions for the purpose of obtaining government legal engagements or appointments by judges and accept such engagements or appointments. The Model

Rules are already adopted in forty-five jurisdictions; the substance of the Model Rules underlies most of the professional conduct rules of the jurisdictions that have not formally adopted the Model Rules. This demonstrated respect for the recommendations of the Association on the subject of acceptable lawyer conduct is evidence that ABA policy on this important subject is likely to be accorded favorable consideration on a nationwide basis.

The black-letter of the Model Rule identifies the two elements that will be required to find a violation of the Rule: making a contribution for the purpose of obtaining work of the type to be awarded, and accepting such work when it is offered. The Comment to the Rule, consistent with the style of the Model Rules, provides illustrative text that explains for the benefit of lawyers and disciplinary agencies how those elements are to be assessed, thereby providing clear and fair notice to lawyers of what conduct is expected of them and assisting discipline counsel with investigation of claims that the Rule has been violated.

Minority Views or Opposition

Although the Standing Committee is hopeful that the Recommendation to adopt the proposed Model Rule will be cosponsored by the Section of Business Law and the Section of State and Local Government Law, it is aware that within each of those two sections there are at this time some individuals who advocate a somewhat different Model Rule. The difference between their formulation and the Model Rule recommended in the Ethics Committee's Report is that the former would prohibit any contribution made for the purpose of obtaining a government legal engagement, whereas the Ethics Committee rule prohibits acceptance of legal engagements or appointments when contributions have been made in order to obtain them.



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**STANDING COMMITTEE ON ETHICS AND PROFESSIONAL
RESPONSIBILITY
JANUARY, 1999 DISCUSSION DRAFT
REPORT ACCOMPANYING PROPOSED**

NEW MODEL RULE ON LAWYERS' POLITICAL CONTRIBUTIONS

INTRODUCTION

The Standing Committee on Ethics and Professional Responsibility ("Ethics Committee") submits with this report discussion drafts of two alternative versions of a possible new Model Rule of Professional Conduct. Both versions are based on the Recommendations of the Task Force on Lawyers' Political Contributions (the "Task Force") that were adopted by the House of Delegates in August 1998. Proposed new Model Rule A and proposed new Model Rule B, along with Comments, are appended to this Report as Attachments A and B. A summary of constitutional issues and cases potentially applicable to rules of professional conduct directed at lawyers' political contributions is appended as Attachment C. Endnotes appear at the end of the Report, preceding these attachments.

Proposed new Model Rule A generally prohibits a lawyer from making or soliciting political contributions for the purpose of obtaining government legal engagements. Proposed new Model Rule B, on the other hand, generally prohibits a lawyer from accepting a legal engagement if its award is based on the lawyer's making or soliciting political contributions. Other important distinctions between the two proposals are noted elsewhere in this Report.

Please analyze the two proposals carefully. Both are sent as discussion drafts only. Please provide us with your personal comments and suggested changes, and those of the organization that you represent. Written comments should be directed to the Committee's Counsel, George Kuhlman by mail (541 N. Fairbanks Ct., Chicago, IL 60611), e-mail (gkuhlman@staff.abanet.org) or by FAX (312-988-5491), and must be received by March 31, 1999, in order that they may be considered in our formulation of Recommendation to the House of Delegates due in May 1999. You also may express your views orally to the Committee during the Midyear Meeting in Los Angeles on Saturday, February 6, 1999, from 11:00 a.m. to 1:00 p.m. in Room 208 of the Doubletree Hotel. If you wish to request a time to present oral comments, please contact Mr. Kuhlman at the locations noted above by Friday, January 22, 1999.

BACKGROUND

In 1995, the Association of the Bar of the City of New York ("ABCNY") proposed that a disciplinary rule be adopted in New York State prohibiting a lawyer or law firm doing business in New York from accepting public finance engagements for two years if the lawyer or anyone in the law firm makes a political contribution to a public official who has a direct or indirect influence on the awarding of the legal engagement, subject to the right of individuals to make a contribution of \$250 each to someone for whom they can vote.

In June 1996, the ABCNY put on the ABA House of Delegates agenda for the Annual Meeting in Orlando, Florida, a resolution recommending that each jurisdiction enact the ABCNY-proposed disciplinary rule. The resolution was withdrawn by ABCNY in order to provide a period of comment by interested persons as well as further study. When a revised

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ABCNY proposal was submitted for the 1997 Annual Meeting, a substitute recommendation was proposed by a Section Officers' Conference Committee, submitted to the House by ABCNY as Resolution 10D, and adopted. It condemned the practice of "pay to play" and called for creation of a task force to determine the need for additional professional standards, laws or procedures relating to the subject.¹

Pursuant to that House action, President Jerome J. Shestack appointed the Task Force on Lawyers' Political Contributions ("Task Force") to review issues related to campaign contributions by lawyers; and to determine whether additional lawyer standards, laws or procedures relating to practices condemned in Resolution 10D were necessary or desirable. Among those concepts to be considered were additional rules of professional conduct, new aspirational ethical standards or other measures.

At the 1998 Annual Meeting the Task Force presented its recommendations to the House of Delegates as Report 301A. The Report was supplemented by a lengthy booklet. An Amended Recommendation was adopted by the House.

DISCUSSION DRAFT A

In Discussion Draft A, the Committee has complied with the directive contained in the fourth section of the first Resolution in the Amended Recommendation by preparing a Model Rule that declares:

A lawyer or law firm shall not make a political contribution or solicit political contributions for the purpose of obtaining or being considered for a legal engagement.²

The text of Discussion Draft A deviates from the language of the House resolution only for grammatical purposes or for the sake of clarity.

In preparing Comments³ to Discussion Draft A, the Ethics Committee carefully considered the Report and supplemental material accompanying the Task Force Recommendation. The Comments differ from material in the Task Force Report only in non-substantive respects. Some observations about the Comments are appropriate.

Definition of Political Contribution

In describing what is meant by the term "political contribution," the proposed Comment excludes uncompensated services, as the Task Force had recommended. In general, prevailing campaign contribution limitation laws take this approach, excluding uncompensated services from contribution reporting requirements. See, e.g., Title 15, Te Elec. Code Ann. § 254.033. On this point, the Ethics Committee has adopted the position implicit in the Task Force Report, that lawyers' willingness and ability to exercise their freedom of political expression, for example, by assisting public officials with the drafting of legislation, supervising election processes, or serving on commissions, task forces, and similar bodies would be diminished seriously if the proposed rule could be employed to call into question their motives in donating such important uncompensated services. Although the definition of "political contribution" specifically excludes uncompensated services for purposes of this Rule, such services may be "anything of value" for purposes Rule 7.2.

The proposed Comment definition differs in form but not substance from the definition supplied in the Task Force Report, in order to avoid the implication that uncompensated services were not, by definition, things of value. Uncompensated services may be things of value for purposes of Rule 7.2(c). By altering the Task Force Report definition, the Committee has preserved the substance of the exclusion of uncompensated services as a political contribution and avoided a clear conflict between rule 7.X and Rule 7.2(c).

Factors to be Considered

The five factors listed in Comment [5] virtually are identical to the factors described in the Task Force Report as among those to be considered by a disciplinary body in determining whether a political contribution has been made for the purpose of obtaining or being considered for a legal engagement.⁴ The Task Force acknowledges that the list is not, and could not be, exhaustive; the Ethics Committee shares this belief. The factors listed are examples only; many other factors could be relevant in making a determination of the purpose for which a contribution has been made.

No one of these factors is intended necessarily to create a "safe harbor" for a particular political contribution. The existence of a fact that might tend to suggest that a contributor purpose was other than to seek an engagement would not necessarily keep the Rule's prohibition from taking effect. For example, although the fact that the recipient of significant political contributions is a close relative of the lawyer may weigh against a determination that the purpose of the contribution was to obtain business, such wrongful purpose could still be otherwise proven. Similarly a record of a lawyer's having made political contributions to a candidate or elected official over a series of elections without seeking or being rewarded with a legal engagement nevertheless may have to be weighed against other circumstances suggesting that a present political contribution was made for prohibited purpose.

De minimis Contributions

The ABCNY proposed rule and the Task Force's proposed rule make exception for *de minimis* contributions: no disqualification lies if contributions are under specified dollar limitations, set separately for an individual and a law firm or political action committee. Discussion Draft A endorses a *de minimis* standard in Comment [5] when it speaks of a contribution being "substantial under all the circumstances." The Committee also is convinced by the evidence compiled in the Task Force's Report that a specific dollar-amount limitation cannot uniformly be applied to all elections in all jurisdictions. The cost of political campaigns varies dramatically from jurisdiction to jurisdiction and office to office; for that reason, the determination of what constitutes a "substantial" contribution (or one that is likely to influence the consideration for or award of legal service) also will vary.

ENFORCEABILITY

The Ethics Committee notes with some concern that a rule such as Discussion Draft "A", requiring as it does that the purpose of a contributor or solicitor be identified (and, indeed proven) poses considerable problems in enforcement, except in the most egregious circumstances. We also note that under the draft rule every political contribution could be subject to review for the giver's intent, regardless of any nexus between a contribution and a subsequent legal engagement, or even if no engagement ever occurs. Finally, we are obliged to note that the Task Force's original proposal and our draft "A" are rules that rely in great part, both in interpretation and application, upon an "appearance of impropriety"

standard. See Task Force Report at 7. That standard was specifically rejected by the House in 1983 when the Model Rules were adopted because it had been amply demonstrated that it could not be enforced uniformly or objectively. See ABA Formal Opinion 342, n.17 (1975).

CONSTITUTIONALITY

The Ethics Committee further notes that proposed Discussion Draft A raises concerns under the First and Fourteenth Amendments of the United States Constitution, and comparable state constitutional provisions. See Attachment C, ABA Ethics Counsel memorandum to Committee reviewing precedent in free speech issues pertaining to political expression.

Government restraints on free speech typically are subject to the strictest scrutiny. See *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). Contributions to political campaigns are equated with pure speech and are accorded the highest level of First Amendment protection. *Id.* at 21-22. To survive the application of a strict scrutiny test, a rule must be necessary to serve a compelling state interest and must be narrowly tailored to achieve that end. Research has uncovered no case that supports or even considers a rule such as that proposed. The Ethics Committee is concerned that Discussion Draft A would invite attack on constitutional grounds because of its wholesale restriction on clearly protected conduct.⁵

In part due to the enforceability and constitutionality issues presented by Discussion Draft A, the Ethics Committee presents below for consideration and discussion a Discussion Draft B, an alternative rule arguably more narrowly tailored to achieve the goal of controlling the award of legal engagements based upon political contributions, and more readily enforceable.

ALTERNATIVE DISCUSSION DRAFT B

Discussion Draft B, like the Further Resolved portion of Amended Recommendation 301A, focuses on accepting the legal engagement. It states that a lawyer "shall not accept government legal engagement if the lawyer knows that the legal engagement has been awarded based upon the lawyer's having made or solicited a political contribution for the benefit of a public official who has the power to influence the award."

ENFORCEABILITY

Discussion Draft B is an effort to accomplish the objectives of the rule proposed by the Task Force without hinging the prohibition on an examination of the purpose of a political contribution, and without placing such a direct prohibition on political expression. Draft states that a lawyer "shall not accept a government legal engagement if the lawyer knows that the legal engagement has been awarded based upon the lawyer's having made or solicited a political contribution for the benefit of a public official who has the power to influence the award." Rather than looking to the purpose for which the lawyer makes a solicitation or contribution, the alternative draft looks to whether the lawyer knows that his or her solicitation or contribution was a reason that the engagement was awarded. The Terminology section of the Model Rules states that the term "knows" denotes actual knowledge of the fact in question, adding that "[a] person's knowledge may be inferred from the circumstances." Comment [3] to Discussion Draft B provides guidance as to the circumstances that may support an inference of actual knowledge.⁶

CONSTITUTIONALITY

Because Discussion Draft B would avoid passing directly on the propriety of constitutionally protected expression, it is more likely to pass constitutional muster than i Discussion Draft A. Although we are unaware of any case addressing a statute or rule that prohibits or punishes political contributions based upon a condemned purpose of the contribution, the Supreme Court's decision in *McCormick v. United States*, 500 U.S. 257 (1991), may be instructive. The Court there reversed a conviction of a state legislator und the Hobbs Act, 18 U.S.C. § 1951, for extortion "under color of official right," where the legislator claimed that the payments were political contributions. As summarized in Justi Scalia's concurring opinion, 500 U.S. at 276, the Court held that the Hobbs Act should n "be interpreted to cover campaign contributions with anticipation of favorable future action, as opposed to campaign contributions in exchange for an explicit promise of favorable future action." While the ruling was one of statutory interpretation rather than constitutional law, the Court's reasons for requiring a special burden of proof in cases involving campaign contributions would seem to apply with equal force to a rule of legal ethics that would punish campaign contributions based upon their "purpose".

A prohibition of only those political contributions by lawyers that are made in exchange f explicit promises of future awards of work would not fully accomplish the goals of the Task Force in recommending Resolution 301A. Discussion Draft B would, however, accomplish those purposes without running afoul of the considerations that led the Court to rule as it did in *McCormick*.

ENDNOTES

1. Resolution 10D stated:

RESOLVED, that the American Bar Association:

condemns the practice of lawyers making campaign contributions to, and soliciting campaign contributions fo public officials in order to be retained by public agencies to perform professional services;

condemns the practice of public officials who require campaign contributions from those seeking to be retain by public agencies to perform professional services;

calls upon lawyer disciplinary agencies to enforce existing Rules of Professional Conduct insofar as they prohibit this practice, such as Model Rule 7.2(c) prohibiting a lawyer from giving "anything of value to a person for recommending the lawyer's services"; and

calls upon legislative bodies and regulatory agencies to enact and enforce appropriate laws that will discoura the practices of public officials condemned in these resolutions.

FURTHER RESOLVED, that the House of Delegates requests the President to appoint a task force:

to review issues related to campaign contributions by lawyers, including the issues raised by The Association the Bar of the City of New York and the proposed New York Court Rule;

to determine whether additional lawyer standards, laws or procedures relating to the practices condemned in these resolutions are necessary and desirable, including the practice of lawyers making significant campaign contributions to judicial candidates before whom the lawyers appear; and

to submit for consideration by the House of Delegates at its meeting in August 1998 recommendations as to any additional professional standards, laws or procedures found to be necessary and desirable in the form of amendments to the Model Rules of Professional Conduct, aspirational ethical standards or other measures.

Targeted in Resolution 10D were contributions made as a condition of being retained, and those solicited for the purpose of being qualified to be retained, situations of a return for the contribution, or *quid pro quo*.

The Resolution proposed by the ABCNY read as follows:

RESOLVED, that the American Bar Association:

encourages bar associations, judicial rule-making authorities and other relevant entities to consider adopting appropriate policies to prevent lawyers who make and solicit (other than de minimis) political contributions to public officials who can influence issuers of municipal securities, from accepting municipal finance engagements from such issuers for a two-year period commencing with the political contribution or solicitation; and

commends to the attention of bar associations, judicial rule-making authorities and other relevant entities the draft New York Court Rule dated August, 1997.

The ABCNY proposal was generally patterned after Securities and Exchange Commission ("SEC") G-37, which prohibits dealers from engaging in municipal securities business with an issuer within two years after making a contribution to an official of such issuer who has a direct or indirect influence on the award of such business. Both can be classified as disqualifying rules, which provide that the consequence of a political contribution made to an official in a position to influence the award of legal business from a governmental entity is disqualification from acceptance of business from that entity for a period of time thereafter.

2. RESOLVED, that the American Bar Association urges the following actions be taken to address any conduct by lawyers making or soliciting campaign contributions to public officials for the purpose of being considered or retained for government legal engagements:

(4) A The Standing Committee on Ethics and Professional Responsibility is directed to report to the House of Delegates by its 1999 Annual Meeting a proposed Model Rule should be adopted that declares that a lawyer law firm shall not make a political contribution or solicitation for the purpose of obtaining or being considered for a legal engagement.

BE IT FURTHER RESOLVED, That, where local circumstances warrant, the American Bar Association urge the adoption of a prescriptive rule, as set forth in Attachment One, Proposed Rule on Political Contributions- Lawyers Accepting Government Legal Engagements, dated August 1998; that a rule be considered for adoption that would limit or prevents a lawyer from accepting a legal engagement to perform professional services after making or soliciting a political contribution to a public official for the purpose of being retained, or being considered eligible for retention, by public agencies if the official is involved in selecting the lawyer to be retained; and requests that the Standing Committee on Ethics and Professional Responsibility take the appropriate action.

[additions are underlined, deletions struck through]

3. As noted in the "Scope" section of the current Model Rules of Professional Conduct, the Comments accompanying each Rule explain and illustrate the meaning and purpose of the Rule. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

4. Report accompanying Task Force Recommendation 301A, at 16.

5. The Task Force Report argues that the suggested rule is constitutional, but the sole precedent for that position relates to limited disqualification from receiving work following the exercise of "free speech," rather than to prohibition of the conduct. *Id.* at 2.

6. One of the five factors suggested by the Task Force to help determine whether a political contribution was given for the purpose of obtaining legal business is whether prior contributions had been made by the lawyer law firm without achieving the result of legal business. If the *quid pro quo* factor were irrelevant to the prohibited purpose of the Task Force recommendation, then the absence of a previous award of legal engagement would not be an ameliorating factor.

ATTACHMENT A

VERSION A (January 1999)

Rule 7.X. POLITICAL CONTRIBUTIONS TO OBTAIN GOVERNMENT LEGAL ENGAGEMENT

a lawyer or law firm shall not make a political contribution or solicit political contribution for the purpose of obtaining or being considered for a government legal engagement.

Comment

[1] This Rule is intended to maintain high standards of integrity in the legal profession and to instill in the public confidence that lawyers hired or appointed to perform work on their behalf are selected on a proper basis. If a lawyer makes or solicits a contribution as a prerequisite for obtaining or being considered for a legal engagement, then the lawyer may violate Rule 7.2 (c) because a contribution or a solicitation may reasonably be considered something of value as referred to in that provision. Moreover, if the contribution constitutes a crime, Rule 8.4 (b) also is implicated.

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate or incumbent or campaign committee to influence or provide financial support for election to or retention in office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services.

[3] The term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award, but does not include substantially uncompensated legal services.

[4] The term "law firm" includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] The purpose of making or soliciting political contributions in order to obtain or be considered for a government legal engagement may be determined by an examination of circumstances in which they occur. The following factors, among others, should be considered: (a) whether large contributions to the campaign of an official in a position to recommend or award work are shortly thereafter followed by an award of substantial legal work; (b) whether legal work was awarded to the contributor or solicitor pursuant to a request for proposal process that was insulated from political influence or on the basis of experience, expertise, professional qualifications and cost; (c) whether the amount of the contribution made or the amount of the contributions resulting from a solicitation was substantial under all the circumstances; (d) whether the contribution or solicitation was made to further a political, social, or economic belief or interest; (e) whether the

contribution or solicitation was made because of an existing personal, family, or professional relationship with the government official; and (f) whether, prior to the contribution or solicitation in question, the contributor or solicitor had made comparable contributions or had engaged in comparable solicitations on behalf of government official from whom the lawyer neither sought nor received legal work.

ATTACHMENT B

VERSION B (JANUARY 1999)

RULE 7.X. ACCEPTING GOVERNMENT LEGAL ENGAGEMENT BASED UPON POLITICAL CONTRIBUTION

A lawyer shall not accept a government legal engagement if the lawyer knows that the legal engagement has been awarded based upon the lawyer's having made or solicited a political contribution for the benefit of a public official who has the power to influence the award.

Comment

[1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government official or entity, the public may legitimately question whether the lawyers engaged to perform government work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate or incumbent or campaign committee to influence or provide financial support for an individual's election to or retention in office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services. The term "lawyer" includes a law firm and a political action committee or other entity owned or controlled by a lawyer or law firm. "Government legal engagement" denotes any engagement to provide legal services that a public official has direct or indirect power to award, but does not include substantially uncompensated legal services.

[3] An award of legal work is based upon a political contribution when the contribution is a determining factor, even if not the only determining factor, in the award. A lawyer's knowledge that an award is based upon making or contributing one or more political contributions may be inferred from the circumstances. See Terminology. The circumstances include the size of the contribution in relation to the cost of the campaign, the timing of the award, the role of the relevant public official in influencing the award, the

prior history of similar awards to political contributors, and the presence or absence of other factors that reasonably explain the award. Among such other factors are the unique experience or expertise of the lawyer in the type of representation that is the subject of the award; the existence and use of a process for award of the type of legal work in question based upon experience, expertise, and cost; or a lawyer's prior professional relationship, if any, with a governmental entity that is the client.

ATTACHMENT C

MEMORANDUM

TO: Standing Committee on Ethics and Professional Responsibility

FROM: Eileen B. Libby, Associate Ethics Counsel

DATE: January 20, 1999

RE: First Amendment Issues Regarding Proposed Pay-to-Play Rule - Executive Summary

Based upon Recommendations of the Task Force on Lawyers' Political Contributions that were adopted by the ABA House of Delegates in August 1998, *see* final amended 301A (Report and Recommendation), the Standing Committee on Ethics and Professional Responsibility prepared discussion drafts of two alternative versions of a possible new Model Rule of Professional Conduct regarding lawyers' political contributions. Discussion Draft A generally prohibits a lawyer from making or soliciting political contributions for the purpose of obtaining government legal engagements. Discussion Draft B generally prohibits a lawyer from accepting a legal engagement if its award is based on the lawyer's making or soliciting political contributions. The purpose of this memorandum is to examine whether the rules proposed in the discussion drafts are overbroad and an impermissible infringement on the First Amendment right of political expression and association.

To date, only one court has reviewed a rule or regulation prohibiting a contributor to an elected public official from performing governmental work if the official has the influence to award such work. In *Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995), *cert. denied*, 517 U.S. 1119 (1996), the court upheld a First Amendment challenge against Rule G-37 approved by the Securities and Exchange Commission (SEC) through its Municipal Securities Rulemaking Board. The purpose of the challenged rule was to address the issue of broker and dealers engaging in ethically questionable practices in order to secure underwriting contracts in the municipal securities market. *Id.* at 939. The rule prevents a municipal securities firm from performing government work if, in the last two years, the firm, the firm's political action committee or any member of the firm contributed to an elected official who can directly or indirectly influence hiring decisions. The rule also requires such firms to disclose all direct and indirect contributions to any such elected official.

Applying strict scrutiny, the court concluded that the SEC had a compelling governmental interest in protecting investors from fraud and shielding underwriters from corrupt market practices. *Id.* at 944. The court concluded that Rule G-37 would advance these interests by fostering fair contracting processes and removing "artificial barriers to competition for those firms that either cannot afford or decide not to make political contributions." *Id.* at 945. Once the court determined that the government's interest was compelling, it concluded that the law was sufficiently narrowly tailored and that disclosure requirements

alone would not adequately serve the SEC's interest in deterring so-called "pay-to-play practices." *Id.* at 947-48. In this regard, it should be noted that one of the problems with mandatory disclosure of campaign contributions is that the First Amendment guarantees the right to engage in a wide range of political activities without risking public disclosure, *see, e.g., McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960). Only if the state can demonstrate a compelling governmental interest in preventing corruption and assuring an informed electorate can there be justification for compelled public disclosure of the sources and amounts of campaign spending and lobbying expenses. *See Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976) (*per curiam*).

Several court decisions since *Blount* call its holding into question. Restrictions on political campaign contributions are analyzed under the framework established in *Buckley*, which recognized that campaign contribution limits that infringe First Amendment freedoms of speech and association nevertheless may be constitutionally permissible if enacted or adopted to prevent corruption and if narrowly tailored to advance the government's interest in preventing actual or perceived corruption. Restrictions on protected speech in this context are narrowly tailored if they limit the *quid pro quo* corruption that may follow from political contributions without concomitantly retarding the ability of the affected parties to engage directly in political speech to the extent they would be able to do so through their own efforts absent the regulation. *Toledo Area AFL-CIO Council et al. v. Pizza*, 154 F.3d 307, 318 (6th Cir. 1998). The Supreme Court has cautioned that "broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U.S. 415 438 (1963) (internal citations omitted).

Nor is there reported authority that prohibits or punishes political contributions based upon a condemned purpose of the contribution. In *McCormick v. U.S.*, 500 U.S. 257 (1991), the Court held that under the Hobbs Act, 18 U.S.C. § 1951, which punishes officials who solicit or accept something of value with the knowledge that it is being given to them in an effort to influence their official exercise of discretion, legislators who accept campaign contributions commit official extortion only if they explicitly promise an official favor in return for the campaign contribution. *Id.* at 273-74. The Court held that where a public official solicits or accepts campaign contributions in return for an official favor, the government must prove the existence of an explicit *quid pro quo*. *Id.* at 274. The Court's holding was a very narrow one, applicable only to campaign contributions, which have historically been given special First Amendment status. *See, e.g., Buckley v. Valeo*, 424 U.S. at 21. The Court explained that it would make no sense "to hold that legislators commit the federal crime of extortion when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents, shortly before or after campaign contributions are solicited and received from those beneficiaries," since such conduct "has long been thought to be well within the law" and "in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures." *Id.* 500 at 285.

Further, if a limitation is so restrictive as to prevent candidates and political committees from amassing the resources necessary for effective advocacy, then it would have a direct and substantial impact on a contributor's freedom of political association. *Id.* at 21. In such cases, the limits are subject to much closer scrutiny so that the state is required to make a greater showing that they serve an important state interest. *Id.* at 24-25; *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), *cert. denied*, 518 U.S. 1033 (1996). Contrary to *Blount*, in *Shrink Missouri Government PAC v. Adams et al.*, 161 F.3d 519, 521 (8th Cir. 1998), the court rejected the argument that the state had a compelling interest in avoiding the

corruption or the perception of corruption brought about when candidates for elective office accept large campaign contributions. Also unavailing is the argument that the state has a compelling interest in preventing the appearance of impropriety created by public officials' supporting of legislation favored by contributors. *Russell v. Burris*, 146 F.3d 56 (8th Cir.), *cert. denied*, ___ U.S. ___, 119 S. Ct. 510, 571 (1998). Nor may the state set a *de minimis* contribution level if it is so low as to prevent meaningful participation in the political process and significantly impairs a candidate's ability to collect the necessary funds to run an effective campaign. *Arkansas Right to Life State Political Action Committee et al. v. Butler et al.*, 983 F. Supp. 1209, 1225 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998) (campaign contribution limit too low to allow); *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994), *cert. denied*, 517 U.S. 1119 (1995) (same). Aside from specific monetary contributions, prohibiting the volunteering of unpaid personal services to candidates for elective office violates contributors' First Amendment rights of association and expression. *Barker v. Wis. Ethics Bd.*, 841 F. Supp. 255, 262-63 (W.D. Wis. 1993).

By prohibiting lawyers or law firms from making political contributions or soliciting political contributions for the purpose of obtaining or being considered for a government legal engagement, Discussion Draft A furthers the state's interest in preventing the appearance of impropriety created by the awarding of legal work to large campaign contributors, as well as preventing any actual *quid pro quo* arrangement between lawyers and elected officials. However, Discussion Draft A might be deemed overly broad in that it has a chilling effect upon lawyers' exercise of the full measure of their constitutional right and their ability to wield political influence. *See Federal Election Comm'n v. National Conservative Political Action Committee, et al.*, 470 U.S. 480 (1985). It arguably curtails speech more than necessary to deal with any purported pay-to-play problem.

Discussion Draft B, on the other hand, does not suffer this constitutional infirmity because it does prohibit or punish political contributions based upon a condemned purpose of the contribution. Instead of stating that lawyers or law firms are prohibited from making political contributions or soliciting political contributions for the purpose of obtaining or being considered for a government legal engagement, Discussion Draft B states that "[a] lawyer shall not accept a government legal engagement if the lawyer knows that the legal engagement has been awarded based upon the lawyer's having made or solicited a political contribution for the benefit of a public official who has the power to influence the award." (Emphasis supplied). The term "knows" already is defined in the Terminology section of the Model Rules. The requirement of a special burden of proof in cases involving campaign contributions seems to apply with equal force to a rule of legal ethics that punishes campaign contributions based upon their "purpose." Discussion Draft B thus comes closer to accomplishing the goals of the Task Force by eradicating corrupt pay-to-play practices without placing an impermissible restraint on lawyers' right of expression and association.



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13631 Windward Circle
Anchorage, Alaska 99516
907-345-3850

September 13, 1999

Ms. Barbara Ritchie
Deputy Attorney General
State of Alaska
Juneau, Alaska 99811

Dear Deputy Attorney General Ritchie:

Thank you for your response of August 31, 1999 on behalf of the Department of Law to some initial inquiries on behalf of the Subcommittee.

Additional questions have arisen among members of the Subcommittee in two areas:

1. Settlement Authority and Practices

What internal process does the Department have for review of potential settlements of litigation?

What practical constraints exist with regard to settlement of litigation?

What legal constraints exist with regard to settlement of litigation? Do constraints exist to limit the Department's authority to enter into settlements which include terms which would impose new obligations on the State? Are potential settlements reviewed from the standpoint of whether they may encroach upon the legislative power?

In the case of financial terms, to what extent are settlements subject to appropriation by the Legislature? Please distinguish, as appropriate between typical tort claims and other civil litigation.

What circumstances, if any, would trigger consultation with the Legislature or legislative leaders prior to settlement of litigation?

What other considerations arise when it comes to proposed settlements?

2. Legal assistance and support to administrative and adjudicative boards and commissions.

Is budgetary data available to determine the extent to which the Department provides legal counsel to specific administrative and adjudicatory boards and commissions? Is it possible to summarize that data by board or commission? In the case in which the board or commission is empowered by statute to make policy decisions and members are confirmed by the Legislature, could the legal services to these boards and commissions be privatized? Why not? To what extent has the privatization of such services been considered?

Sincerely,

**Mark K. Johnson
Chairman
Subcommittee on the Department of Law**

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3600
FAX: (907) 465-2075

September 30, 1999

Mark K. Johnson
Attorney at Law
13631 Windward Circle
Anchorage, Alaska 99516

Dear Mr. Johnson:

This is in response to your letter which we received on September 17th requesting information about settlement authority and practices in the Department of Law and legal services provided to boards and commissions.

1. Settlement Authority and Practices

- You have asked what internal process the department has for review of potential settlement of litigation.

The department has an internal policy that establishes levels of authority to enter into settlement of litigation depending upon the monetary value of the case and/or policy implications raised by a settlement. Generally, if the amount in controversy exceeds a certain internally established threshold or if the case implicates a major policy issue (regardless of the amount in controversy), the case is reviewed by a case assessment committee in the office where the case is being handled (*i.e.*, Anchorage, Fairbanks, or Juneau). The local case assessment committee carefully reviews the case with the assistant attorney general who is handling the matter and will forward a recommendation to the Attorney General, or his designee, as appropriate, for consideration and action. All settlement decisions include the input of the state agency implicated by the settlement decision.

Final settlement authority rests with the Attorney General, who may delegate final approval based on departmental policy. AS 09.50.300; AS 44.23.020. In those instances where the litigation is being handled by outside counsel through a contract with the Department of Law, the assistant attorney general assigned as the contract manager coordinates with the Attorney General, or his designee, in considering settlement recommendations and giving final approval for a settlement.

In considering whether to settle litigation, we carefully and fully consider all relevant factors, including: the facts; the legal issues; the applicable law; the posture of the case; the court rulings to date; the views of the agency involved; the public interest; any public policy issues; and, if money is at stake, the reasonableness of the amount sought in settlement considering the factors set out above.

- You have asked what practical and legal constraints exist with regard to the settlement of litigation.

Probably the most common practical constraint is the availability of money to fund a financial settlement. Most cases will require a legislative appropriation to fund a settlement. Agencies, including Law, do not have funds available to pay for settlements of litigation. This can impact settlement if, for instance, the opposing party for some reason wants payment immediately. That is not generally something the state can accommodate. The item must be submitted to the Legislature for its consideration and appropriation. Therefore, settlements will generally be contingent on appropriation of the funds; if funds are not appropriated, the litigation will continue.

Turning to the issue of legal constraints with regard to settlement, this issue has been examined in detail in the past. Specifically, the question of the authority of the Attorney General to settle litigation arose in the course of the EXXON VALDEZ litigation. Then Attorney General Charlie Cole issued a comprehensive legal opinion on the authority of the Attorney General to settle litigation. 1991 Inf. Op. Att'y Gen. (April 2). (The opinion is lengthy, and we are mailing a copy to each member of the subcommittee.)

The opinion discusses that the Attorney General is the state officer charged with implementing the executive branch's policies with respect to execution of the law. "In that respect, the Attorney General has broad common law powers and responsibilities." Op. at 13-14. See, AS 44.23.020; *Public Defender Agency v. Superior Court*, 534P.2d 947, 950-51 (Alaska 1975).

The opinion concludes (regarding this issue), at 16:

"It is thus entirely clear that, as an incident of both common law and statutory powers, the Attorney General has the discretionary authority to settle the State's litigation."

- You have asked to what extent are the financial terms of settlements subject to appropriation of funds by the Legislature.

Settlements and judgments on tort claims are funded through the state's property/casualty self-insurance program administered by the Division of Risk Management, Department of Administration. Settlement of other litigation (or tort claims in the event the self-insurance program lacks sufficient funds for the judgment/settlement of a particular claim) is funded through the legislative budget bill process. Such appropriations are usually included in the supplemental budget bill which is submitted to the Legislature each session. (The section of the supplemental budget bill that includes funds for settlements and judgments is often referred to as "the judgment bill.") AS 09.50.270 provides for the payment of judgments against the state and for the submission of judgments to the Legislature for appropriation.

In short, the financial terms of a settlement (or judgment) in other than tort cases are almost always submitted to the Legislature for appropriation. State agencies do not typically have funds in their budgets to pay for such claims. The review process for the payment of settlements and judgments is thorough and involves both the executive and legislative branches. I have enclosed a copy of the form which must be completed by the assistant attorney general who handled the case.

Our process is as follows: first, the attorney who handled the case is required to complete the form, attach the pertinent backup materials, and submit it to our administrative services director for review and calculation of interest owed through June 30 (the latest projected date of payment). The director also periodically sends out information to all of the lawyers in the department on the interest rate as it changes.¹ Then, the civil or criminal deputy general, depending on which division handled the case, reviews the information to make sure it is complete and clearly articulated. We prepare the forms throughout the year. At the appropriate time, we transmit the forms to the

¹ Under AS 09.30.070(a), the interest rate on judgments entered on causes of action accruing after August 7, 1997, is tied to the discount rate in the 12th Federal Reserve in effect on January 2 of the year the judgment is entered. Thus, the interest rate changes each year and the director makes sure the lawyers know the applicable dates for the interest rates and the correct percentages.

Office of Management and Budget for review and inclusion in an appropriate legislative budget bill, generally the supplemental budget bill. The forms and attachments are then transmitted by OMB to both the House and Senate Finance Committees as backup to the budget bill that includes the judgments and claims at issue.

The House and Senate Finance Committees each carefully review the settlement and judgment items submitted in the budget bill(s) during the committee hearing process. We testify at the committee hearings on the requests, often item by item, in front of both committees. Through that process, questions are asked of the Department of Law and sometimes the agency involved as well. We will also provide any additional information requested.

Most settlements are entered into contingent upon appropriation. Thus, if the Legislature decides not to appropriate funds for the settlement, the matter will go back into the litigation process.

- You have asked what circumstances, if any, would trigger consultation with the Legislature or legislative leaders prior to settlement of litigation.

We work to keep the Legislature and legislative leaders informed on significant developments in cases in litigation. For instance, each year, during the legislative session, we provide a comprehensive confidential briefing on the status of all oil and gas related litigation -- all members of the Legislature are invited to attend the briefing.

A circumstance that would probably trigger consultation with the Legislature prior to settlement of litigation would be if a proposed settlement were presented to the Legislature for appropriation and the Legislature did not approve the settlement. This circumstance came up in 1995 with regard to the settlement of litigation concerning environmental contamination and cleanup at Toksook Bay, *City of Toksook Bay v. Lower Kuskokwim School District*. The settlement of the litigation was submitted to the Legislature for funding. The appropriation was not approved and the case went back into litigation. A settlement proposal reached later was discussed with legislators, which enabled the parties to know that the new proposal would likely pass legislative scrutiny. The appropriation for the settlement was approved by the Legislature in 1996.

We also prepare a quarterly update on all significant natural resources litigation. This report is provided to the Legislature and is now also available on our web page, along with our monthly report. In addition, we provide updates and information to legislators frequently on cases of special interest. Examples would be the *Evans v. State*

Mark K. Johnson
Attorney at Law

September 30, 1999
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litigation, a constitutional challenge to the 1997 Tort Reform Act, the *Irby Construction v. State* litigation challenging the constitutionality of the local hire statutes, the *ACLU v. State* case challenging the constitutionality of the campaign finance reform legislation, and the several cases we have now in the courts concerning abortion rights.

2. Legal assistance and support to administrative and adjudicative boards and commissions.

You requested budgetary data on legal services provided to administrative boards and commissions. A list of FY99 actual expenditures by individual board and commission is attached. While this is not a comprehensive list of all boards and commissions, it is what we have readily available through our timekeeping and billing system. If there is a board or commission not on the list that you are particularly interested in, we can work on getting the budgetary data on legal services for that entity. I have also indicated on the spreadsheet whether the legal services are provided in-house, or by outside counsel, and whether they are funded within the Department of Law's budget or by reimbursable services agreement with the board or commission.

In response to the second part of question 2, whether the board or commission is empowered by statute to make policy decisions and its members are confirmed by the Legislature has no bearing on whether legal services are provided by the Attorney General or private counsel. Only a very limited number of agencies (such as the Alaska Railroad Corporation and the University of Alaska) are exempted from AS 36.30.015(d), which provides, "[a]n agency may not contract for the services of legal counsel without the approval of the attorney general." As was discussed at the September 16th subcommittee meeting, these legal services could perhaps be privatized, but at a significant cost, both monetary and institutional.

You have also asked to what extent has privatization of these services been considered. The department has not systematically examined legal services to boards and commissions for privatization. As was discussed at the September 16th meeting, the department procures private counsel to supplement our in-house attorneys and resources when such additional services are in the best interests of the state. The boards and commissions serve fundamental governmental functions, such as the regulation of fish and game resources in the state, the enforcement of campaign finance disclosure laws, the regulation of professional licensing, the regulation of public utilities, and deciding state personnel and executive branch ethics issues. Similarly, the legal services we provide on these issues involve core governmental issues. Thus, we believe it is most appropriate for these legal services to be provided by the Attorney General.

Mark K. Johnson
Attorney at Law

September 30, 1999
Page 6

We have also enclosed with this letter follow up information requested at the last meeting concerning tort litigation and areas of law worked on by contract counsel. We look forward to our next meeting with the subcommittee.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Barbara J. Ritchie
Deputy Attorney General

Enclosures

cc: All members
Subcommittee on the Department of Law
Commission on Privatization and Delivery of
Government Services

LEGAL SERVICES PROVIDED FOR BOARDS AND COMMISSIONS*
FY99 ACTUAL EXPENDITURES

Board or Commission	FY 99 Actual Expenditures	In-house or Outside Counsel	Agency Reimburses Law (RSA) or Dept of Law Funds
Occupational Licensing	\$379,873	In-house	RSA
APUC Legal Services (now ARC)	\$298,000	In-house	RSA
Postsecondary Education Commission	\$231,597	In-house	RSA
Alaska Public Offices Commission	\$189,560	In-house	Law
Oil & Gas Conservation Commission	\$90,477	In-house	Law
Human Rights Commission	\$89,313	In-house	Law
Alcohol Beverage Control Board	\$81,716	In-house	Law
Board of Fish	\$69,778	In-house	Law
Commercial Fisheries Entry Commission	\$61,054	In-house	Law
Board of Game	\$53,489	In-house	Law
Alaska State Pension Investment Board	\$44,144	Outside Counsel	RSA
Professional Teaching Practices Commission	\$20,023	In-house	RSA
Personnel Board			
Board of Education	<u>\$19,332</u>	In-house	RSA
	\$1,628,354		

* The list is not comprehensive. It represents the boards and commissions for which information is readily available through the department's timekeeping and billing system.

Department of Law

**JUDGMENT/SETTLEMENT FUNDING REQUEST
QUESTIONNAIRE**

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name:

Case No.:

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.
2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.
3. Did the State prevail on any issues? If so, describe.
4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

5. What was the source of the State's liability in this case?

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

8. Any recommendations concerning cases of this type in the future?

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations.

Attorney completing form:

Title

Date:

Phone Number

DEPARTMENT OF LAW
Response to Subcommittee Questions Concerning Tort Litigation

The subcommittee has asked if the department retrospectively reviews the performance of in-house counsel after a trial to consider whether outside counsel might have achieved a better outcome. Essentially the question is whether the department's use of less costly in-house counsel instead of private attorneys in litigation could be "penny-wise and pound foolish."

The department's torts section and the Division of Risk Management always reflect on the outcome of the few cases the section defends through trial and how the case or issues might be handled differently. We have not evaluated what might have happened if different attorneys had been assigned to the defense. Such an exercise is highly speculative and pure conjecture.

Moreover, we believe that our torts section attorneys are on a par with, or in some cases better than, private attorneys at representing the state's interests. The director of risk management, Brad Thompson, who is very familiar with the work of the torts section and outside counsel for nearly two decades, can attest that our tort litigators rival their private sector counterparts. And in many tort cases, our assistant attorneys general have superior expertise to litigate issues unique to government, such as discretionary immunity defenses.¹

Moreover, there is an economy of scale when in-house attorneys deal with recurring issues and agencies with which they have a continuous working relationship.

We have previously explained to the subcommittee that it is difficult to make a direct comparison between tort cases handled in-house and those done by outside counsel, as every case is unique. There have been three trials in the past few years that provide anecdotal information.

¹ In the past few years, the torts section has successfully litigated a number of important cases all the way through the Alaska Supreme Court which have resulted in very useful precedents: Mesiar v. Heckman, 964 P.2d 445 (Alaska 1998); Kooly v. State, 958 P.2d 1106 (Alaska 1998); Karen L. v. Dep't of Health and Human Services, 953 P.2d 871 (Alaska 1998); Hawks v. State, 908 P.2d 1013 (Alaska 1995); Arrowwood v. State, 894 P.2d 642 (Alaska 1995). In addition, the section frequently wins summary judgment motions on issues of duty and immunity, such as the recent victories in the Miller's Reach fire class action cases filed in the Palmer and Anchorage Superior Courts.

- Last year private counsel defended the state in the Walden case, in which the plaintiff's son's catastrophic injuries incurred in a single vehicle accident were blamed on the state's allegedly defective highway maintenance and signing. An Anchorage jury trial lasted over seven weeks and resulted in a verdict of no liability for the state. (The boy's father, who was the driver in the accident, was found 100% liable for damages of \$8.1 million; the state had brought the father into the case as a third-party defendant for equitable apportionment purposes). The state's defense, including expert witnesses, other related costs, and attorney's fees, exceeded \$850,000, not counting costs of the appeal now underway.
- A few years earlier an assistant attorney general took the Arrowwood case to jury trial, in which the plaintiff's son's death was also attributed to the state's allegedly negligent highway maintenance. The two- to three-week trial resulted in a verdict for the state of no liability, which was affirmed on appeal by the Alaska Supreme Court. Total costs at the trial court level were \$101,902, again excluding appeal costs.
- Another case handled by in-house counsel presented different legal issues, but the length of trial and use of experts more closely parallel the Walden case. In Kerr, the state Department of Corrections was sued for not preventing inmates from directing the creation and delivery of a mail bomb, which resulted in the death of David Kerr and significant injury to his spouse. After a five-week Anchorage jury trial, the state was found responsible for only 12% of the \$12.4 million damages awarded, which we viewed as a favorable outcome in a difficult and emotional case. Defense costs in that case amounted to \$326,000.

While every case presents its challenges and not every ruling goes our way, we are confident that the state is well represented by our in-house staff. A testimony to the capability of our tort litigators is the fact that the state's excess insurers approve of their work. Even where plaintiffs approach excess insurers directly to pressure settlement of high-exposure cases, the insurers have declined to second-guess our defense.

The subcommittee also requested additional detail on the 16 tort litigation outside counsel contracts for which expenditures were made between FY94 and FY99. The contracts are categorized by reason for entering into them below:

- Resources (caseload of in-house tort section too high when case filed): 5
- Resources and expertise (caseload consideration, and special expertise required): 3
- Limited extra help needed, but case handled in-house: 2
- AHFC tort case (agency not a participant in state's self-insurance program): 2
- Conflict in representation: 2
- Excess insurers paid cost directly: 2

DEPARTMENT OF LAW
Contractors by Type of Legal Services

FIRM	AREA OF LAW
Alfred J. Hendron	miscoded expenditure; expert witness
Ashburn and Mason	Employment; Oil & Gas
Atkinson, Conway & Gagnon	Tort Litigation
Baker & Hostetler	Administrative Law (federal)
Baxter, Bruce, Brand & Douglas	Employment
Bernd C. Guetschow, P.C.	Bankruptcy
Birch Horton et al.	Civil Rights; State's Rights; Tort Litigation
Bliss & Holmes	Construction Claims; Investment Contract Litigation
Carney, Badley, Smith & Spellman	Construction Claims
Charles E. Cole	State's Rights
Charlson, Marben & Jorgenson	Collections
Computer Forensics, Inc.	miscoded expenditure; expert witness
Constantino & Associates	Employment
Covington & Burling	Administrative Law (federal)
Crowell & Moring	Administrative Law (federal)
Delaney, Wiles, Hayes	Employment
Dillon & Findley	Regulations
Donelan, Cleary, Wood & Maser	Oil & Gas; State's Rights
Douglas K. Mertz	Regulations
Foreman, Arch, Dodge, Volyn & Zimpo	Collections
Foster, Pepper & Shefelman	Bond/Investment Counsel
G. Thomas Koester	Mental Health Lands; Natural Resources; Oil & Gas; State's Rights
Groh, Eggers & Price	(See Groh, Eggers, LLC - firm name change)
Groh, Eggers, LLC	Employment
Heller, Ehrman, White & McAuliffe	Environmental; Investment Contract Litigation; Real Estate; State's Rights
Hogan & Hartson	State's Rights
Hosie, Frost & Large	Consumer Protection/Antitrust; Oil & Gas
Hosie, Wes, Sacks & Breisford	(See Hosie, Frost & Large - firm name change)
Ikon Office Solutions	miscoded; printing charge
Jeff Killip	Child Protection
Jensen, Harris, Roth	Construction Claims
Jermain, Dunnegan & Owens, P.C.	Bankruptcy
Johnston & Savage	Criminal Prosecution
Kaye, Scholer, Fierman, Hays & Handler	Oil & Gas
Kuntz, Keenan & Laughlin	Collections

DEPARTMENT OF LAW
Contractors by Type of Legal Services

L.C.M.F. Limited	miscoded; expert witness
Marvin S.C. Dang, Law Offices	Collections
Michael A.D. Stanley	State's Rights
Milton B. Barker	Commercial (paralegal services)
Mooers & Associates	Collections (investigator/paralegal services)
Morrison & Foerster	Bond/Investment Counsel; Oil & Gas
Mot, Inc.	miscoded; expert witness
National Association of Attorneys General	miscoded; dues
Owens & Turner, P.C.	Employment; Technology/Patent
Pachulski, Stang, Ziehl et al	Investment Contract Litigation
Partnow, Sharrock & Tindall	Oil & Gas
Partnow, Sharrock & Tindall (c/o trust account)	Oil & Gas
Perkins Cole	(See Hosie, Frost & Large - firm name change)
Preston, Gates & Ellis	Bankruptcy; Bond/Investment Counsel; Environmental; Oil & Gas; Consumer Protection/Antitrust; Employment
Price & Price	Real Estate
Price & Swan	(See Price & Price - firm name change)
Reid & Riege, P.C.	Commercial
Ringert Clark Chartered	Collections
Robertson, Monagle & Eastaugh	Criminal Prosecution; Environmental
Ruddy, Bradley & Kolkhorst	Environmental
Sarah E. Gay	Regulations
Savage & Associates	Collections
Simpson, Tillinghast, Sorensen et al	Constitutional; Regulations
Stephan H. Williams	Oil & Gas
Susan M. Reitter	Collections
Washburn, Briscoe & McCarthy	Oil & Gas; State's Rights
Welborn, Sullivan, Meck & Tooley	Oil & Gas
William Brian Prince	miscoded; can't identify older vouchers
Williams, Kastner & Gibbs, LLP	Real Estate
Wilson-Epes Printing Co.	miscoded; printing charge
Wohlforth, Argetsinger, Johnson et al.	(See Wohlforth, Vassar, Johnson, et al. - firm name change)
Wohlforth, Vassar, Johnson, et al.	Real Estate

MEMORANDUM

State of Alaska Department of Law

TO: Sen. Richard I. Eliason, Chair
Senate Special Committee on the
Exxon Valdez Oil Spill
Claims Settlement

DATE: April 2, 1991

FILE NO:

TEL NO: 465-3600.

Rep. Max F. Gruenberg, Jr., Chair
House Special Committee on the
Exxon Valdez Oil Spill
Claims Settlement

SUBJECT: Authority of the Governor
and Attorney General to
Enter into the EXXON VALDEZ
Settlement Agreement

FROM: Charles E. Cole
Attorney General

As you know, the Agreement and Consent Decree (hereinafter "Settlement Agreement") in the EXXON VALDEZ litigation was reached between Exxon,^{1/} the State and the Federal governments after several weeks of discussion about the pending and potential litigation between them. The terms of the Settlement Agreement reflect many hours of hard bargaining among the parties, an effort to resolve on mutually acceptable terms their respective claims related to the EXXON VALDEZ oil spill ("Oil Spill") without additional expensive, potentially interminable, and uncertain litigation.

This memorandum will discuss the reasons why the Governor and the Attorney General have the authority to negotiate and agree to the Settlement Agreement on behalf of the State of Alaska.

I. THE ECONOMIC TERMS OF THE SETTLEMENT AGREEMENT

The basic economic terms related to the Settlement Agreement are the provisions pertinent to this memorandum's discussion and, therefore, merit summary at the outset.

A. The Federal Criminal Plea Agreement

The State played no role in the negotiations between Exxon and the Federal government with respect to the Plea Agreement in the Federal government's criminal case against Exxon (Case No. A-90-015 CR., United States District Court for the District of Alaska). However, under that Plea Agreement, the State is to receive half of the fine to be paid by Exxon.

^{1/} The Exxon entities involved in the Settlement Agreement are Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V EXXON VALDEZ, the supertanker that caused the Prince William Sound oil spill. Those entities will be referred to in this memorandum collectively as "Exxon."

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Under the Plea Agreement, Exxon Shipping pleads guilty to violations of the Clean Water Act, 33 U.S.C. §§1311(a) and 1319(c)(1)(A), the Refuse Act, 33 U.S.C. §§407 and 411, and the Migratory Bird Treaty Act, 16 U.S.C. §§703 and 707(a); Exxon Corporation pleads guilty to Migratory Bird Treaty Act violations, 16 U.S.C. §§703 and 707(a). Exxon will pay \$100 million as a criminal fine under the Plea Agreement.

The Plea Agreement provides that \$50 million of that fine is to be paid as restitution to the State of Alaska within 30 days of the Court's acceptance of the Plea Agreement. It further provides that those monies "are to be used by the State of Alaska exclusively for restoration projects" relating to the Oil Spill. Restoration is defined to include "restoration, replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup and amelioration of oil spills." Plea Agreement §4(A). Those monies will be entirely under the control of the State and will thus be subject to the legislative appropriations process, though with that restriction on their use. Plea Agreement §4(B).

B. The Agreement And Consent Decree

The Settlement Agreement requires Exxon to make a total of \$900 million in payments.^{2/} After the first installment of \$90 million is paid within ten days after the effective date of the Settlement Agreement, payments are to be made annually on September 1st, over a ten year period beginning in 1992, in amounts set out in the payment schedule in paragraphs 9(b) and (c) of the Settlement Agreement.

The Settlement Agreement includes two basic types of recoveries from Exxon related to the settlement of the State's civil claims. The first type, in a amount of up to \$72 million, is in settlement to reimburse the State 1) for response and clean-up costs incurred prior to January 1, 1991, 2) for its natural resource damages assessment costs, and 3) for its litigation costs, including attorneys' fees, experts' fees and other costs. Settlement Agreement §10.

^{2/} The Settlement Agreement also includes a "reopener" provision that provides for Exxon to pay up to \$100 million dollars for additional restoration projects in areas affected by the Oil Spill, if the projects meet a cost/benefit criterion and the injury being redressed was not reasonably known or anticipated based on information available at the time of the Settlement Agreement's effective date. Settlement Agreement §§17-19.

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The second type governs the balance of the \$900 million to be paid, after deductions are made for the State reimbursement payments, for the similar federal reimbursement payments of up to \$62 million, and for expenditures made by Exxon with respect to continuing Oil Spill clean-up, as defined in paragraph 11 of the Settlement Agreement. In addition, the related Memorandum of Agreement ("MOA") provides for reimbursements to the State and Federal government for "all of the Governments' unreimbursed response and cleanup costs incurred after December 31, 1990," as certified by their spill response coordinators, "shall be paid directly to the Governments by Exxon over a period of 5 years." MOA §V(B). These reimbursements will thus be paid to the State and subject to the Legislature's appropriations power, like the \$72 million in reimbursements to the State for pre-1991 costs and the \$50 million in restitution to be received under the Plea Agreement.

The remaining balance of Exxon's settlement payments will be held in and administered through a joint trust fund ("Trust Fund"). Those monies must be used by the Trust Fund's trustees "to assess injury resulting from the Oil Spill, and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources or natural resource services injured, lost, or destroyed as a result of the oil spill, or the acquisition of equivalent resources or services." The Settlement Agreement provides that the Trust Fund monies are to "be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska." §10.

Pursuant to the MOA, the Trust Fund will be administered by the State and Federal governments as "co-trustees." MOA §III(A). A group of six Trustees designated by the President and the Governor, three each from the State and Federal governments, are to act as co-trustees: the Administrator Of the National Oceanic and Atmospheric Administration, the Secretaries of the Departments of the Interior and Agriculture; the Commissioner of the Alaska Department of Fish and Game, the Commissioner of the Alaska Department of Environmental Conservation, and the State Attorney General. The MOA requires that the Trustees act jointly in the collection and use of all damage recoveries. Decisions on use of the monies in the Trust Fund for restoration are to be made by unanimous agreement of the Trustees, though provisions are made in the MOA for methods to resolve any disputes. MOA §IV(A)(3). The MOA provides that the Trustees "shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group" MOA §IV(A)(3). The funds are to be held subject to this co-trusteeship in a joint Trust Fund under the supervision of the United States District Court for the District of Alaska. MOA §IV(A)(2).

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II. DEFINING THE REAL ISSUE

The only real issue presented by the joint Trust Fund aspect of the settlement is whether the executive branch of the State government has authority to negotiate and agree to such a settlement mechanism.

In framing that issue, it is critical to understand that the Trust Fund monies are not monies to be received by or belong to either the State or the Federal governments. While the State's position is that it owns and is the trustee for most of the resources impacted by the Oil Spill, the Federal government contends otherwise. As a compromise of both governments' claims to exclusive control of monies recovered, the governments agreed that the monies would instead be placed in the joint Trust Fund established by Consent Decree under the Clean Water Act.

Thus, under the Settlement Agreement, those monies comprise a trust per se, as to which neither government has sole ownership or control, held jointly for the benefit of certain damaged natural resources.^{3/} Consistent with well-established trust law, the governments, as co-trustees, have joint ownership control over the Trust Fund monies and must exercise that control jointly and consistently with the terms of the Settlement Agreement. See generally Restatement (Second) of Trusts §§2, 34, 185, 194 (1959) (two or more co-trustees hold trust property as joint tenants; unless terms of trust provide otherwise, co-trustees share duties and powers, which can properly be exercised only by all trustees).^{4/}

^{3/} The rights and obligations of the governments with respect to the Trust Fund are governed by the terms of the Settlement Agreement, construed in light of common law trust principles. See Restatement (Second) of Trusts §4 (1959) (terms of trust are defined by instrument creating trust). See also *State v. Weiss*, 706 P.2d 681, 683-83 & n.3 (Alaska 1985) (applying common law trust principles to State's obligations with respect to public lands; state legislature had no power to alter status of Mental Health Lands granted by United States, because doing so effectively terminated trust in violation of the State's duties as trustee); *State v. University of Alaska*, 624 P.2d 807, 814 (Alaska 1981) (private trust law principles applied to evaluation of State's obligation with respect to University lands).

^{4/} See also *Mitchell v. Mitchell*, 655 P.2d 748, 752 (Alaska 1982) (person seeking recovery as representative for surviving family members is "a nominal party only and holds the recovery in trust"); *Thomson v. Wheeler Construction Company*, 385 P.2d 111, 114 (Alaska 1963) ("A trust is a fiduciary relationship with respect to
(continued...)

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A. The Trust Fund Does Not Violate
The Legislature's Appropriations Authority

While there has been concern expressed about whether the Trust Fund violates the Legislature's appropriation power, that power simply does not extend to monies that are not public revenues or assets of the State and can not be placed in the State Treasury.^{1/}

The Alaska Supreme Court has discussed the definition of "appropriations" in delineating the scope of the governor's line item veto power:

'An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.'

For our purpose, the operative phrase "public revenue" is critical since it is the basis of the general fund and special funds from which the legislature may allocate money. Thus, any time the legislature allocates monies from the general fund or special funds, the governor's line item veto would be appropriate. However, the sale of general obligation bonds is the commitment of the state to a debtor relationship with those who purchase the bonds, and is therefore distinguishable from such allocations.

Thomas v. Rosen, 569 P.2d 793, 796-97 (Alaska 1977) (citations omitted) (governor lacks constitutional power to line item veto general obligation bonds authorizations, since they "do not qualify as appropriations").

^{1/}((...continued)

property, subjecting the person who holds ... the property to equitable duties to deal with it for the benefit of another person.") Cf., In re Cornelius, 520 P.2d 76, 85 (Alaska 1974) (one who receives money on behalf of another is a fiduciary; "the funds are impressed with a trust and conversion by the [person to his or her own uses] is a breach of that trust").

^{2/} The provision of the Alaska Constitution concerning appropriations provides, in relevant part:

No money shall be withdrawn from the Treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law.

Alaska Const., Art. IX, §13 (emphasis added).

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Most broadly interpreted, the Legislature's appropriations power extends both to "public revenues" and to all "state assets," all property owned by the State. Thomas v. Bailey, 595 P.2d 1, 4-9 (Alaska 1979) (Beirne initiative to transfer State lands to private persons based on residency violated constitutional prohibition against making "appropriations" by initiative). As the Supreme Court later explained, invalidating initiative provisions requiring the University of Alaska to transfer real and personal property to Community College System:

The reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs. This rationale applies as much or nearly as much to allocations of physical property as to allocations of money. To whatever extent it is desirable for the legislature to have sole responsibility for allocating the use of state money, it is also desirable for the legislature to have the same responsibility for allocating property other than money. Otherwise, the prohibition against appropriations by initiative could be circumvented by initiatives changing the function of assets the State already owns. We conclude that the constitutional prohibition against appropriations by initiative applies to appropriations of state assets, regardless of whether the initiative would enact a give-away program or simply designate the use of the assets.

McAlpine v. University of Alaska, 762 P.2d 81, 87-88 (Alaska 1988) (emphasis added). See also Alaska Conservative Political Action Committee v. Municipality of Anchorage, 745 P.2d 936 (Alaska 1987) (initiative seeking to require sale of municipally owned utility to private, nonprofit cooperative for \$1 would unconstitutionally make "appropriation," where utility had \$32.7 million in equity; "prohibition against appropriations by initiative applies to all state and municipal assets") (emphasis added).

However, that power obviously does not extend to monies that are not assets belonging to the State, but are instead assets of a joint Trust Fund not subject to sole State ownership or control.^{6/}

^{6/} Courts in other jurisdictions have ruled that funds received by a state for specific purposes are trust funds and are not subject to the legislative appropriations power, even where they are received and held solely by the state and not in a joint trust fund subject to co-trusteeship obligations. The Massachusetts Supreme Court well stated the rationale for that conclusion:

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2/((...continued)

If Federal funds are received by State officers or agencies subject to the condition that they be used only for objects specified by Federal statutes or regulations, the money is impressed with a trust and is not subject to appropriation by the Legislature. The recipient of such funds has no choice but to comply with the requirements imposed by Federal law.

Moreover, legislation requiring that Federal funds, including those received in trust by officers and agencies of the executive branch, be paid into the State treasury and be expended only on appropriation by the legislative branch, would result in the Legislature's interfering with the right and obligation of the executive to decide the extent and manner of expending funds in performing its constitutional duty faithfully to execute and administer the laws.

Opinion of the Justices to the Senate, 378 N.E.2d 433, 436 (Mass. 1978) (citations omitted). See, e.g., Colorado General Assembly v. Lamm, 738 P.2d 1156 (Colo. 1987) (expenditure of federal block grant funds, not subject to state matching requirement or other legislative decisionmaking, was within governor's executive power to make resource allocation decisions, since funds were essentially custodial in nature); Colorado General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985) (oil company's payment to state pursuant to consent order resolving administrative proceeding alleging that company violated regulations in marketing petroleum and natural gas products was not subject to General Assembly's appropriation power, and governor's exercise of authority over fund was not an impermissible invasion of Assembly's right to appropriate public funds); Opinion of the Justices to the House of Representatives, 471 N.E.2d 1266 (Mass. 1984) (even if revenues received pursuant to bill establishing Development Bank constituted "money received on account of the Commonwealth" within meaning of State Constitution's article establishing process by which revenues are to be received and disbursed, revenues would not be subject to those requirements, since funds were impressed with a trust established to secure debt obligations of Bank, which could disburse those funds pursuant to specific conditions and limitations). See also Navajo Tribe v. Arizona Dept. of Administration, 528 P.2d 623 (Arizona 1974); MacManus v. Love, 499 P.2d 609, 610 (Colo. 1972); State ex rel. Sego v. Kirkpatrick, 524 P.2d 975 (N.M. 1974); Application of State ex. rel. Dept. of Transportation, 646 P.2d 605, 609-10 (Okla. 1982). Contra, Shapp v. Sloan, 391 A.2d 595, 604-07 (Pa. 1978), appeal dismissed sub nom., Thornburgh v. Casey, 440 U.S. 942 (1979) (custodial Federal funds must be appropriated by the legislature or returned to the Federal government).

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B. The Trust Fund Does Not Violate The Constitution's
Prohibition Against Dedicated Funds

For similar reasons, the Alaska Constitution's prohibition concerning dedicated funds is not violated by the Trust Fund. The relevant sentence in the Constitution states:

Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 [the Constitution's Permanent Fund provisions] of this article or when required by the federal government for state participation in federal programs. ...

Alaska Const. Art. IX, §7.

The Supreme Court has interpreted that prohibition against dedicating "proceeds of a state tax or license" to extend to all similar "source[s] of revenue" received by the State. State v. Alex, 646 P.2d 203 (Alaska 1983). In Alex, the legislature had passed a statute authorizing private aquaculture associations to collect mandatory assessments on the sale of salmon by commercial fishermen, in a way that "dedicate[d] the proceeds of the assessments to the associations." The Court rejected "a distinction between 'general revenue taxes' and 'special assessments' for services," and held the dedication of assessments unconstitutional. Id. at 208-210. As discussed previously with respect to the appropriations issue, however, the Trust Fund monies are simply not "revenues" of the State.^{2/}

^{2/} (...continued)

The Alaska Supreme Court has not decided the issue whether the Legislature can or must exercise its appropriations power in order to authorize the State to expend trust monies or custodial funds held by the State, though a Superior Court decision has ruled (without elaboration) that the governor could not expend custodial funds without a legislative appropriation. Kelly v. Hammond, Case No. 77-4 Civ. (Juneau, 4/19/78).

^{2/} There is obviously a strong link between the Alaska Constitution's appropriations language and the dedicated funds prohibition. That prohibition is aimed at restraining the Legislature's creation of dedicated funds from certain State revenues through its appropriations power. See Alaska Constitutional Convention Proceedings 2364 (dedications of funds had the undesirable effect of preventing the "legislature" from "decid[ing] each case on its merits," causing it to "lose[] [the] control that it should have over the workings over state government"; appropriations should be made only after legislature (continued...)

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Furthermore, even if the Trust Fund monies were State revenues, the limitations on the use of those monies to those allowed under the Clean Water Act would not violate the dedicated funds prohibition for two additional reasons: 1) the monies would be received by the State subject to co-trusteeship obligations; and 2) the monies would be received by the State subject to a federal statutory requirement as to their use.^{7/}

^{7/}((...continued)

"decide[s] each case on its merits"); *id.* at 2367-70 ("eventually you get so many funds earmarked that the legislature just does not have the money to work with for current operating expenses").

^{8/} In a thorough analysis of the dedicated funds prohibition after the Alex decision, the Attorney General concluded that even under the strictest conceivable interpretation, monies received in trust would not be subject to that prohibition. 1982 Op. Att'y Gen. No. 13, File No. 366-649-80 (Nov. 30, 1982) ("[E]ven under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract"). That opinion also concluded that the fact that some State revenue was subject to federal statutory requirements that it be spent in a particular way did not violate the prohibition. *Id.* ("The dedication of proceeds of fishing and hunting licenses to the operation of a Department of Fish and Game is required by federal law for participation in federal programs and is therefore authorized by Article IX, section 7. See 16 U.S.C. §669."). See also Op. Att'y Gen., File No. 366-403-85 (Aug. 13, 1985) (trust obligation exists with respect to public school fund; dedication of revenues to public school fund would not violate dedicated fund prohibition because "the legislature has removed the lands from a federally-created trust and substituted a monetary fund. We believe the exceptions to the prohibition on dedicated funds contained in article IX, section 7, of the Alaska Constitution--i.e., for dedicated funds 'required by the federal government' or 'existing upon the date of ratification of this section by the people of Alaska'--authorize the dedication of revenues to the public school fund, since the dedication of revenues is an alternate form to the pre-statehood federal dedication of lands."); Op. Att'y Gen., File No. 388-140-82 (June 22, 1982) (federal statute specifying use to which State could put its share of receipts from oil and gas leasing in National Petroleum Reserve; "federal legislation directing payment of the money to the state attaches conditions to the state's receipt of that money" and thus "impose[s] a requirement which is exempt from the dedicated fund prohibition").

(continued...)

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C. The Real Issue

The Trust Fund monies are not "State assets" or "public revenues," subject to the Legislature's appropriations power or the constitutional prohibition against dedicated funds.

The issue then, purely and simply, is whether the Governor and the Attorney General of the State of Alaska have the power and authority to agree to a settlement of the Exxon litigation in which a portion of Exxon's settlement payments are made into a Trust Fund, supervised by the United States District Court and administered by the State and Federal governments as co-trustees, or whether they are legally constrained to settle the Exxon litigation only on terms that require all monies to be paid directly to the State.

III. THE SEPARATION OF POWERS DOCTRINE IN ALASKA

As the legislature well knows, the principle of separation of powers is a central construct of American constitutional government and of Alaska's Constitution.^{9/}

^{9/}((...continued))

A common sense reading of the exemption where a dedication of funds is "required by the federal government for state participation in federal programs" would allow funds to be taken under the restrictions embodied in the Settlement Agreement, even were those funds considered "public revenues." The purpose of this exemption is to ensure that the State may receive monies available under federal law subject to restrictions. Though recoveries under the Clean Water Act might not be received literally from a federal "program," it is likely that the dedicated funds prohibition would be interpreted by the courts to allow the State to benefit from such recoveries with the statutory restrictions as to their use.

^{9/} The historical and intellectual origins of the separation of powers doctrine have been extensively reviewed and analyzed by scholars. See, e.g., W. Gwyn, *The Meaning of the Separation of Powers* (1965); M. Vile, *Constitutionalism and the Separation of Powers* (1967); Sharp, "The Classical American Doctrine of 'the Separation of Powers'," 2 U.Chi.L.Rev. 385 (1935). The doctrine is generally considered to have been derived primarily from the writings of John Locke concerning the delineation of functions in the English government, and the writings of Montesquieu, who strongly "argued that any combination of the judicial, legislative or executive powers would create a system with an inherent tendency towards tyrannical actions." The doctrine was incorporated into the state constitutions that predated the American Constitution and has been embodied in subsequent state constitutions. J. Nowak, R.
(continued...)

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The Alaska Supreme Court has long and consistently recognized that although "the Alaska Constitution does not expressly address itself to the doctrine of separation of powers," that principle is clearly "implied" from the Constitution's separate articles creating the executive, legislative and judicial branches of the Alaska government. Rust v. State, 582 P.2d 134, 138, n.11 (Alaska 1978).^{10/} "Under the structure envisaged by Alaska's fundamental charter, the legislative power of the state is vested in the legislature, the executive power in the governor, and the judicial power in a supreme court, a superior court and such additional courts as established by the legislature." Bradner v. Hammond, 553 P.2d 1, 5 (Alaska 1976) (footnotes omitted).

There is no doubt that the countervailing principle of "checks and balances" allows each branch of the State government to directly and indirectly affect the other.^{11/} Thus, the legislature may enact laws that are to be executed by the executive and interpreted by the judiciary in accordance with legislative intent;^{12/} the executive may enforce those laws in accordance with its discretionary view of the public interest and governmental priorities; and the judiciary may review the actions of both the

^{9/} (...continued)

Rotunda, and J. Young, Constitutional Law (1983), citing, J. Locke, Second Treatise of Government (An Essay Concerning the True Origin, Extent and End of Civil Government); Montesquieu, The Spirit of Laws (Nugent trans. 1949)

^{10/} See also Alaska State-Operated School System v. Mueller, 536 P.2d 99, 103 (Alaska 1975) ("Those who wrote our constitution followed the traditional framework of American government. The governmental authority of the State of Alaska was distributed among the three branches, the executive, the legislative and the judicial.").

^{11/} See, e.g., Bradner v. Hammond, 553 P.2d at 5:

A problem inherent in applying the doctrine of 'separation of powers' stems from the fact that the doctrine is descriptive of only one facet of American government. The complementary doctrine of checks and balances must of necessity be considered in determining the scope of the doctrine of separation of powers.

^{12/} For purposes of the analysis presented below in this memorandum, it is important to bear firmly in mind that the legislature can restrict the executive's constitutional discretion to execute the law only by means of a lawfully enacted statute. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980).

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other branches in light of applicable constitutional and other legal constraints.^{13/}

However, the Alaska Supreme Court has embraced a strict view of the autonomy of the State's governmental branches, which precludes each branch from improperly interfering with the autonomy and discretion of the others with respect to their core constitutional powers. See, e.g., Bradner v. Hammond, 553 P.2d at 6-8 ("the separation of powers doctrine requires that the blending of governmental powers [between the branches] will not be inferred in the absence of an express constitutional provision").

IV. THE GOVERNOR'S CONSTITUTIONAL AUTHORITY
TO EXECUTE AND ENFORCE THE LAWS

"There is no dispute that our constitution was designed with a strong executive in mind." Bradner v. Hammond, 553 P.2d 1, 3 n.3 (Alaska 1976). See Alaska Constitutional Convention Proceedings 1102, 1741, 1986-88, 2038, 3103. Article III, Section 1 of the Constitution provides that "[t]he executive power of the State is vested in the governor."

Principal among the governor's express constitutional powers is his or her responsibility for executing and enforcing the laws. The constitutional provision concerning that power makes clear the governor's plenary authority to initiate and control litigation brought for that purpose:

Governor's Authority. The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. ...

^{13/} See also, e.g., State ex rel. Stephan v. Kansas House of Representatives, 687 P.2d 622 (Kan. 1984) (doctrine of separation of powers avoids dangerous concentration of power through checks and balances each branch of government has against other by assigning each branch powers and functions appropriate to it; generally, "legislative power" is power to make, amend or repeal laws, whereas "executive power" is power to enforce laws, and "judicial power" is power to interpret and apply laws in actual controversies).

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Alaska Const., Art. III, §16.^{14/}

The Constitutional Convention considered the discretion of the executive branch to enforce the law to be an essential element of the strong executive intended under the Alaska Constitution:

In order to enforce the strong executive and to bulwark his power we have given him power by appropriate actions or proceedings in the court, brought in the name of the state, to enforce compliance with any constitution [sic] or legislative mandate. That is specifically written into the constitution because we want to have a broad interpretation of the powers of the strong executive.

Alaska Constitutional Convention Proceedings 1986. Thus, the governor has the constitutional mandate to use his or her judgment in enforcing the law to best protect the public's interest. See State v. Lewis, 559 P.2d 630, 635 (Alaska), cert. denied, 432 U.S. 901 (1977).

V. THE ATTORNEY GENERAL'S SETTLEMENT AUTHORITY

The Attorney General is the State officer charged with implementing the executive branch's policies with respect to execution of the law.^{15/} In that respect, the Attorney General

^{14/} See, e.g., Alexander v. State By and Through Allain, 441 So.2d 1329 (Miss. 1983) ("Executive power" is the power to administer and enforce the laws; "execution" is at the core of executive power).

^{15/} The Alaska Constitutional Convention strongly rejected proposals offered by a minority of its Judiciary Committee members either to create an elected Attorney General's position in the Constitution (defeated by a 40-12 vote) or to have the Governor appoint the Attorney General, by a process similar to that adopted for judicial appointments, from candidates determined to be qualified by the Judicial Council (defeated by a 36-18 vote). In doing so, the Convention expressly reaffirmed the Constitution's intention to have a "strong executive" and made it clear that the Governor should have full authority to appoint his or her Attorney General, in order to assure that the Attorney General could work effectively in the executive department and would be compatible with the Governor and the Governor's programs. Alaska Constitutional Convention Proceedings 2193-2202, 2215-23 (Delegate McLaughlin stating that an elected Attorney General would put "a diverse and possibly a discordant element into the executive (continued...)

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has broad common law powers and responsibilities. For the historically inclined, the common law roots of the attorney general's powers were recently, tersely summarized by the Alabama Supreme Court:

The office of attorney general had its nascence in the *attornatus regis* of the thirteenth and fourteenth century England. The *attornatus regis* served as the sovereign's primary legal representative, with considerable power subject to limitation only by the King. The office was carried over to colonial America, where it eventually became the office of attorney general. All fifty states have an office of attorney general created either by constitution or statute. ...

The most far-reaching of the attorney general's common-law powers is the authority to control litigation involving state and public interests. It is generally accepted that the attorney general is authorized to bring actions on the state's behalf. As the state's chief legal officer, 'the attorney-general has power, both under common law and by statute, to make any disposition of the state's litigation that he deems for its best interest.... [H]e may abandon, discontinue, dismiss or compromise it.' In addition to having authority to initiate and manage an action, the attorney general may elect not to pursue a claim or to compromise or settle a

¹⁸/(...continued)

branch" undercutting the Attorney General's "attorney-client relationship" with the Governor, which "has to be based on faith and personal selection"; instead, Attorney General should be an "executive appointee" and "an attorney largely for the executive department"; Delegate Stewart stating that rather than giving independent advice to both the executive and the legislature, "the attorney general [should be] purely and simply the adviser for the executive"; Delegate Rivers, a territorial attorney general, agreeing that the Attorney General should not be expected to counsel both the governor and the legislature, and that an elected attorney general would undercut the constitutional intention to have a strong executive, because an elected attorney general might be of an "opposite political faith," otherwise not "see eye-to-eye" with the governor, or be "inadequate or hostile to [the governor]"; Delegate Buckalew opposing the Judicial Council proposal as inconsistent with the commitment to a strong executive). See also *id.* 2284 (Delegate Taylor explaining that by not making the attorney general a constitutional office, the Convention was recognizing that "it was a legal department of the executive branch and ... the governor would have the right ... to appoint the attorney general who sets up the legal department of the executive department").

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suit when he determines that continued litigation would be adverse to the public interest.

Weaver v. Blue Cross and Blue Shield of Alabama, 570 So.2d 675, 677 (Ala. 1990) (footnotes omitted) (attorney general had authority to dismiss state insurance department's proceedings in appeals court despite objection of commissioner of insurance).^{10/}

Alaska takes a similarly expansive view of the Attorney General's common law powers. Because the nature and extent of those powers is fundamental to the issue addressed in this memorandum, the Alaska Supreme Court's seminal discussion of the subject deserves extended quotation:

Generally, an attorney general has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. AS 44.23.020 indicates that the office of the Attorney General is to function with those powers and duties normally ascribed to it at common law:

- (b) The attorney general shall . . .
- (7) perform all other duties required by law or which usually pertain to the office of the attorney general in a state.

Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases.

When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts. To interfere with that discretion would be a violation of the doctrine of separation of powers. Although the Alaska Constitution does not expressly address itself to the doctrine of separation of powers, we have noted that often what is implied is as much a part of the constitution as what is expressed. The state constitution is divided into a number of separate articles. Since Article III concerns the executive

^{10/} See also 6 W. Holdsworth, A History of English Law 467-68 (1924); National Association of Attorneys General Committee on the Office of Attorney General, Common Law Powers of State Attorneys General 9-17 (1980); Cooley, Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies, 2 Am.J. of Legal History 304 (1958).

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branch, it can fairly be implied that this state does recognize the separation of powers doctrine.

Both federal and state courts have consistently and carefully observed the line which divides their branch of government from that of the executive. They have held that the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding.

"In that field, the discretion of the Attorney General is plenary. He is a constitutional officer . . . and, as such, the head of the state's legal department. His discretion as to what litigation shall or shall not be instituted by him is beyond the control of any other officer or department of the state."

The order to prosecute by the Superior Court overstepped this line and was an infringement upon the discretionary powers residing in the executive branch. Such an order is not within the province of the court.

We conclude that, although we have jurisdiction to entertain this case and to find, as we have, the existence of legal authority, we do not have power to control the exercise of the Attorney General's discretion as to whether he will take action in any particular cases of contempt for non-support.

Public Defender Agency v. Superior Court, 534 P.2d 947, 950-51 (Alaska 1975) (footnotes and citations omitted) (emphasis added).^{17/}

It is thus entirely clear that, as an incident of both common law and statutory powers, the Attorney General has the discretionary authority to settle the State's litigation.^{18/}

^{17/} In addition to AS 44.23.020, which codifies certain of the Attorney General's inherent powers and provides other duties for him or her, other statutes, far too numerous for citation, expressly provide for the Attorney General to initiate or defend administrative and judicial proceedings. However, "[t]he duties of the office are so numerous and varied that it has not been the policy of state legislatures to attempt specifically to enumerate them." State ex rel. Olsen v. Public Service Commission, 283 P.2d 594, 598-99 (Mont. 1955).

^{18/} See also State of Oklahoma ex. rel. Wilson v. Blankenship, 308 F. Supp. 870, 875 (W.D. Ok. 1969), rev'd. on jurisdictional grounds, 447 F.2d 687 (10th Cir. 1971), cert. denied, 405 U.S. 918 (1972) ("Ordinarily, the Attorney General both under the common law (continued...)

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A. The Attorney General Has The Authority To Agree To
A Settlement That Includes A Joint Trust Fund

The Trust Fund settlement device agreed to by the Attorney General in the Exxon litigation is appropriate under both common law and state and federal statutes.

First, as part of the Attorney General's common law authority to initiate, participate in and settle litigation, the Attorney General may seek any available legal or equitable remedy, even if a particular remedy is not expressly provided by statute.^{10/}

^{10/} (...continued)

and by statutes, may control and manage all litigations in behalf of the state and is empowered to make any disposition of the state's litigation, which he deems for its best interest"); Island-Gentry Joint Venture v. State Through State Board of Land and Natural Resources, 554 P.2d 761 (Haw. 1976) (attorney general has exclusive authority to control and manage for state all phases of civil litigation in which state has an interest, and such authority necessarily includes control of settlement of actions); Sarkeys v. Independent School District, 592 P.2d 529, 536 (Okla. 1979) ("The authority of the Attorney General to settle or compromise the litigation in question, in the absence of fraud or collusion is exclusive."); State ex rel. Derryberry v. Kerr-McGee, 516 P.2d 813 (Okla. 1973) (attorney general had authority to settle and compromise asphalt price-fixing case; absent "fraud or collusion," court will presume that case settled for valid reasons, based on Attorney General's judgment as to the state's best interests); State v. Jones, 41 So.2d 280 (Ala. 1949) (attorney general had power to enter into good faith settlement, despite constitutional provision forbidding compromise or release of obligations owed the state).

^{10/} Attorneys general have been recognized to have numerous common law litigation powers, including: to institute and intervene in civil suits to protect the public interest, in their discretion; to challenge the constitutionality of legislative or administrative actions; to bring suits under federal law to protect members of the public; to intervene in regulatory rate cases; to litigate parens patriae (for the benefit of the state's citizens) in cases involving a wide range of matters; to bring proceedings against public officers; to sue for abatement of nuisances; to enforce charitable trusts; to intervene in will contests; to seek revocation of corporate charters; to represent state agencies; and to initiate criminal prosecutions, even where local prosecutors have not done so. See National Association of Attorneys General Committee on the Office of Attorney General, Common Law Powers of State Attorneys General 36-71 (1980).

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Thus, in State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982), the Alaska Supreme Court held that the State's Consumer Protection Act did not regulate real property sales and that the State's Uniform Land Sales Practices Act would not apply retroactively to certain land purchases. However, the Court held that neither statute restricted "the court's traditional equity powers" to award restitution "at the instance of the State," as a remedy to benefit defrauded land purchasers. 660 P.2d at 416.²⁰/

Furthermore, the Court held that the Attorney General, on behalf of the State, had the authority to pursue the common law fraud claims of land purchasers and to seek restitution for them based on those claims. Quoting and reaffirming its recognition of the Attorney General's broad common law powers in the Public Defender case, discussed previously, the Court concluded:

We believe that the above language [from the Public Defender decision] forecloses any argument that the State is without authority to bring suit in the absence of express statutory authority. This view finds ample support in the decisions of other jurisdictions where the attorney general's common law powers are recognized. ... This authority has been held to confer standing on the attorney general to seek redress for common law fraud.

We therefore hold that the State has the authority to bring suit in the public interest on the basis of common law fraud to obtain restitution for defrauded land purchasers. ... [I]t is not the court's function to pass upon the Attorney General's determination of what is or is not in the "public interest"

660 P.2d at 420-21.

²⁰/ In reaching this conclusion, the Court found "persuasive" the California Supreme Court's reasoning in a case involving a substantially similar issue. In that case, People v. Superior Court, 507 P.2d 1400 (Cal. 1973), the Court ruled that while a California statute only expressly authorized the California Attorney General to sue to enjoin misleading advertising, that statute "did not restrict the court's general equity jurisdiction 'in so many words, or by a necessary and inescapable inference'" Therefore, the California Court held that courts retained their "inherent power to order, as a form of ancillary relief, that the defendants make or offer to make restitution to the consumers found to have been defrauded." 507 P.2d at 1402 (citations omitted and emphasis added). The Alaska Supreme Court's First National Bank opinion noted that "a number of analogous federal cases ... had reached the same conclusion." 660 P.2d at 416.

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The trust, used as the vehicle for the Exxon settlement, is an ancient equitable creature. Litigants have long asked courts to infer or create trusts as a way to remedy legal or equitable wrongs. See, e.g., Klondike Industries Corp. v. Gibson, 741 P.2d 1161, 1171 (Alaska 1987) (court may impose constructive trust where it concludes that holders of legal title to property should be considered to have duty to act consistently with the equitable interests of other persons in property); Avers v. Jackson Township, 525 A.2d 287, 314 (N.J. 1987) (citing authorities in support of creation of equitable fund so that 1) damages from toxic discharge would not have to be estimated in advance; 2) recovery could be used for medical monitoring; and 3) trustees could make decisions on disbursements on equitable grounds). See also Milliken v. Bradley, 433 U.S. 267, 281 (1976) (courts have "broad" "equitable powers to remedy past wrongs").^{21/}

For almost 40 years, environmental trusts have been created, by settlements and court orders, as a method to use monies paid by a polluter to benefit the resource damaged by the polluter's activities. See For Land's Sake 1 (New Jersey Conservation Foundation, Morristown, N.J., 1990). Such trusts have been established with both private plaintiffs and governmental trustees making the decisions about expenditures of trust monies.^{22/}

^{21/} The creation of common or trust funds for recoveries in class action litigation is one notable and well-established example of the courts' willingness to create such funds as a remedy. See generally 2 H. Newberg, Newberg on Class Actions §§10.01 et seq., 11.15 - .21, 12.01 et seq. (2d ed. 1985) (classwide damage awards and lump sum fund settlements).

^{22/} Some examples gleaned from research done by the National Wildlife Federation as a result of the Exxon litigation:

The Chesapeake Bay Foundation and Natural Resources Defense Council sued Bethlehem Steel for polluting the Chesapeake Bay in violation of its clean water permit. The resulting consent decree gave them extensive oversight powers in administering a \$1.1 million trust fund, with monies to be spent on projects which "further the goals of the Clean Water Act by contributing to the restoration and protection of the Chesapeake Bay and its resources," consistent with the "mitigation project criteria" set forth in the EPA's Clean Water Act settlement policies. Chesapeake Bay Foundation v. Bethlehem Steel Corp., Civ. No. Y-84-1620 (D.Md., July 14, 1987).

The Hudson River Foundation was the result of a protracted case brought by environmental organizations and Hudson River fishermen opposed to the construction of the Storm King power plant. The settlement established a \$12 million endowment for scientific research on the ecology of the Hudson River.

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22/(...continued)

Representatives from the state and federal government, from the different plaintiff groups, and from New York utilities sit on a panel which recommends projects for a trustee panel. Final authority for administration of funds rests with the trustee panel, comprised of ten distinguished persons independent of government. See generally R. Sandler and D. Schoenbrod, The Hudson River Plant Settlement (New York University, 1981).

The Virginia Environmental Endowment began with a \$13.2 million deposit from Allied Chemical Corporation which had been found guilty of polluting the James River with the toxic chemical kepone. The presiding federal judge approved Allied's suggestion that instead of paying a fine, it would create an environmental trust. The judge appointed independent, prominent citizens to administer the Endowment. Projects undertaken range from educating citizens to tackling pollution problems in the Virginia area. See Virginia Environmental Endowment, Annual Report (1987).

The Ohio Fund was established pursuant to a consent decree between the EPA and parties responsible for the administration of the Hamilton County municipal sewer system, the Metropolitan Sewer District of Greater Cincinnati, which failed to comply with its NPDES permit. The purpose of the trust is to fund "environmentally beneficial project(s)" for enumerated purposes in accordance with certain criteria. The project(s) are required 1) to further the statutory goals of the Clean Water Act, 2) to address the kinds of environmental problems caused by the defendants' noncompliance, 3) to supplement any existing legal requirements, and 4) to benefit the general public rather than any of the defendants or any governmental unit. U.S. v. Bd. of County Commissioners of Hamilton County, Ohio, et al., C-1-89-0693 (S.D. Ohio, March 11, 1985).

The Whooping Crane Trust is a \$7.5 million "trust in perpetuity" created in a consent decree between an electric power company and plaintiffs, the State of Nebraska and the National Wildlife Federation. Each of the three parties to the agreement (the power company, the governor of Nebraska, and the National Wildlife Federation), appoint one trustee who may be replaced at the pleasure of the party who appointed him. The purpose of the trust is "to protect and maintain the migratory bird habitat in the so-called Big Bend area of the Platte River between Overton and Chapman, Nebraska;" the trustees may choose to fund "programs, activities, and acquisitions ... formulated to protect and maintain, consistent with the provisions hereof, the physical, hydrological, and biological integrity of the Big Bend area so that it may continue to function as a life support system for the whooping crane and other migratory species which utilize it." Platte River Whooping Crane Maintenance Trust, Trust Declaration. See also U.S. v. Metropolitan District Commission, No. 85-0489-MA (D.Mass. 1988) (establishing Boston Harbor Massachusetts Bay
(continued...)

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Trust funds have often been created by consent decrees entered in Clean Water Act actions for injunctive relief and other remedies.^{22/} See, e.g., PIRG v. Powell Duffryn, 913 F.2d 64, 82 (3rd Cir. 1990), cert. denied, 111 S.Ct. 1018 (1991) ("in a Clean Water Act case, a court may fashion injunctive relief requiring a defendant to pay monies into a remedial fund, if there is a nexus between the harm and the remedy"; district court can create trust fund as part of equitable relief, but civil penalties must be paid into U.S. Treasury).

The environmental trust fund most analogous to that created under the Exxon Settlement Agreement was established as a result of litigation relating to the Shell Oil Company's discharge of oil from its Martinez, California complex. That discharge affected lands and waters, including wetlands around the Shell Marsh and Peyton Slough, and entered into the Carquinez Strait and Suisun Bay, near San Francisco.

^{22/}(...continued)

Trust). Cf., United States v. Browning-Ferris Industries Chemical Services, Inc., 704 F.Supp. 1355 (M.D. La. 1988) (attorney general had defendant pay a portion of recovery to university to endow environmental research program).

^{23/} The remedies expressly available under the CWA also arguably exist at common law. The courts have long recognized common law "public trust" and "parens patriae" doctrines, under which a government is entitled to seek damages and injunctive relief in order to protect land or water resources in which it has a "public trust" interest. See, e.g., Maine v. M/V Tamano, 357 F.Supp 1097, 1101 (D.Me. 1973) (state can seek both injunctive relief and damages for oil discharge under public trust and parens patriae theories); Aerojet-General Corp. v. San Mateo County Superior Court, 257 Cal.Rptr. 621 (Cal.App. 1989) (State's public trust interest in navigable portions of river was sufficient for standing to claim damages caused by environmental pollution). See generally 1 V. Yannacone, B. Cohen, S. Davison, Environmental Rights and Remedies §2.1 et seq. (1972) (discussing development of trust doctrine). Under common law theory then, the State might seek as an equitable remedy, and a court might order created, a fund to benefit damaged resources. See, e.g., Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493, 495-96 (1971) (fund sought for restoration of waters polluted by mercury); State v. Levi Strauss & Co., 715 P.2d 564 (Cal. 1986) (settlement fund for class members created in parens patriae consumer action brought by Attorney General). See also 1 W. Rodgers, Environmental Law §2.13D (1986) (range of equitable remedies possible in environmental cases is "virtually unlimited").

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The Consent Decree in that case, a copy of which is available to the Legislature, resolved the claims of the United States Government, as well as those of numerous California state and local governmental entities and agencies that were also plaintiffs. U.S. et al. v. Shell Oil Company, Civ. No. C-89-4220 (N.D. Cal., Nov. 29, 1989). Like the present case, the Consent Decree used a Clean Water Act trust as the mechanism for collectively resolving claims for natural resources and other damages sought under various state and federal statutes, as well as common law theories. See Shell-Martinez Consent Decree ¶¶I(D)-(J), V.

Prominent among its settlement payment provisions, the Consent Decree provides for approximately \$11 million to be placed in a joint trust fund.^{24/} A Memorandum of Agreement incorporated into the Consent Decree provides for decisions concerning disbursement and management of the trust fund to be made by a Committee comprised of representatives of federal, California and local governmental entities. See Shell-Martinez MOA ¶I. While the Shell-Martinez MOA enumerates various uses to which the fund monies may be devoted, the Committee is to "be guided by the primary objectives of restoring, rehabilitating and acquiring the equivalent of the natural resources adversely affected by the Oil Spill." See Shell-Martinez MOA ¶II.

Cooperation with the Federal government and the creation of a joint trust fund is clearly appropriate under the circumstances of the Exxon litigation, as it was in the Shell-Martinez case.

B. The Clean Water Act Trust Remedy

The Clean Water Act ("CWA") provides that the State and Federal governments are to act as "trustees" in seeking recovery for natural resource damages and that all recoveries by the trustees are to be used for restoration and resource acquisition purposes. See 33 U.S.C. §1321(f)(5) ("The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.").

^{24/} Like the Exxon Settlement Agreement, the Shell-Martinez Consent Decree, though dedicating the majority of the recovery to an environmental trust fund, also provided for significant monies to be paid directly to the numerous governmental parties as reimbursement for their costs and clean-up efforts, as well as penalties. See Shell-Martinez Consent Decree ¶IV(A).

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Consistent with the trustee status under which the governments may recover natural resource damages, the statute is interpreted to require that such recoveries be held in trust for the damaged resources. See Commonwealth of Puerto Rico v. The SS Zoe Colocotroni, 628 F.2d 652, 675 (1st Cir. 1980), cert. denied, 450 U.S. 912 (1981) (requirement that recoveries be used to benefit damaged resource is "[i]n accordance with the trust analogy"). See also W. Fratcher, Scott on Trusts §5170, 192 (4th ed. 1987) (trustee's duty is to act with respect to trust property in the interests of the trust's beneficiaries).

The regulations promulgated under the CWA concerning such trusts expressly address only the situation where a single sovereign recovers money. "All sums recovered ... by the Federal government acting as trustee shall be retained by the trustee, without further appropriation, in a separate account in the U.S. Treasury." 43 C.F.R. §11.92(a)(1). "All sums ... recovered ... by a State government acting as trustee shall either: (i) be placed in a separate account in the state Treasury; or (ii) be placed by the responsible parties in an interest bearing account payable in trust to the state agency acting as trustee." 43 C.F.R. §11.92(a)(2). These sums must be spent "out of the account ... only for those actions described in the Restoration Plan" 43 C.F.R. §11.92(c). The regulations further provide the State trustee responsible for the Restoration Plan and spending trust proceeds in accordance with that Plan is to be an "agency designated by the governor". 43 C.F.R. §11.14(rr).

However, relevant to the joint Trust Fund created by the Exxon Settlement Agreement, the regulations also provide that the state and federal trustees should cooperate to "[d]evise and carry out a plan" for restoration and resource acquisition where the affected resources are "contiguous," or under joint trusteeship. 40 C.F.R. §§300.615(a), (b)(4).^{25/} The CWA and its accompanying regulations therefore strongly support the conclusion that joint recoveries should be placed in a joint trust fund and administered cooperatively. See also Alaska Const., Art. XII, §2 ("The state ... may cooperate with the United States ... on matters of common interest.").

Based on these statutory and regulatory provisions, a joint trusteeship was considered the appropriate basis for the Consent Decree in the Shell-Martinez oil spill litigation,

^{25/} See also 43 C.F.R. §§11.32(a)(1)(ii), (a)(1)(iii) (trustees encouraged to cooperate in assessing inseparable damages and required to cooperate in pursuing such damages); 40 C.F.R. §§300.73-.74 (requiring trustee coordination and cooperation in fulfilling duties which, under 33 U.S.C. §1321 (f)(5), include pursuing damage claims and implementing restoration plan).

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discussed previously in this memorandum. A joint trusteeship will almost certainly be upheld by the courts as an appropriate settlement mechanism, authorized by federal law, in the Exxon case as well.

C. No Statutory Provision Expressly Precludes
The Trust Fund Settlement

The Attorney General's authority to enter into the joint Trust Fund settlement with Exxon and the Federal government is certainly subsumed within the Attorney General's broad, inherent settlement powers. Because of the inherent nature of those powers, "[i]t is the general consensus of opinion that in practically every state of this Union whose basis of jurisprudence is the common law," the Attorney General retains all his or her common law powers "in the absence of express restrictions" imposed by constitution or statute. Hansen v. Barlow, 456 P.2d 177, 178 (Utah 1969) (emphasis added).^{26/}

No Alaska statutory provision expressly precludes the Attorney General from settling litigation like the EXXON VALDEZ case by means of a settlement which includes a joint Trust Fund.^{27/}

^{26/} Accord, Weaver v. Blue Cross and Blue Shield of Alabama, 570 So.2d 675, 684 (Ala. 1990); Olsen v. Public Service Commission, 283 P.2d 594 (Mont. 1955); Lund ex rel. Wilbur v. Pratt, 308 A.2d 554, 558 (Me. 1973) (attorney general "may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights"); Martin v. Thornburg, 359 S.E.2d 472, 479 (N.C. 1987) ("[i]n the absence of explicit legislative expression to the contrary, the attorney general possesses entire dominion over every civil suit instituted by him in his official capacity ..., and his authority extends as well to control of defense of civil suits against the state, its agencies, and officers"); State ex rel. Derryberry v. Kerr-McGee Corporation, 516 P.2d 813 (Okla. 1973). See also National Association of Attorneys General Committee on the Office of Attorney General, Common Law Powers of State Attorneys General 24 (1980) ("In states which recognize common law powers, codification does not affect such powers unless the statutes expressly state so.")

^{27/} Given the absence of any such express prohibition, it is unnecessary to speculate concerning the issue whether and to what extent the Legislature might prohibit the Attorney General from so settling the litigation. However, it is clear that the separation
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27/(...continued)

of powers doctrine would restrict any legislative attempt to intrude on the executive branch's discretionary authority to conduct litigation in the State's interest. See Bradner v. Hammond, 553 P.2d 1 (Alaska 1976) (appointment of executive officers clearly an executive function, and legislature could not require legislative confirmation of lesser executive officers in addition to those made subject to confirmation by the Alaska Constitution); In re Mackay, 416 P.2d 823 (Alaska 1965), cert. denied, 382 U.S. 803 (1965) (inherent power of Supreme Court over suspension and disbarment of attorneys cannot be defeated by legislative branch of government). Cf., Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979) (superior court could not constitutionally require State executive agency to perform home-study in private child custody dispute); Rust v. State, 582 P.2d 134 (Alaska 1978) (sentencing court could recommend that defendant be incarcerated in particular facility, but ultimate responsibility for classification and placement of defendant was vested in Division of Corrections, and court lacked authority to order defendant incarcerated in a designated facility); State v. Carlson, 555 P.2d 269 (Alaska 1976) (separation of powers principles precluded trial court from accepting guilty plea to lesser charge of manslaughter over the opposition of the prosecution). See also Bowsher v. Synar, 478 U.S. 714 (1986) (powers vested in the Comptroller General under "reporting provisions" of Balanced Budget and Emergency Deficit Control Act violated the Constitution's command that Congress play no direct role in the execution of the laws); State Board of Ethics for Elected Officials v. Green, 545 So.2d 1031 (La. 1989) (to extent statute authorized Supervisory Committee on Campaign Finance Disclosure to file civil proceedings to collect penalties for violation of Campaign Finance Disclosure Act, it unconstitutionally violated separation of powers; Committee members were legislatively appointed, and thus could not constitutionally be authorized to enforce the law); In re Opinion of the Justices, 532 A.2d 195 (N.H. 1987) (once legislature has made appropriation for executive branch, requirement of fiscal committee approval of contracts made pursuant thereto is unconstitutional intrusion into executive branch of government); State ex rel. Mattson v. Kiedrowski, 391 N.W.2d 777 (Minn. 1986) (constitutional provision that duties of state executive "shall be prescribed by law" does not allow the legislature to transfer inherent or core functions of executive officers); General Assembly of State of New Jersey v. Byrne, 448 A.2d 438 (N.J. 1982) (any legislative action which excessively interferes with executive's ability to faithfully execute the laws passed by Legislature violates separation of powers); Aiken County Bd. of Ed. v. Knetts, 262 S.E.2d 14 (S.C. 1980) (legislature may not, consistent with separation of powers, undertake to both pass laws and execute them by its own members); State ex rel. Guste v.
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The only statutes that have been suggested to have potential impact on that settlement authority are the Alaska statutes concerned with oil and hazardous substance release remedies. However, those statutes can not be fairly said to preclude expressly the Settlement Agreement or its joint Trust Fund mechanism, for several reasons.

First, AS 46.08.020 and AS 46.08.010 require "money received by the state" to be "deposited in the general fund and credited to the special account called the 'oil and hazardous substance release account'." As discussed earlier in this memorandum in the context of the appropriations and dedicated fund issues, the joint Trust Fund monies are not monies "received by the state." Therefore, the statutory requirement to deposit such monies in the general fund, as a matter of plain statutory language, simply does not apply.

Furthermore, the most plausible reading of these statutes is that they deal only with monies recovered by the State as reimbursement for costs, as the February 15, 1991, memorandum to Senator Cotten from the Assistant Revisor of Statutes stated at page 4, ¶II(C). AS 46.08.070(a) empowers the Attorney General to seek compensation for State cleanup related expenditures. That section states:

The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(a), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(emphasis added).

AS 46.08.020 similarly makes clear the cost reimbursement nature of the recoveries subject to the statutory chapter, in outlining potential appropriations of these proceeds:

²⁷/(...continued)

Legislative Budget Committee, 347 So.2d 160 (La. 1977) (legislature may not appoint officers to enforce its laws because that would invade the exclusive realm of the executive).

Some courts have held that the legislature may not restrict the attorney general's common law powers. See, e.g., Gust K. Newberg, Inc. v. Illinois State Toll Highway Authority, 456 N.E.2d 50, 55 (Ill. 1983) (Attorney General's duties are prescribed by law and include those powers traditionally held by Attorney General at common law; while legislature may add to his powers, it cannot reduce his common-law authority in directing legal affairs of state); Murphy v. Yates, 348 A.2d 837 (Md. 1975) (legislature may not abrogate common-law powers of Attorney General).

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(a) The legislature may appropriate from the following sources to the ["Oil and Hazardous Substance Release Response] fund:

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific cite [sic]...; [and]

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to the special account called the "oil and hazardous substance release mitigation account."

The relevant sections thus require on their faces that only those damages, penalties or fines recovered for "costs incurred by the State" for "clean up and containment" be placed in the special account in the general fund.²⁶/

Additionally, it is important to recognize that if any Alaska statute were interpreted to preclude the Attorney General from pursuing or agreeing to Clean Water Act trust fund remedies,

²⁶/ The Legislature's concern was that the general fund be reimbursed for outlays of money. The legislative Fiscal Note to HB 205, the source of AS 46.04.010 as it presently reads, states, "This procedure is designed to reimburse the general fund and thus hold down overall state cleanup costs. It is intended that about 20% of all cleanup costs can be recovered." 1980 House Journal Supp. No. 43, Apr. 8, 1980. Similarly, in introducing this legislation, Representative Miles stated that "it provides for prompt clean up of oil spills and for prompt reimbursement of those spills." House Floor debates, Apr. 15, 1980.

With respect to AS 46.08, Representative Navarre noted in support of the new fund that "it appeals to me because although it offers the opportunity to charge back to the responsible party, if we can identify them, the cost of cleaning up these areas as we discover them." House Resources Comm., Jan. 29, 1986. Former DEC Commissioner Ross similarly told the House Finance Committee on Feb. 17, 1986, that "we would anticipate operating this fund in exactly the same manner, of looking for liability, and assigning it accordingly when we found it, and reimbursing the state." (emphasis added). See also Statement by Representative Pourchot before House Finance Committee, Mar. 10, 1986; statement by Representative Davis on House Floor, Mar. 19, 1986.

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serious federal supremacy and preemption issues would be raised.²⁹/ While the State may in many contexts provide remedies more liberal or protective than those provided by federal law,³⁰/ the courts might well rule invalid an attempt by the Legislature effectively to eliminate a remedy clearly provided under federal law.

In brief, were a State statute interpreted to preclude the State from participating in trust fund recoveries under the Clean Water Act, that statute would likely be held preempted, because it would frustrate and serve as an obstacle to the Clean Water Act's purposes. See International Paper Company v. Quелlette, 479 U.S. 481, 491 (1987) ("[i]n addition to express or implied preemption, a state law also is invalid to the extent that it 'actually conflicts with a ... federal statute'"; Clean Water Act preempts private water pollution suit based upon the common law of nuisance of the state in which the alleged injury occurred, when the source of the alleged injury is located in another state).

Finally, it would make little sense for the legislature expressly to constrain the Attorney General's discretion by prohibiting him or her from agreeing to a settlement, based on federal laws, that establishes a joint State-federal environmental restoration trust fund, even when that settlement mechanism would provide the best overall outcome for the State. The Legislature clearly, and wisely, has not done so.

VI. THE SETTLEMENT STRUCTURE WAS NEGOTIATED AND AGREED TO REASONABLY AND IN GOOD FAITH

It was thus certainly within the Attorney General's authority and discretion to decide to settle the State's Oil Spill litigation with Exxon, in part by agreeing to the creation of a resource restoration Trust Fund jointly administered by State and federal Trustees. As quoted previously in this memorandum, the

²⁹/ The Supremacy Clause provides:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

U. S. Const., Art. VI.

³⁰/ See, e.g., Webster v. Bechtel, 621 P.2d 890 (Alaska 1980) (federal Fair Labor Standards Act did not preempt State from providing greater protection and more expansive remedies under the Alaska Wage and Hour Act).

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Alaska Supreme Court has strongly declared that where the Attorney General has the "legal authority" to make a particular decisions with respect to the State's litigation, Alaska's courts "do not have power to control the exercise of the Attorney General's discretion" To attempt to do so would be "an infringement upon the discretionary powers residing in the executive branch" "not within the province of the court." Public Defender Agency, 534 P.2d at 951.

Even if the Supreme Court's clear statement in that regard were disregarded, at most an Attorney General's decision concerning the conduct and disposition of State litigation can be legally challenged only if that decision was made in bad faith or, perhaps, for entirely arbitrary and capricious reasons. See Weaver v. Blue Cross and Blue Shield of Alabama, 570 So.2d 675, 677 (Ala. 1990) (courts have either "refused to interfere with the attorney general's use of his discretionary power" or "left undisturbed the use of the power to control litigation as long as the attorney general's actions are not arbitrary, capricious, or in bad faith").^{31/}

The Governor and the Attorney General must be allowed to exercise discretion to settle cases in good faith and on whatever lawful basis they think to be in the State's best interests. They are not required to doggedly pursue in every case all potential State positions and claims. In some cases, they might decide for a variety of reasons, including litigation strategy or problems of proof, simply to abandon potential claims, without seeking any recovery for them. In other cases, they might determine that injunctive relief would provide the best settlement consideration (for instance, an agreement by Exxon itself to undertake certain cleanup or restoration work at the direction of State and federal agencies), rather than seek any monetary recovery under any State or federal law.^{32/}

^{31/} See also Seaverns v. Wilmington Medical Center, Inc., 421 A.2d 1334 (Del. 1980) (Supreme Court will not interfere with performance of attorney general's discretionary duties, absent bad faith); Fesney v. Commonwealth, 366 N.E.2d 1262 (Mass. 1977) (attorney general's discretionary power not to be used in arbitrary or capricious manner); State ex rel. Carmichael v. Jones, 41 So.2d 280 (Ala. 1949) (consent agreement between attorney general and taxpayer settling unliquidated claim for taxes was lawful because made in good faith and within power of Attorney General); Cooley v. South Carolina Tax Commission, 28 S.E.2d 445 (S.C. 1943) (attorney general acted in good faith in compromising estate tax).

^{32/} See also Rubin v. Board of Environmental Protection, 577 A.2d 1189, 1192 (Me. 1990) ("Attorney General is entitled under the common law to seek injunctive relief against violations" of law).

**Special Committees on the
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There is no sense in which the Exxon Settlement Agreement was negotiated and agreed to in bad faith or arbitrarily and capriciously. Instead, for the reasons discussed in this memorandum and which will be discussed further with the Legislature during the public comment and legislative approval process, the conclusion was reached that it was in the best interests of the State of Alaska to settle the Oil Spill litigation in large part through the mechanism of a joint Trust Fund, rather than pursue separately the State's various claims for damages. For present purposes, this memorandum will merely summarize the basic reasons why the joint Trust Fund was a reasonable, even essential, component of a settlement.

As a fundamental matter, it was important for the State and Federal governments to act in concert in seeking a settlement. By acting and settling together with the Federal government, the State was able to achieve a better overall settlement for the people of Alaska, both in terms of receiving reasonable reimbursement damages (as to which the Legislature will have appropriations authority), and obtaining the greatest benefit for Alaska's damaged natural resources.

A joint Trust Fund recovery for natural resource damages and restoration was reasonably necessary to such a joint settlement because of potential disputes concerning which sovereign is trustee for which resources. It was desirable to avoid such disputes for several reasons, including: 1) the expense and considerable time unquestionably required for litigating -- undoubtedly including through the available appeals processes -- the numerous resource trusteeship issues presented; 2) the uncertain outcome, always attendant to litigation even in more clearly charted legal waters, of such disputes because of numerous unsettled questions of law concerning trusteeships of various resources; 3) the arguable prospect that some resources or restoration efforts might ultimately be held by the courts to be subject to joint trusteeship by the State and Federal governments; 4) the practical fact that even with respect to resources that might be identified with some confidence as subject to the trusteeship of a single sovereign (e.g., state tidelands and federal uplands), both the damage to those resources and restoration efforts affecting them are very much intertwined; and, finally, 5) as a tactical matter, resource trusteeship disputes could certainly have been used by Exxon to complicate hugely the litigation by interjecting at various stages issues as to which sovereign could recover and bore the burden of proving damages with respect to which resources, thereby both dividing the State and Federal governments and likely prolonging further Exxon's day of reckoning and payment.

The State believes that it has a stronger claim to many of the fish, wildlife and other natural resources impacted by the spill than does the Federal government and might well have

**Special Committees on the
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prevailed to that effect after lengthy and costly litigation. However, in light of the considerations mentioned above, it was more appropriate and in the best interests of the State to agree instead to a settlement that in part employed a joint State-federal resource restoration Trust Fund. Such a Trust Fund was a necessary ingredient of a settlement designed to produce the greatest benefit to the people of Alaska.

CONCLUSION

This memorandum has discussed the clear authority of the Attorney General to agree to the settlement of the EXXON VALDEZ litigation on the terms contained in the Settlement Agreement.

However, despite that authority, the settlement is obviously politically sensitive, not only because of the magnitude of the resource and economic issues addressed by the Settlement Agreement, but also because of the profound impact of the EXXON VALDEZ Oil Spill on both Alaska's political culture and -- very directly -- on the lives of many Alaskans.

Therefore, in recognition of the public's interest in the settlement and the Legislature's perceived desire to review the Settlement Agreement, the Settlement Agreement was made subject both to a public comment period and review by the Alaska Legislature. As paragraph 37 of the Agreement provides, if the Legislature does not approve the Settlement Agreement within a prescribed time period, the Agreement may be terminated by the State merely by giving notice to Exxon and the United States government.

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

October 4, 1999

Mark K. Johnson
Attorney at Law
13631 Windward Circle
Anchorage, Alaska 99516

Dear Mr. Johnson:

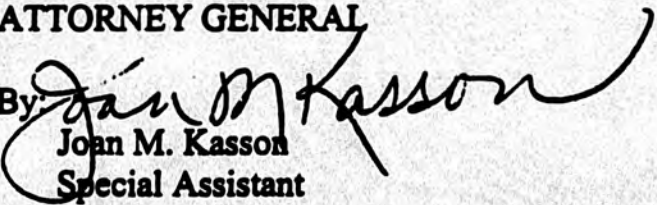
The subcommittee requested copies of any solicitations from legal auditing firms the Department of Law might have. Enclosed is one we received last year from the firm of Stuart, Maue, Mitchell and James, Ltd.

Also enclosed is the list of tort litigation contracts, with total expenditures, that I faxed to you today.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Joan M. Kasson
Special Assistant

Enclosures

cc: All members
Subcommittee on the Department of Law
Commission on Privatization and Delivery of
Government Services



**FACSIMILE TRANSMISSION
COVER SHEET**

Office of the Attorney General
Dimond Courthouse, 123 Fourth Street, 4th Floor
P.O. Box 110300
Juneau, AK 99811-0300
PHONE: (907) 465-5370 FAX: (907) 465-2075

DATE: October 4, 1999

FROM: JOAN KASSON
SPECIAL ASSISTANT
Joan_Kasson@law.state.ak.us

Total number of pages including this cover sheet: 2

Please deliver the following pages to:

SCOTT BRANDT-ERICHSEN, 247-6625
BLAKE CALL, 263-8320
REP. JOHN COWDERY, 269-0223
MARK JOHNSON, 273-5382
RICHARD MCVEIGH, 373-8036
WILLIAM OBERLY, 258-7282
BETTY ROLLINS, 488-6614
BILL SATTERBERG, 452-4454
BRUCE WEYHRAUCH, hand delivered

MESSAGE:

As requested by Mr. Satterberg, attached is the list of tort litigation contracts, with total expenditures to date.

In preparing this spreadsheet, we discovered that two more have been closed than was indicated on the original list of contracts by type of legal services sent to you on August 31. The line for "Tort Litigation" should read 8 single matter and 2 multi-matter contracts closed, and 6 single matter contracts open.

Please inform us immediately
if you do not receive this transmission in full
(907) 465-2133 Ask for: Kathy

**TORT LITIGATION CONTRACTS
FY94-FY99**

FIRM	CLIENT	LITPROJ	SUBJECT	BEGIN	DATE	ENDDATE	TOTAL EXP
Atkinson, et al.	Revenue	AHFC Legal Counsel	Tort Litigation	7/1/94		6/30/98	\$177,905
Bankston & McCollum	Admin/RM	Davis v. State	Tort Litigation	2/18/98		1/1/2015	\$455,355
Birch Horton et al.	Revenue	AHFC Legal Counsel	Tort Litigation	7/1/94		6/30/98	\$203,298
Delaney Wiles et al.	Admin/RM	Peel v. State	Tort Litigation	12/21/93		6/30/98	\$439,436
Delaney Wiles et al.	Admin/RM	Walden v. State	Tort Litigation	12/11/95		1/1/2015	\$846,190
Delaney Wiles et al.	Admin/RM	Bartek v. State	Tort Litigation	12/1/98		1/1/2015	\$155,494
DeLiso Moran et al.	Admin/RM	Sanders v. State	Tort Litigation	7/12/94		6/30/98	\$99,627
DeLiso Moran et al.	Admin/RM	McCubbins v. State	Tort Litigation	10/10/94		1/1/2015	\$189,307
Jamin, Ebell, et al.	Admin/RM	Markham v. Gamache	Tort Litigation	9/27/94		6/30/97	\$22,832
Koziol, Frank S.	Admin/RM	Dinamore v. Hall	Tort Litigation	11/6/95		6/30/98	\$27,669
Lessmeier & Winters	Admin/RM	Frederick v. State	Tort Litigation	4/17/95		2/18/99	\$90,776
Lessmeier & Winters	Admin/RM	Brunk v. State	Tort Litigation	4/25/95		1/1/2015	\$125,058
Moran & Serafin	Admin/RM	McKenzie v. State	Tort Litigation	1/29/96		9/30/97	\$7,509
Robertson, et al.	Admin/RM	Sanders v. Whitaker	Tort Litigation	1/29/96		1/1/2015	\$44,012
Stephen H. Williams	Admin/RM	Noble v. State	Tort Litigation	9/11/95		6/30/97	\$22,870
Young Sanders et al.	Law	Hellen v. State	Tort Litigation	5/6/93		6/30/94	\$17,005



Stuart, Maue, Mitchell & James, Ltd.
Legal Auditors and Consultants

3840 McKelvey Road • Saint Louis, Missouri 63044 • Telephone 314.291.3030 • Facsimile 314.291.6546

www.smmj.com

Via Priority Mail

September 14, 1998

**Ms. Joan M. Kasson
Special Assistant
State of Alaska
P.O. Box 110300
Juneau, AK 99811-0300**

Dear Ms. Kasson:

Thanks for taking a moment to speak with me today. Stuart, Maue, Mitchell & James, Ltd. (SMMJ) is the oldest legal auditing firm in the nation. Our clients include insurance companies, state and municipal governments, bankruptcy courts, product manufacturers, and service providers. We have the most technically advanced system in the nation supported by a full staff of attorneys and accountants.

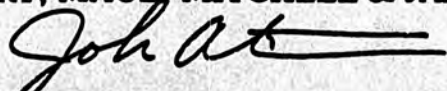
SMMJ provides On-site Legal Audits, Desk Audits, Automated Bill Review (LIBRA™), Compliance Audits, Consulting Services, and Claims Auditing Services.

SMMJ can review, analyze, and process billing statements on a prospective or retrospective basis. The LIBRA™ System is specifically designed to process data in an efficient, cost-effective manner, and the audits will conform to a client's normal pay cycle. LIBRA™ may be utilized with our staff or with your internal staff. SMMJ will provide the training necessary. A typical compliance review program can lower legal fees by 15% or more. In addition, analysis is improved by our data warehousing and archiving.

Enclosed please find some information about our company and services along with the past two editions of *The Journal of Legal Auditing*. I will be in touch soon to confirm receipt of this material and to answer any questions. Should you wish to speak to me sooner please contact me at 941-364-8410 or at our corporate office in Saint Louis. Thanks for your time and consideration.

Sincerely,

STUART, MAUE, MITCHELL & JAMES, LTD.


by: **John P. Antonucci**
Vice-President and Director of National Accounts

JPA/cp

Enclosures



LIBRA™

Legal Invoice/Billing Review and Analysis



Prepared by

Stuart, Maue, Mitchell & James, Ltd.

Legal Auditors and Consultants



LIBRA™

WHAT IS LIBRA™?

LIBRA™ (Legal Invoice/Billing Review and Analysis) is a sophisticated, state-of-the-art auditing system utilizing proprietary software and methodology developed and maintained by Stuart, Maue, Mitchell & James, Ltd. (SMMJ) exclusively for legal auditing. The LIBRA™ software is designed to perform those functions in the legal audit process that will aid the user in the analysis of legal fees and expenses and then summarize the audit information derived in the form of exhibits and audit summaries. With the LIBRA™ System, computer-assisted audits can be performed by either SMMJ's professionals or on-line by the client's personnel in the familiar Windows environment.

By utilizing the LIBRA™ System, SMMJ can review, analyze, and process large volumes of billing statements on a continuing basis and provide recommendations to the client regarding prompt payment of charges that conform to the client's requirements and billing guidelines (compliance audits). The LIBRA™ System is specifically designed to process data in an efficient and cost-effective manner and to produce exception reports within a time frame that conforms to the client's normal pay cycle. EXHIBIT A displays the flowchart for the typical audit process for the LIBRA™ System. The steps of the audit process can be adjusted to meet the needs and expectations of the individual client.

SMMJ's exhibits and LIBRA™ exception reports are specifically tailored to quantify and display all fees and expenses determined not to be in compliance with the client's established directives, standards, billing guidelines, expense cost provisions, and governing agreements. While the LIBRA™ System software is developed to identify, sort, track, and report on issues of non-compliance, the auditors are in total control of the audit process and exercise their judgment, experience, and expertise as audit professionals on any identified non-compliance issue.

SMMJ's compliance audit methodology utilizing the LIBRA™ System incorporates an analysis of projects and activities in apparent conflict with recognized attorney/client agreements and billing guidelines instituted by the client. SMMJ will also assist the client with the development of billing guidelines or with the modification of existing guidelines. SMMJ's analysis includes identification of the following types of activities and/or problem areas:

- **Unapproved timekeepers;**
- **Duplicative activities;**
- **Unauthorized billing rate increases;**
- **Double billings;**
- **Wrong case billings;**
- **Administrative/clerical activities;**
- **Vague entries;**
- **Intra-office conferences;**
- **Multiple attendance;**
- **Unauthorized research;**
- **Other fees inconsistent with the billing guidelines;**
- **Expenses that are not relevant to the litigation such as: wrong case billings, gifts, and personal amenities;**
- **Expenses that are not properly receipted;**
- **Markups or enhancements to direct cost reimbursements such as: telephone expenses, computer research, facsimiles, and photocopies;**
- **Overhead items such as: word processing, overtime, office supplies, local telephone expense, and routine postage; and**
- **Other expenses inconsistent with the billing guidelines.**

The LIBRA™ System can also be employed to evaluate the individual law firm's compliance with the Uniform Task-Based Billing Management System (UTBMS)¹, should that be a component of the client's billing requirements.

The LIBRA™ System can perform any number of on-line audit steps and activities, the process and results of which are completely automated. This includes the review of both fee and expense billing entries determined by the program as potentially being in violation of specific non-compliance categories. Using the LIBRA™ System's automated search capabilities, the user can identify those entries that should be segregated into various questioned categories established by the user. The user can also create customized searches using any combination of date ranges, timekeepers, hours, words, or word phrases as criteria and segregate the results into the same or additional categories. The user can also add or delete individual billing entries or groups of billing entries to or from any of these categories with a simple mouse click. Finally, the user can prepare summaries of all of these searches and generate audit findings contained in detailed LIBRA™ exception reports and exhibits for presentation to the law firm making the submission.

Additionally, a connection can be established between the LIBRA™ System and the client utilizing an equipment and software configuration. This connection will provide the client on-line access to the LIBRA™ System on any of its Windows-based desktop computers while retaining efficiency, speed, and data security. The connection to SMMJ's application and database servers, maintained at SMMJ's headquarters in Saint Louis, Missouri, can be achieved through any of the presently available technologies, including the T1, frame relay, ISDN, dedicated phone line, or other electronic means. The connection allows the client access to the LIBRA™ System as a "thin-client" that provides the client with parallel auditing capabilities. When connected into the LIBRA™ System, the client's personnel can perform the same compliance audit functions as SMMJ's professionals and obtain immediate on-line access to SMMJ's compliance audit findings. EXHIBIT B displays an example of the LIBRA™ exception report that can be generated using the LIBRA™ System. The LIBRA™ exception report and associated exhibits can be tailored to

¹ The Uniform Task-Based Management System Litigation Code Set and definitions attached hereto was developed by a tripartite initiative of the American Bar Association Section of Litigation, the American Corporate Counsel Association, and a sponsoring group of major corporate law departments and law firms coordinated and supported by Price Waterhouse LLP, and initially dated May 1995. It may also be found on the Internet at www.abanet.org/litigation/utms.html.

conform with the individual client's billing guidelines and reporting expectations. SMMJ will also train the client's personnel in the use of the LIBRA™ System and SMMJ's audit methodology.

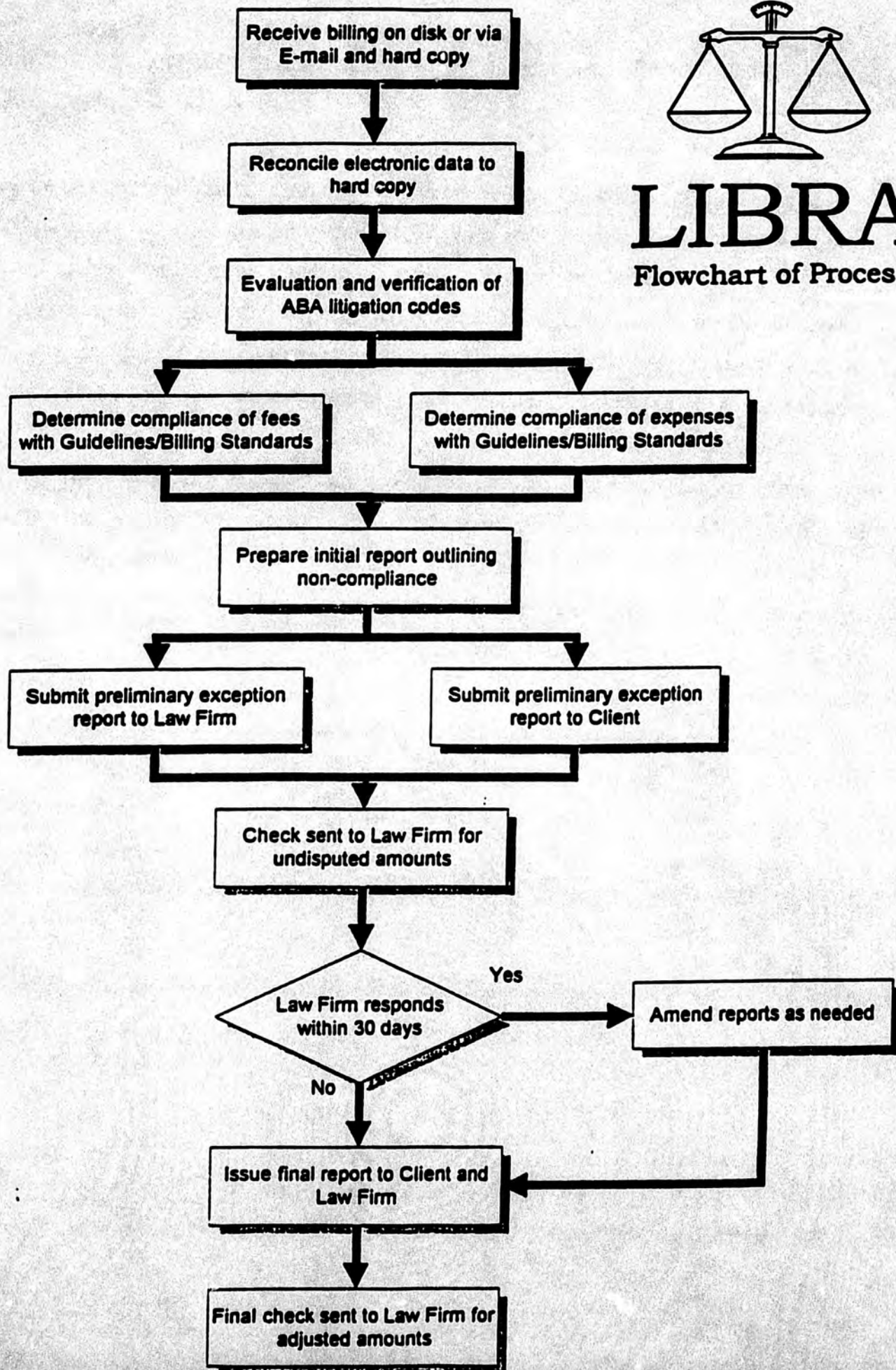
In addition to the immediate goal of auditing the law firms' billing statements as a part of the payment approval process, the data provided from the individual fee and expense billing entries, UTBMS codes, audit results, and pertinent claim data can be incorporated into a data warehouse to create high-level management reports for trend analysis. For example, this information can enable the client to evaluate the litigation costs of various law firms performing similar representation functions. EXHIBIT C shows examples of the types of data elements that can be maintained in the historical database. The data elements warehoused for future benchmarking purposes may vary between clients depending upon the individual needs of each client. EXHIBIT D provides some examples of the output that can be derived from the database (presented here in the form of charts and graphs to assure the maintenance of client confidentiality). Actual client information from the database can be presented in whatever degree of detail the client directs, such as to include an all-encompassing overview or on a law firm, claim, or line-of-business basis.

EXHIBIT E represents the summary audit results obtained by SMMJ for two clients utilizing the LIBRA™ System (again presented here in the form of an abbreviated summary to assure the maintenance of client confidentiality). Actual client information from the database can be presented in whatever degree of detail the client directs, such as to include an all-encompassing overview or on a law firm, claim, or line of business basis.



LIBRA™

Flowchart of Process



Client Insurance Company Exception Report Summary Sheet

Firm: Kellog & Knight
Address: 1234 Main Street
Bridgeton, MO 63044
Period: October 1, 1997 through October 31, 1997
Tax ID: (not specified)
Vendor: KEL-101

Total amount to be paid: **\$12,348.88**

Claim Number	Invoice Number	Invoice Date	Dates of Service	Payable Amount
111111-081	015	10/31/97	09/21/97 - 10/31/97	\$671.00
222222-001	016	10/31/97	10/06/97 - 10/31/97	\$43.30
333333-123 *	006	10/31/97	10/02/97 - 10/31/97	\$120.00
444444-123	041	10/31/97	10/02/97 - 10/31/97	\$11,444.58
555555-123 *	014	10/31/97	10/06/97 - 10/31/97	\$70.00
666666-123	012	10/31/97	10/06/97 - 10/31/97	\$0.00
Total amount for all claims:				\$12,348.88

* denotes a claim with shared responsibility with another insurance company

If you have any questions concerning this report, please respond in writing to:

Stuart, Maue, Mitchell & James, Ltd.
3840 McKelvey Road
Bridgeton, MO 63044

re: Submission #1690

Client Insurance Company List of Submitted Claims

Firm: Kellog & Knight
Address: 1234 Main Street
Bridgeton, MO 63044
Period: October 1, 1997 through October 31, 1997
Tax ID: (not specified)
Vendor: KEL-101

Listed below is selected information for each claim referenced in your recent submission to Client Insurance Company. Please review your records and confirm that your future submissions contain this information. Should you not agree with this information, please contact your Client Insurance Company examiner.

Firm File Number ⁺	Claim Number	Examiner Number	Date of Loss	Policy Number	Policy Holder
00021000018	444444	001	01/01/80	JMT0123089	JONES, LTD.
00021000023	222222	001	01/01/80	DEF2222222	JOHN SMITH, M.D.
00021000024	111111	081	01/01/80	ABC1234567	ABC CONSTRUCTION
00021000025	555555	055	01/01/80	XYZ9876541	BECK ENTERPRISES
00021000026	666666*				
00021000028	333333	125	01/01/80	SMM8989890	RCP PROPERTIES

+ firm file number as provided on diskette

* denotes an invalid claim number

Kelleg & Knight

Claim Number 111111

October 1, 1997 through October 31, 1997

Invoice Number 015, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$1,083.00	
TOTAL EXPENSES BILLED	\$3.60	
TOTAL FEES AND EXPENSES BILLED		\$1,086.60

NON-COMPLIANCE FEES

Computational error \$-19.00*

Itemization of non-compliance fee entries

<u>Non-Compliance Category</u>	<u>N/C Fees</u>
Wrong period billing	\$200.00
Blocked billing	\$99.00
Administrative/clerical tasks	\$20.00
Multiple attendance - disallowed	\$52.00
Vague billing entries	\$16.00
Excessive hours	\$44.00

Total itemization of non-compliance fee entries

\$431.00

TOTAL NON-COMPLIANCE FEES

\$412.00

NON-COMPLIANCE EXPENSES

Itemization of non-compliance expense entries

<u>Non-Compliance Category</u>	<u>N/C Expenses</u>
Not properly documented	\$3.60

Total itemization of non-compliance expense entries

\$3.60

TOTAL NON-COMPLIANCE EXPENSES

\$3.60

TOTAL NON-COMPLIANCE FEES AND EXPENSES

\$415.60

TOTAL COMPLIANCE FEES

\$671.00

TOTAL COMPLIANCE EXPENSES

\$0.00

TOTAL COMPLIANCE FEES AND EXPENSES

\$671.00

* - The negative computational error(s) displayed above has (have) been credited against the non-compliance fees and/or expenses up to the amount of said non-compliance fees and/or expenses.

Kelleg & Knight

Claim Number 111111

October 1, 1997 through October 31, 1997

Invoice Number 015, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
09/21/97	Hall, Carolyn F.	015-1	5.00	5.00	\$200.00	Wrong period billing
	1 PREPARATION OF MEDICAL FACTS FOR LITIGATION PLAN.					
10/01/97	Percy, Gerard F.	015-4	2.40	0.40	\$44.00	Excessive hours
	1 DRAFT, REVISE AND FINALIZE LITIGATION PLAN TO ROBIN DONOIAN. 2.00 hour maximum allowed					
10/09/97	Hall, Carolyn F.	015-9	1.30	1.30	\$52.00	Multiple attendance - disallowed
	1 ATTEND HEARING ON PLAINTIFF'S MOTION FOR PROTECTIVE ORDER.					
10/09/97	Percy, Gerard F.	015-7	0.90	0.90	\$99.00	Blocked billing Vague billing entries
	1 COMMUNICATE (OTHER OUTSIDE COUNSEL): PROPOSED ORDER, TO BE SIGNED BY JUDGE DOLE, REFLECTING HIS RULING ON OUR APPLICATION TO FILE AMENDED PETITION; LETTER TO PLAINTIFF'S ATTORNEY RE: SAME.					
10/09/97	Percy, Gerard F.	015-8	1.30	0.00	\$0.00	Multiple attendance - informational
	1 APPEAR FOR/ATTEND HEARING - JUDGE DOLE - PLAINTIFF'S MOTION FOR PROTECTIVE ORDER. (NOTE: JUDGE DOLE ALSO TOOK UP OUR PENDING MOTION FOR LEAVE TO FILE AMENDED ANSWER AND MOTION TO ENTER SCHEDULING ORDER).					
10/17/97	Hall, Carolyn F.	015-11	0.20	0.20	\$8.00	Vague billing entries
	1 FURTHER RECEIPT AND REVIEW OF DOCUMENTARY EVIDENCE.					
10/23/97	Hall, Carolyn F.	015-12	0.50	0.50	\$20.00	Administrative/clerical tasks Vague billing entries
	1 PLAN AND PREPARE OF DEPOSITION NOTICE.					
10/31/97	Hall, Carolyn F.	015-13	0.20	0.20	\$8.00	Vague billing entries
	1 REVIEW/ANALYZE OF DOCUMENTS TO LEARN THE FACTS OF THE CASE.					
Total hours and fees associated with non-compliance categories			8.50		\$431.00	

Kelleg & Knight

Claim Number 111111

October 1, 1997 through October 31, 1997

Invoice Number 015, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/31/97	Copying	015-1	\$3.60	\$3.60	Not properly documented
Total expenses associated with non-compliance categories				<u>\$3.60</u>	

Kellog & Knight
Claim Number 222222

October 1, 1997 through October 31, 1997

Invoice Number 016, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$44.00	
TOTAL EXPENSES BILLED	\$23.30	
TOTAL FEES AND EXPENSES BILLED		\$67.30

NON-COMPLIANCE FEES

Itemization of non-compliance fee entries

Non-Compliance Category

N/C Fees

Administrative/clerical tasks

\$24.00

Total itemization of non-compliance fee entries

\$24.00

TOTAL NON-COMPLIANCE FEES \$24.00

TOTAL NON-COMPLIANCE EXPENSES \$0.00

TOTAL NON-COMPLIANCE FEES AND EXPENSES \$24.00

TOTAL COMPLIANCE FEES \$20.00

TOTAL COMPLIANCE EXPENSES \$23.30

TOTAL COMPLIANCE FEES AND EXPENSES \$43.30

Kellog & Knight

Claim Number 222222

October 1, 1997 through October 31, 1997

Invoice Number 016, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
10/13/97	Hall, Carolyn F.	016-2	0.30	0.30	\$12.00	Administrative/clerical tasks Unit billing
	1 PREPARATION OF REQUEST FOR MEDICAL RECORDS TO DR. PAT BOSTON.					
10/13/97	Hall, Carolyn F.	016-3	0.30	0.30	\$12.00	Administrative/clerical tasks Unit billing
	1 PREPARATION OF REQUEST OF MEDICAL RECORDS TO MR. LELAND COLLINS.					
Total hours and fees associated with non-compliance categories				0.60	\$24.00	

Kellog & Knight
Claim Number 333333
October 1, 1997 through October 31, 1997
Invoice Number 006, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED			\$240.00	
TOTAL EXPENSES BILLED			\$0.60	
TOTAL FEES AND EXPENSES BILLED				\$240.60
TOTAL NON-COMPLIANCE FEES			\$0.00	
NON-COMPLIANCE EXPENSES				
Itemization of non-compliance expense entries				
<u>Non-Compliance Category</u>	<u>N/C Expenses</u>			
Not properly documented	\$0.60			
Total itemization of non-compliance expense entries		\$0.60		
TOTAL NON-COMPLIANCE EXPENSES			\$0.60	
TOTAL NON-COMPLIANCE FEES AND EXPENSES				\$0.60
TOTAL COMPLIANCE FEES			\$240.00	
TOTAL COMPLIANCE EXPENSES			\$0.00	
TOTAL COMPLIANCE FEES AND EXPENSES				\$240.00
Percentage allocated to Client Insurance Company				50.00%
TOTAL ALLOCATED TO CLIENT INSURANCE COMPANY				\$120.00

Kellog & Knight

Claim Number 333333

October 1, 1997 through October 31, 1997

Invoice Number 006, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/31/97	Copying	006-1	\$0.60	\$0.60	Not properly documented
Total expenses associated with non-compliance categories				\$0.60	

Kellog & Knight
Claim Number 444444
October 1, 1997 through October 31, 1997
Invoice Number 041, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$13,972.50	
TOTAL EXPENSES BILLED	\$384.58	
TOTAL FEES AND EXPENSES BILLED		\$14,357.08

NON-COMPLIANCE FEES

Non-approved rates

<u>Name</u>	<u>Hours</u>	<u>N/A Rate</u>	<u>App. Rate</u>	<u>N/C Fees</u>
Mason, Robert E.	26.50	\$125.00	\$110.00	\$397.50

Total non-approved rates \$397.50

Itemization of non-compliance fee entries

<u>Non-Compliance Category</u>	<u>N/C Fees</u>
Blocked billing	\$1,687.00
Office conferences/memoranda	\$8.00
Administrative/clerical tasks	\$44.00
Vague billing entries	\$466.00
Non-defensive/no utility to litigation	\$104.00
Wrong case billing	\$4.00

Total itemization of non-compliance fee entries \$2,313.00

TOTAL NON-COMPLIANCE FEES	\$2,710.50	
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NON-COMPLIANCE EXPENSES

Itemization of non-compliance expense entries

<u>Non-Compliance Category</u>	<u>N/C Expenses</u>
Not properly documented	\$39.70
Direct bill	\$150.00
Non-approved expenses	\$12.30

Total itemization of non-compliance expense entries \$202.00

TOTAL NON-COMPLIANCE EXPENSES	\$202.00	
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TOTAL NON-COMPLIANCE FEES AND EXPENSES		\$2,912.50
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TOTAL COMPLIANCE FEES	\$11,262.00	
TOTAL COMPLIANCE EXPENSES	\$182.58	
TOTAL COMPLIANCE FEES AND EXPENSES		\$11,444.58

Kellog & Knight

Claim Number 444444

October 1, 1997 through October 31, 1997

Invoice Number 041, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
10/09/97	Mason, Robert E.	041-12	4.60	4.60	\$506.00	Blocked billing Vague billing entries
	1 CONTINUE REVIEW OF FILE, DEPOSITIONS, PLEADINGS AND EXHIBITS FOR TRIAL.					
10/10/97	Mason, Robert E.	041-14	2.80	2.80	\$308.00	Blocked billing Vague billing entries
	1 CONTINUE TRIAL PREPARATION, DEPOSITION, PLEADINGS AND EXHIBIT REVIEW.					
10/16/97	Hall, Carolyn F.	041-24	0.20	0.20	\$8.00	Vague billing entries
	1. FURTHER RECEIPT AND REVIEW OF DOCUMENTARY EVIDENCE.					
10/16/97	Hall, Carolyn F.	041-25	0.10	0.10	\$4.00	Administrative/clerical tasks
	1 MANAGE DATA/FILES: FURTHER TRIAL PREPARATION.					
10/20/97	Hall, Carolyn F.	041-26	0.50	0.50	\$20.00	Administrative/clerical tasks
	1 PREPARATION OF NOTICE TO TAKE DEPOSITION AND SUBPOENA FOR DR. WHEELER.					
10/21/97	Hall, Carolyn F.	041-30	1.30	1.30	\$52.00	Blocked billing
	1 COMMUNICATE (OTHER EXTERNAL) WITH BETTY HANSON AT GRAHAM VILLAGE IN RE: DOCUMENT REVIEW AND SUBPOENA FROM PLAINTIFF'S ATTORNEY (3 CALLS).					
10/22/97	Mason, Robert E.	041-37	2.20	2.20	\$242.00	Vague billing entries
	1 APPEAR FOR/ATTEND: MEDICAL EXAMINER - LARRY BACON.					
10/23/97	Hall, Carolyn F.	041-42	4.00	4.00	\$160.00	Vague billing entries
	1 PLAN AND PREPARE FOR TRIAL.					
10/23/97	Hall, Carolyn F.	041-44	0.50	0.50	\$20.00	Administrative/clerical tasks
	1 DELIVER DOCUMENTS TO PLAINTIFF'S ATTORNEY IN RE: DOCUMENT PRODUCTION (NO MILEAGE ACCURED).					
10/24/97	Hall, Carolyn F.	041-47	0.80	0.80	\$32.00	Vague billing entries
	1 FURTHER REVIEW OF DOCUMENTARY EVIDENCE.					
10/27/97	Hall, Carolyn F.	041-55	0.20	0.20	\$8.00	Office conferences/memoranda
	1 COMMUNICATE (IN FIRM) WITH REM AND GFP IN RE: STRATEGY ON CASE.					
10/28/97	Percy, Gerard F.	041-60	4.50	4.50	\$495.00	Blocked billing
	1 DRAFT/REVISE JURY INSTRUCTIONS (INCLUDING LEGAL RESEARCH IN CONNECTION WITH SOME OF THE INSTRUCTIONS).					
10/29/97	Hall, Carolyn F.	041-64	0.20	0.20	\$8.00	Vague billing entries
	1 PLAN AND PREPARE FOR: FURTHER TRIAL PREPARATION.					
10/29/97	Hall, Carolyn F.	041-66	0.80	0.80	\$32.00	Non-defensive/no utility to litigation
	1 COMMUNICATE (OTHER EXTERNAL) WITH STATE TAX COMMISSION - FRANCHISE AND BANKRUPTCY DIVISIONS IN RE: BACK TAX LIABILITIES.					
10/29/97	Hall, Carolyn F.	041-68	1.00	1.00	\$40.00	Blocked billing Travel - non-approved/local Travel - improper rate
	1 TRAVEL TO AND FROM COMPENSATION COURT; REVIEW OF BILL FORD'S COMPENSATION FILE.					
10/29/97	Percy, Gerard F.	041-69	0.40	0.40	\$44.00	Non-defensive/no utility to litigation
	1 COMMUNICATE (WITH CLIENT): CALL FROM MARK MARSHALL RE: DISCUSS CLIENT PAYING THE FRANCHISE TAXES; OTHER AREAS OF TRIAL PREPARATION.					
10/29/97	Percy, Gerard F.	041-72	2.60	2.60	\$286.00	Blocked billing
	1 APPEAR FOR/ATTEND DEPOSITION OF DR. WALTERS AND DR. SMITH.					
10/30/97	Hall, Carolyn F.	041-74	0.40	0.40	\$16.00	Non-defensive/no utility to litigation
	1 COMMUNICATE (OTHER EXTERNAL) WITH NANCY ROSE AND STAN ALEXANDER AT THE STATE TAX COMMISSION IN RE: TAX LIABILITIES THAT MUST BE PAID BEFORE RE-INSTATEMENT OF CORPORATION.					
10/31/97	Hall, Carolyn F.	041-78	0.40	0.40	\$16.00	Vague billing entries
	1 REVIEW/ANALYZE OF DOCUMENTS TO LEARN FACTS OF CASE.					
10/31/97	Hall, Carolyn F.	041-79	0.30	0.30	\$12.00	Non-defensive/no utility to litigation
	1 COMMUNICATE (OTHER EXTERNAL) WITH STATE TAX COMMISSION LEGAL COUNSEL IN RE: OUTSTANDING TAX WARRANTS AND FRANCHISE TAX.					
10/31/97	Hall, Carolyn F.	041-80	0.10	0.10	\$4.00	Wrong case billing
	1 COMMUNICATE (OTHER EXTERNAL) WITH ROSEMARY SMITH IN RE: STATUS OF MITCHELL WARD'S APPEAL FROM FINAL ORDER.					
Total hours and fees associated with non-compliance categories			27.90		\$2,313.00	

Kellog & Knight
Claim Number 444444
October 1, 1997 through October 31, 1997

Invoice Number 041, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/21/97	Experts - Witness Fee for Dr. Balding	041-1	\$150.00	\$150.00	Direct bill Non-approved expenses
10/31/97	Copying	041-2	\$39.70	\$39.70	Not properly documented
10/31/97	Local travel	041-4	\$12.30	\$12.30	Non-approved expenses Local travel
Total expenses associated with non-compliance categories				\$202.00	

Kellog & Knight
Claim Number 555555
October 1, 1997 through October 31, 1997
Invoice Number 014, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$240.00	
TOTAL EXPENSES BILLED	\$0.60	
TOTAL FEES AND EXPENSES BILLED		\$240.60

NON-COMPLIANCE FEES

Itemization of non-compliance fee entries

Non-Compliance Category

Vague billing entries

N/C Fees

\$100.00

Total itemization of non-compliance fee entries

\$100.00

TOTAL NON-COMPLIANCE FEES

\$100.00

NON-COMPLIANCE EXPENSES

Itemization of non-compliance expense entries

Non-Compliance Category

Not properly documented

N/C Expenses

\$0.60

Total itemization of non-compliance expense entries

\$0.60

TOTAL NON-COMPLIANCE EXPENSES

\$0.60

TOTAL NON-COMPLIANCE FEES AND EXPENSES

\$100.60

TOTAL COMPLIANCE FEES

\$140.00

TOTAL COMPLIANCE EXPENSES

\$0.00

TOTAL COMPLIANCE FEES AND EXPENSES

\$140.00

Percentage allocated to Client Insurance Company

50.00%

TOTAL ALLOCATED TO CLIENT INSURANCE COMPANY

\$70.00

Kellog & Knight
Claim Number 555555

October 1, 1997 through October 31, 1997

Invoice Number 014, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
10/06/97	Kellog, Susan A. 1 REVIEW/ANALYZE GRIEVANCE.	014-1	0.60	0.60	\$60.00	Vague billing entries
10/06/97	Kellog, Susan A. 1 TELEPHONE CONFERENCE WITH GRETA JONES.	014-2	0.40	0.40	\$40.00	Vague billing entries
Total hours and fees associated with non-compliance categories				1.00	\$100.00	

Kellog & Knight

Claim Number 555555

October 1, 1997 through October 31, 1997

Invoice Number 014, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/31/97	Copying	014-1	\$0.60	\$0.60	Not properly documented
Total expenses associated with non-compliance categories				\$0.60	

Kelleg & Knight
Claim Number 666666
October 1, 1997 through October 31, 1997
Invoice Number 012, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$1,127.00	
TOTAL EXPENSES BILLED	<u>\$9.70</u>	
TOTAL FEES AND EXPENSES BILLED		<u>\$1,136.70</u>

NON-COMPLIANCE FEES

Itemization of non-compliance fee entries

Non-Compliance Category

Invalid claim

N/C Fees

\$1,127.00

Total itemization of non-compliance fee entries

\$1,127.00

TOTAL NON-COMPLIANCE FEES

\$1,127.00

NON-COMPLIANCE EXPENSES

Itemization of non-compliance expense entries

Non-Compliance Category

Not properly documented

Invalid claim

N/C Expenses

\$0.70

\$9.00

Total itemization of non-compliance expense entries

\$9.70

TOTAL NON-COMPLIANCE EXPENSES

\$9.70

TOTAL NON-COMPLIANCE FEES AND EXPENSES

\$1,136.70

TOTAL COMPLIANCE FEES

\$0.00

TOTAL COMPLIANCE EXPENSES

\$0.00

TOTAL COMPLIANCE FEES AND EXPENSES

\$0.00

Kellog & Knight

Claim Number 666666

October 1, 1997 through October 31, 1997

Invoice Number 012, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
10/06/97	Hall, Carolyn F.	012-1	1.50	1.50	\$60.00	Invalid claim Vague billing entries
1 RECEIPT AND REVIEW OF DOCUMENTARY EVIDENCE.						
10/08/97	Percy, Gerard F.	012-2	2.10	2.10	\$231.00	Invalid claim
1 PLAN AND PREPARE FOR MEETING WITH VITA WILSON, PROGRAM COORDINATOR AT CLIENT'S OFFICE, RE: DEPOSITION PREPARATION.						
10/08/97	Percy, Gerard F.	012-3	3.30	3.30	\$363.00	Invalid claim
1 APPEAR FOR/ATTEND DEPOSITION OF VITA WILSON (TAKEN BY PLAINTIFF'S COUNSEL).						
10/16/97	Percy, Gerard F.	012-4	1.00	1.00	\$110.00	Invalid claim
1 APPEAR FOR/ATTEND HEARING ON PLAINTIFF'S MOTION TO ENTER.						
10/16/97	Percy, Gerard F.	012-5	0.30	0.30	\$33.00	Invalid claim
1 COMMUNICATE (WITH CLIENT): LETTER TO JOEL LEVIN RE: ENCLOSE SCHEDULING ORDER AND DISCUSS STATUS AND STRATEGY.						
10/31/97	Percy, Gerard F.	012-6	3.00	3.00	\$330.00	Invalid claim
1 MEETING WITH VITA WILSON AT CLIENT RE: REVIEW VITA'S DEPOSITION TRANSCRIPT; REVIEW BILLUPS' PERSONNEL FILE; REVIEW "REQUEST FOR LEAVE" FILE; DISCUSS STATUS AND STRATEGY.						
Total hours and fees associated with non-compliance categories				11.20	\$1,127.00	

Kellog & Knight

Claim Number 666666

October 1, 1997 through October 31, 1997

Invoice Number 012, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/31/97	COPYING	012-1	\$0.70	\$0.70	Not properly documented Invalid claim
10/31/97	OUTSIDE PRINTING	012-2	\$9.00	\$9.00	Invalid claim
Total expenses associated with non-compliance categories				\$9.70	

INVOICE AND CLAIM SPECIFIC DATA

INVOICE INFORMATION

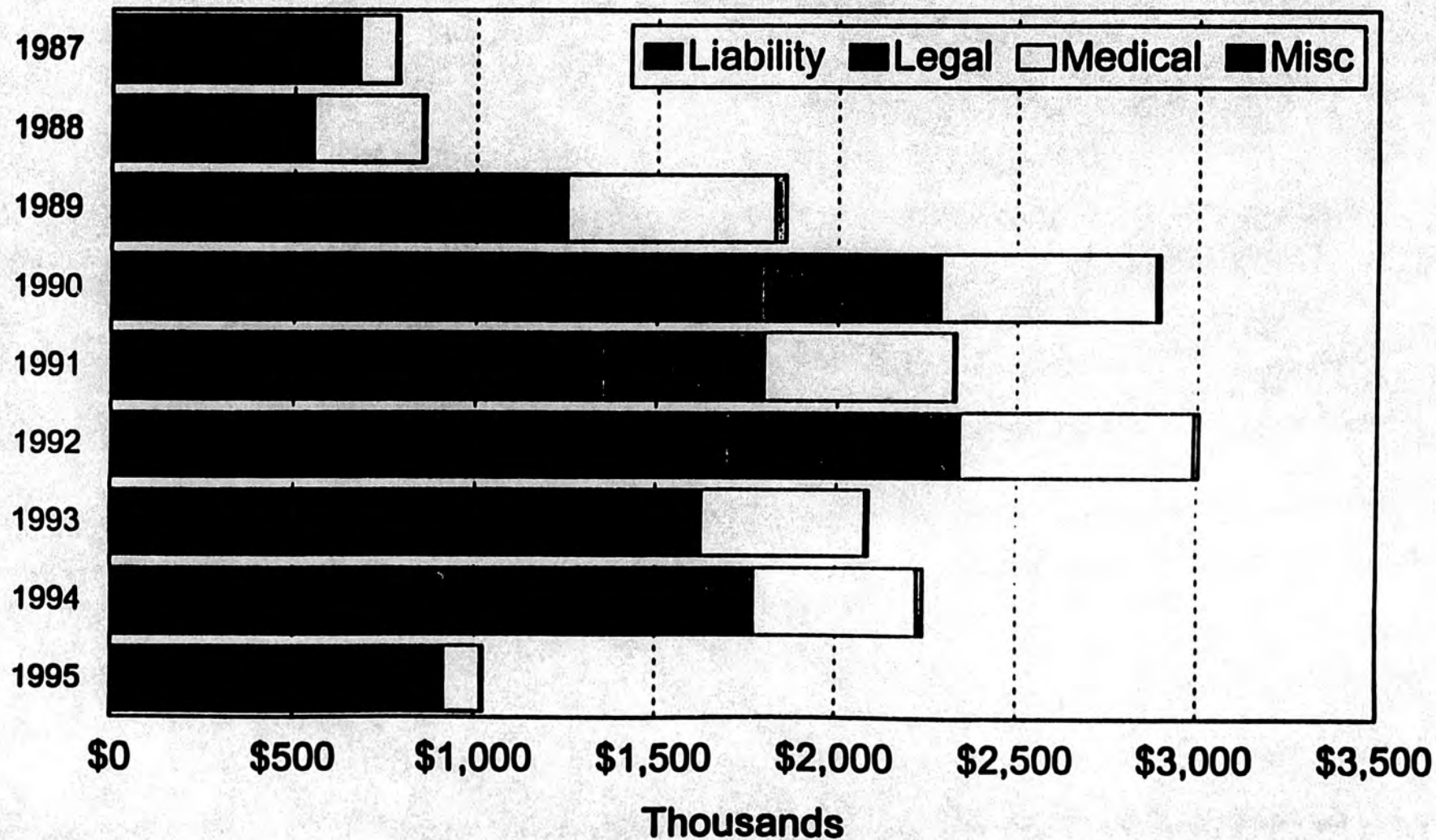
- Firm Name
- Invoice Number
- Dates of Service
- Fees Billed/Expenses Billed
- ABA Litigation Code Amounts
 - ◆ Litigation Codes
 - ◆ Activity Codes
 - ◆ Expense Codes
- ABA Litigation Code Amounts Violating Billing Guidelines
 - ◆ Litigation Codes
 - ◆ Activity Codes
 - ◆ Expense Codes
- Categories and Amounts in Violation of Billing Guidelines
 - ◆ Double Billing
 - ◆ Wrong Case Billing
 - ◆ Administrative/Clerical
 - ◆ Inadequately Described
 - ◆ Intra-office Conferences/Memos
 - ◆ Getting Up-to-Speed
 - ◆ Minimum Billing Increment
 - ◆ Duplicate Effort/Review/Revision
 - ◆ Multiple Attendance
 - ◆ Unauthorized Research
 - ◆ Travel Time
 - ◆ Long Billing Days
 - ◆ Grouping Functions/Blocked Billing

CLAIM INFORMATION

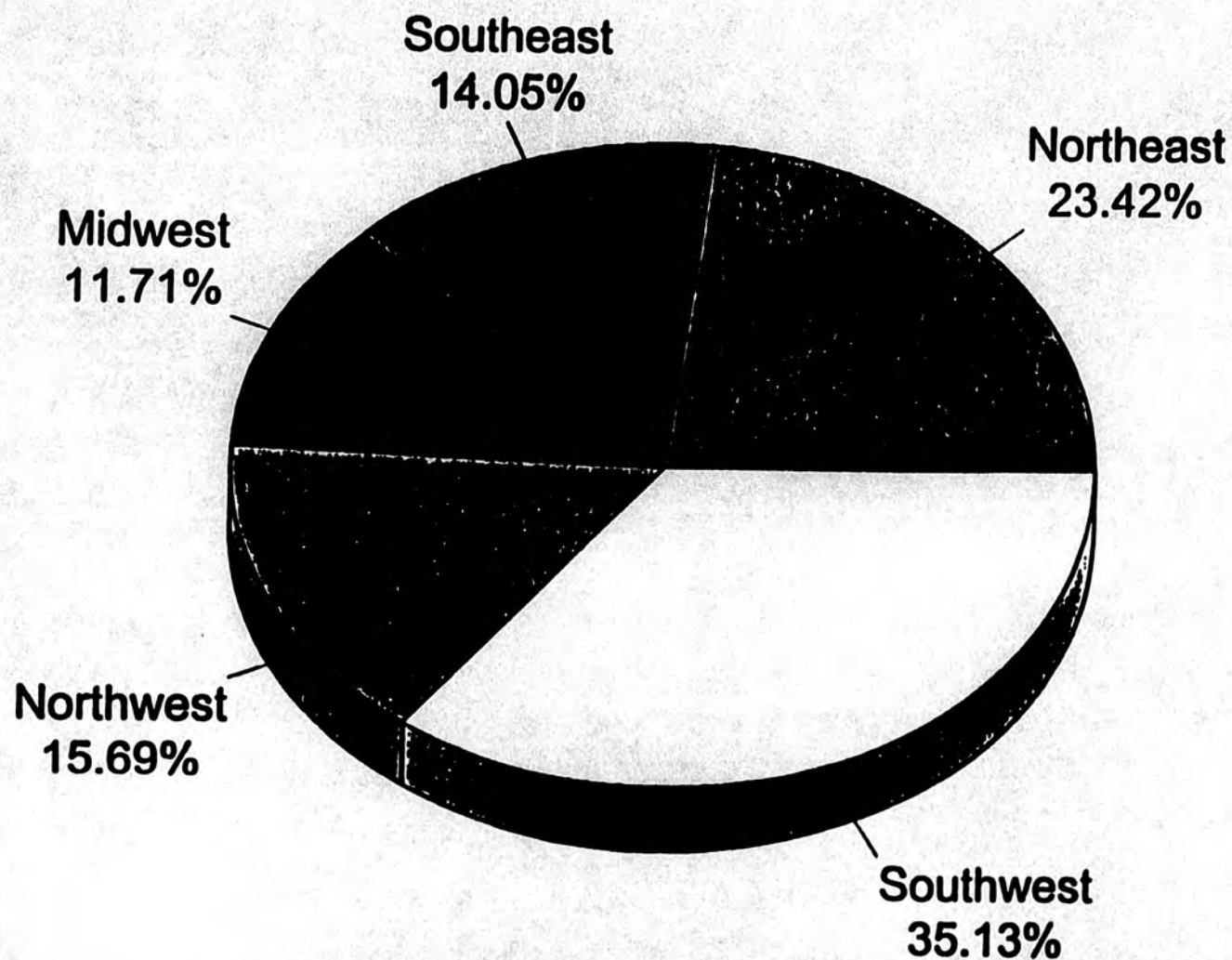
- Claim Number
- Date of Loss
- Date of Claim
- Type of Claim
- Description of Injury
- Claim Examiner
- Claim Office
- Jurisdiction Location
- Claim Resolution
- Closure Date
- Reserve Amounts
 - ◆ Liability
 - ◆ Legal
 - ◆ Medical
 - ◆ Miscellaneous
- Demand Amounts
 - ◆ Liability
 - ◆ Legal
 - ◆ Medical
 - ◆ Miscellaneous
- Award Amounts
 - ◆ Liability
 - ◆ Legal
 - ◆ Medical
 - ◆ Miscellaneous

Reserve Amounts By Year

XYZ Law Firm

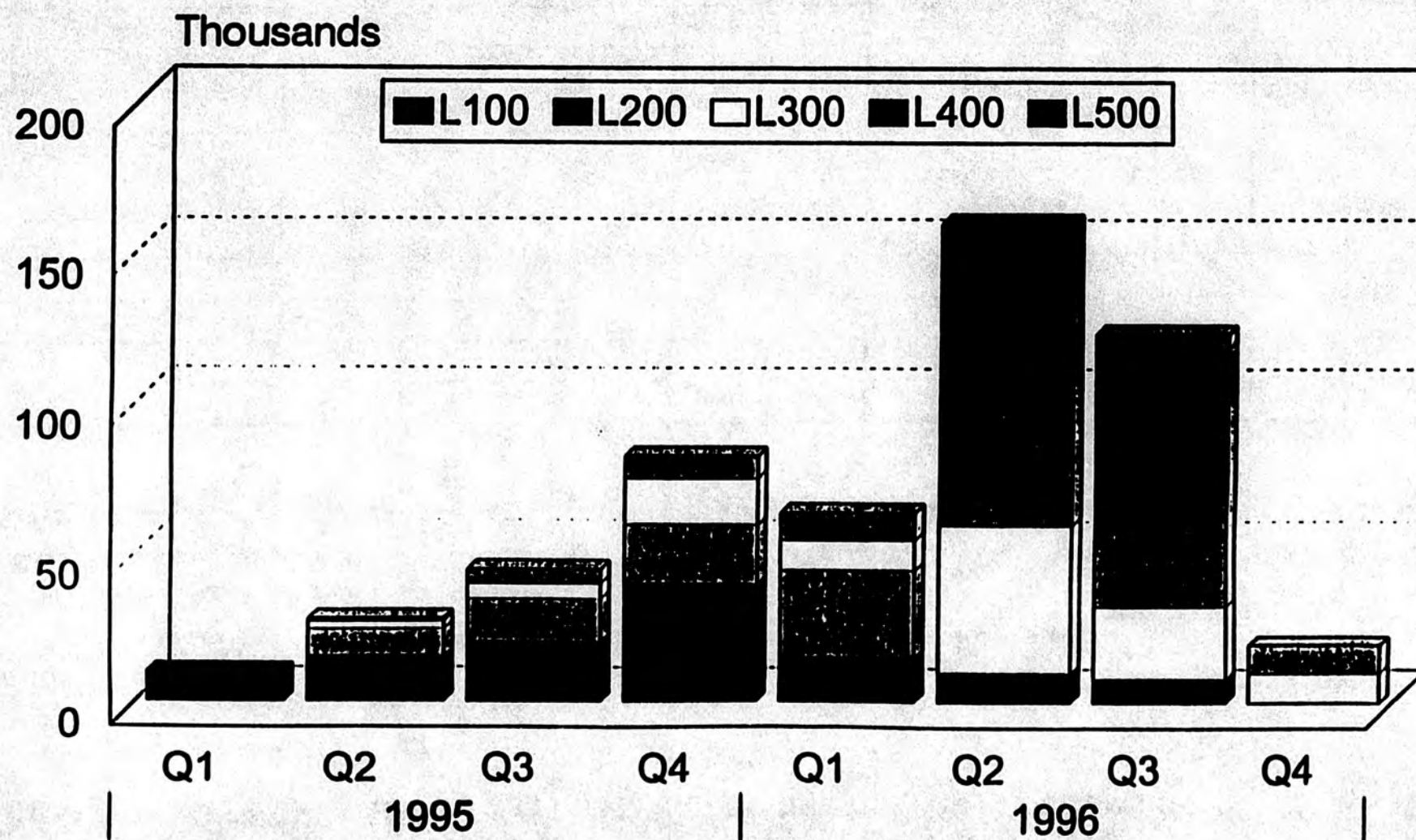


Comparison of Litigation Costs by Region



Quarterly Comparison of Litigation Codes

XYZ Law Firm



**COMPARISON OF (LAW FIRM) FEES BY TYPE OF CLAIM
UTILIZING ABA LITIGATION CATEGORIES FOR ALL CLAIMS**

Type of Claim	Open Claims	Closed Claims	L100		L200		L300		L400		L500		Total Fees Incurred	
			Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees
1. Construction Defect	1	0	\$52.50	100.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$52.50	100.00%
2. General Liability	936	31	\$37,204.20	31.01%	\$21,850.10	18.21%	\$44,686.50	37.25%	\$16,235.90	13.53%	\$0.00	0.00%	\$119,976.70	100.00%
3. Professional Liability	6	1	\$57.00	46.08%	\$0.00	0.00%	\$53.20	43.01%	\$13.50	10.91%	\$0.00	0.00%	\$123.70	100.00%
4. Transportation	142	25	\$7,312.10	36.32%	\$3,912.70	19.43%	\$7,904.30	39.26%	\$1,004.70	4.99%	\$0.00	0.00%	\$20,133.80	100.00%
5.														
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9.														
10.														
11.														
12.														
13.														
14.														
15.														

L100 Case Assessment, Development, and Administration
 L200 Pretrial Pleadings and Motions
 L300 Discovery
 L400 Trial Preparation and Trial
 L500 Appeal

M/CLAIM

COMPARISON OF (LAW FIRM) FEES BY TYPE OF CLAIM
UTILIZING ABA ACTIVITY CATEGORIES FOR ALL CLAIMS

Type of Claim	Open Claims	Closed Claims	A101		A102		A103		A104		A105		A106	
			Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees
1. Construction Defect	1	0	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2. General Liability	936	31	\$8,921.50	7.44%	\$435.60	0.36%	\$29,527.70	24.61%	\$23,822.00	19.86%	\$636.20	0.53%	\$8,848.70	7.38%
3. Professional Liability	6	1	\$18.00	14.55%	\$0.00	0.00%	\$9.00	7.28%	\$21.00	16.98%	\$26.20	21.18%	\$10.50	8.49%
4. Transportation	142	25	\$1,319.60	6.55%	\$0.00	0.00%	\$5,106.30	25.36%	\$3,190.20	15.84%	\$218.10	1.08%	\$1,651.80	8.20%
5.														
6.														
7.														
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9.														
10.														
11.														
12.														
13.														
14.														
15.														

- A101 Plan and Prepare for
- A102 Research
- A103 Draft/Revise
- A104 Review/Analyze
- A105 Communicate (in Firm)
- A106 Communicate (With Client)

RM/CLAIM

**COMPARISON OF (LAW FIRM) FEES BY TYPE OF CLAIM
UTILIZING ABA ACTIVITY CATEGORIES FOR ALL CLAIMS**

Type of Claim	Open Claims	Closed Claims	A107		A108		A109		A110		A111		Total Fees Incurred	
			Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees
1. Construction Defect	1	0	\$52.50	100.00%	\$0.00	0.00%	\$0.0	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$52.50	100.00%
2. General Liability	936	31	\$5,110.40	4.26%	\$10,639.50	8.88%	\$28,784.90	23.99%	\$175.50	0.15%	\$3,054.70	2.55%	\$119,976.70	100.00%
3. Professional Liability	6	1	\$0.00	0.00%	\$39.00	31.53%	\$0.0	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$123.70	100.00%
4. Transportation	142	25	\$928.20	4.61%	\$1,668.30	8.29%	\$5,239.40	26.02%	\$22.50	0.11%	\$789.40	3.92%	\$20,133.80	100.00%
5.														
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A107 Communicate (Other Outside Counsel)

A108 Communicate (Other External)

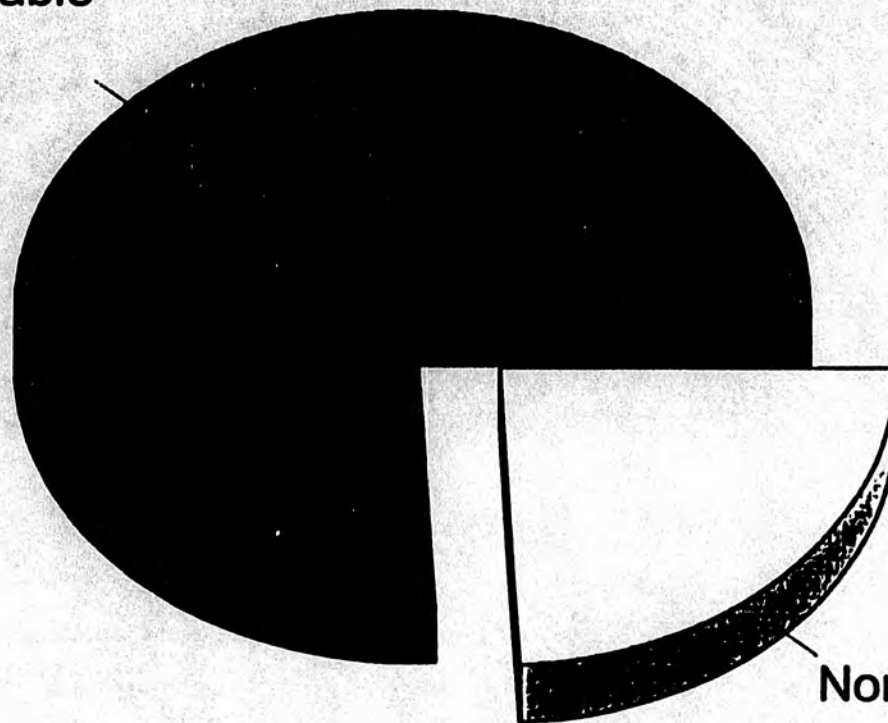
A109 Appear for/Attend

A110 Manage Data/Files

A111 Other

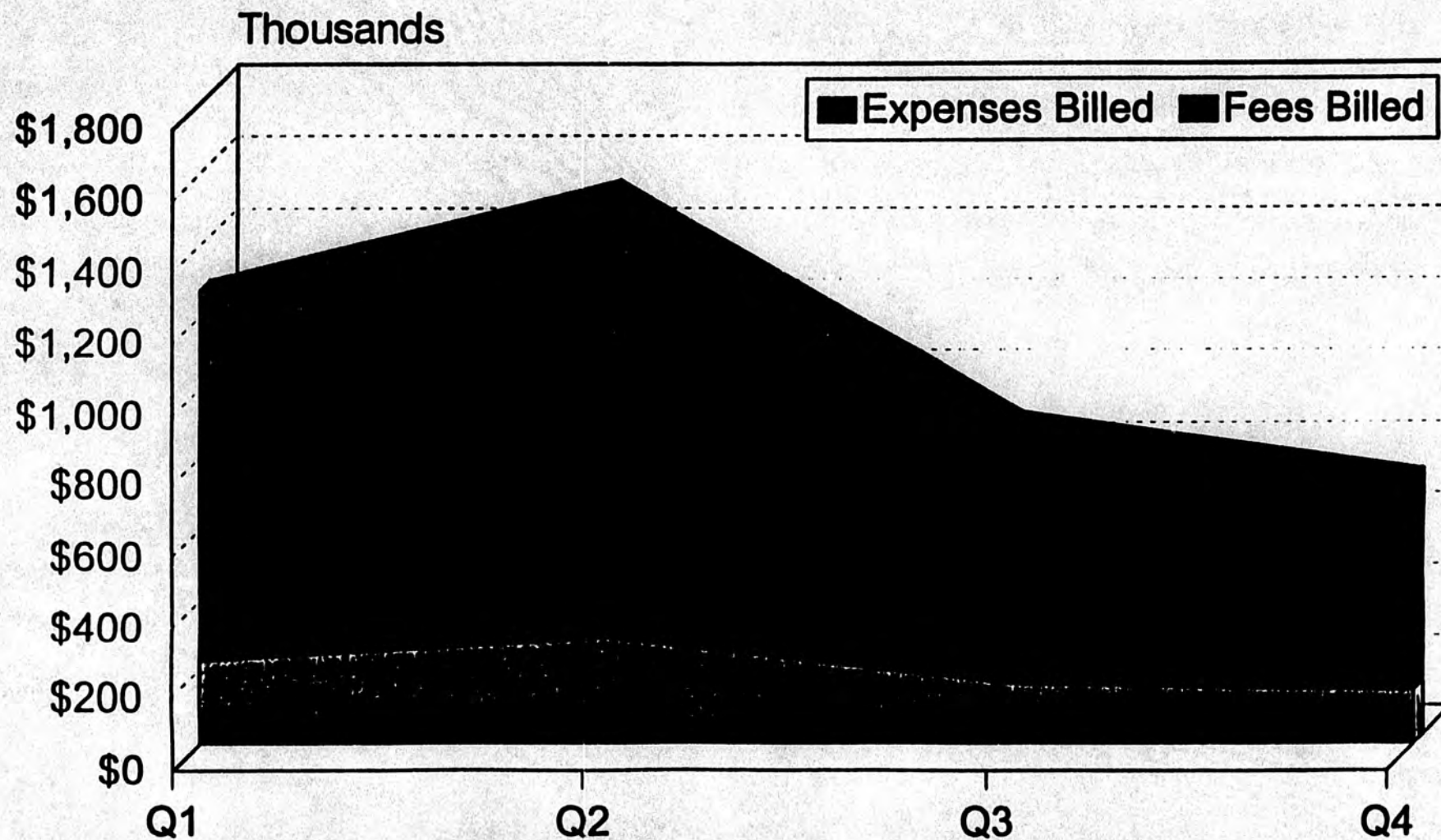
Percentage of Non-Compliance

Amount Payable
75.88%



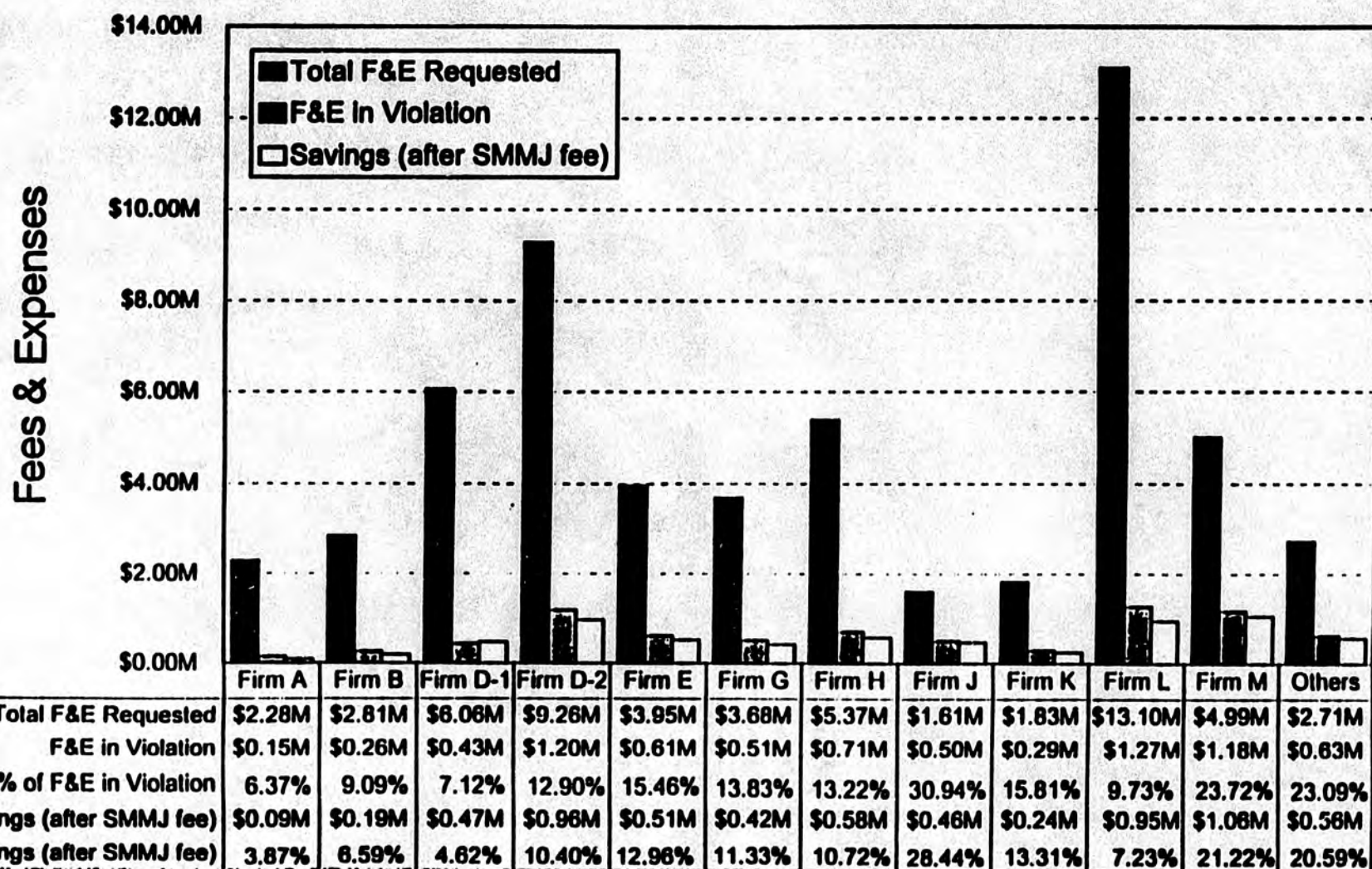
Non-compliance Amount
24.12%

Legal Costs by Quarter



Comparison of Fees & Expenses by Firm

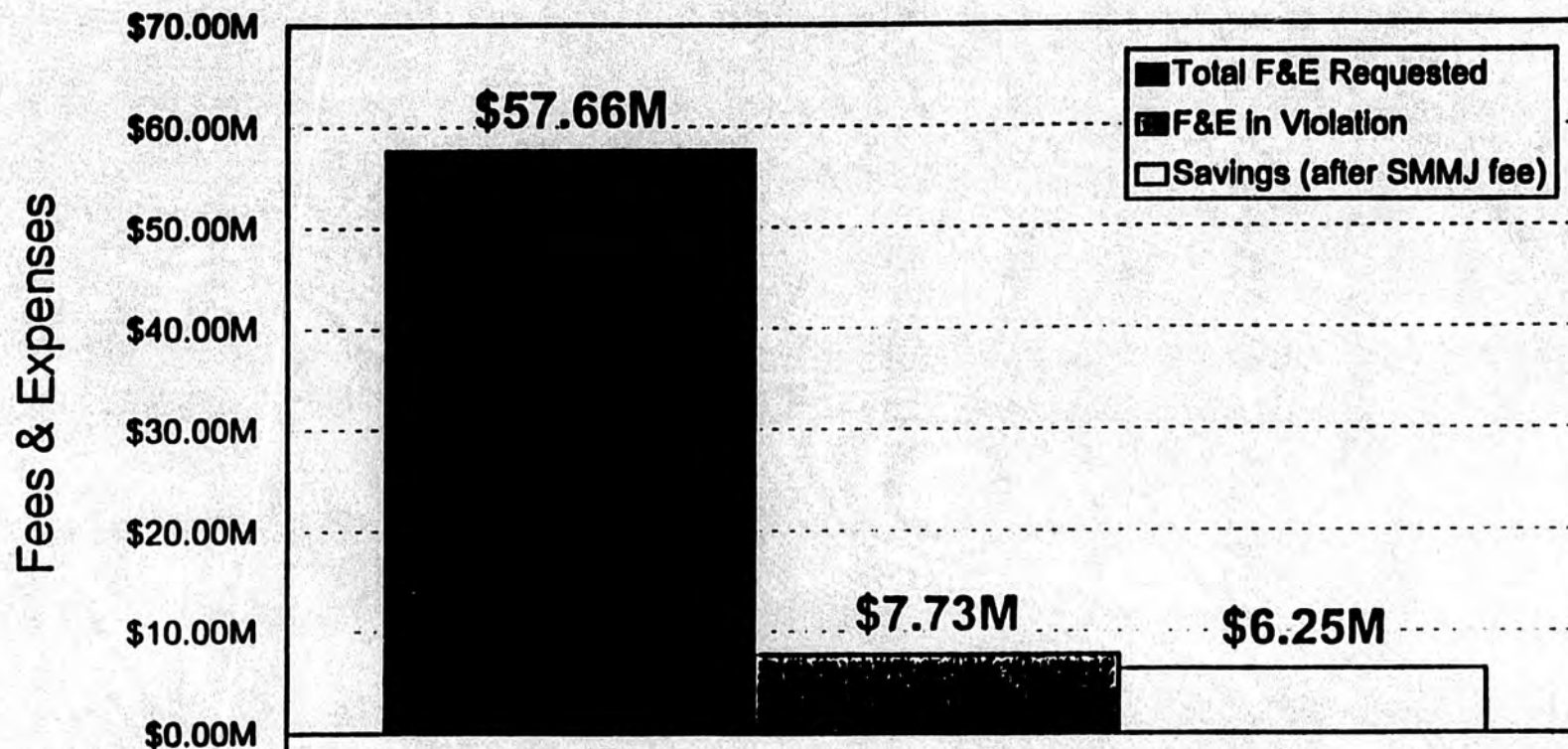
Total Requested versus Total in Violation



Note: savings based on SMMJ fee of 2.5% of fees and expenses reviewed

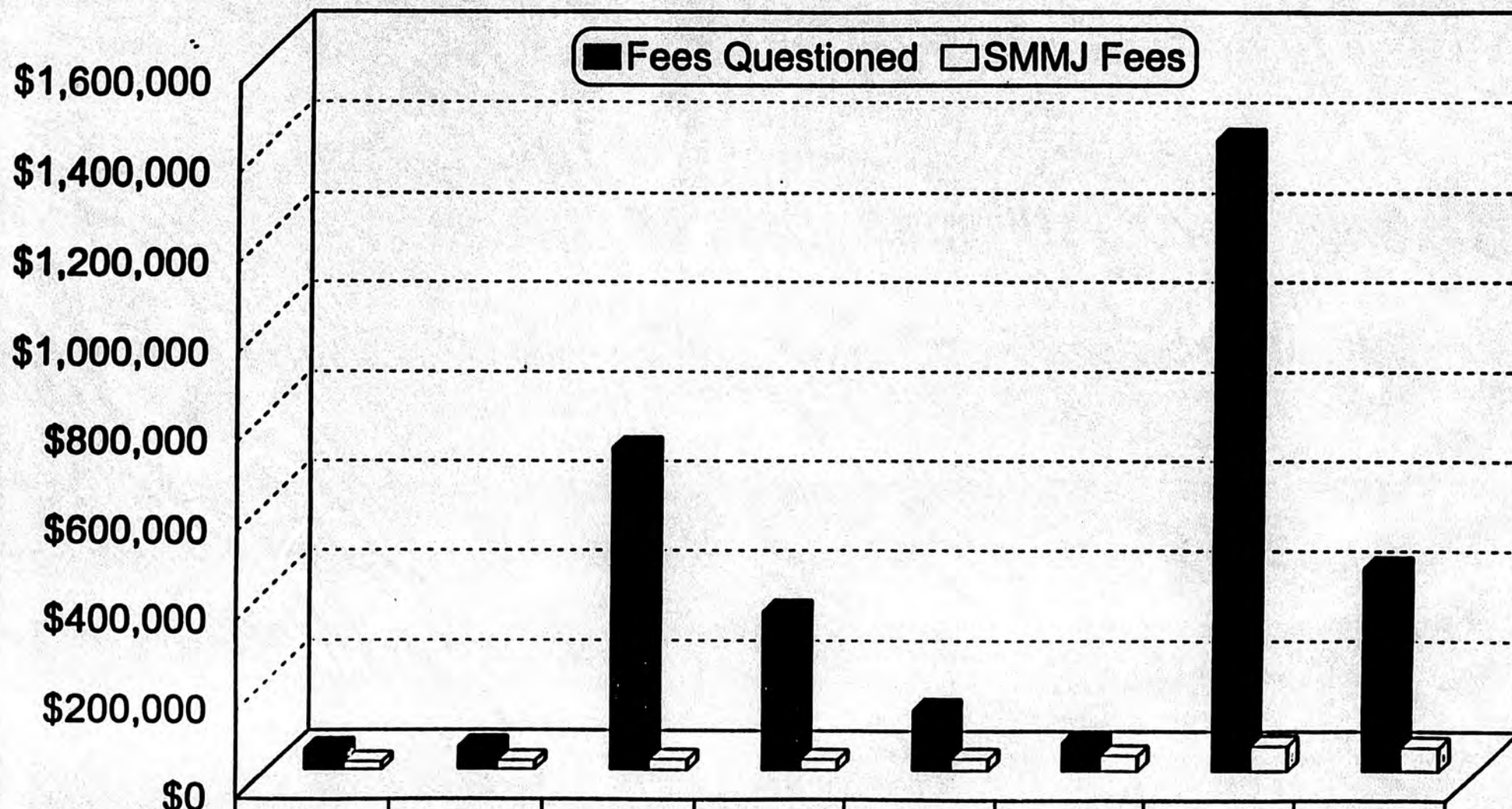
Comparison of Fees & Expenses for All Firms

Total Requested versus Total in Violation



Total F&E Requested	\$57.66M
F&E In Violation	\$7.73M
% of F&E In Violation	13.40%
Savings (after SMMJ fee)	\$6.25M
% Savings (after SMMJ fee)	10.90%

Note: savings based on SMMJ fee of 2.5% of fees and expenses reviewed



Firm Identification	G	J	V	BB	FF	I	W	Other Firms
Fees Audited	\$905,270	\$1,039,218	\$1,228,670	\$1,241,551	\$1,389,332	\$1,853,709	\$2,893,714	\$2,760,239
Fees Questioned	\$50,272	\$56,209	\$721,952	\$355,797	\$139,776	\$67,916	\$1,408,476	\$454,382
% Fees Questioned	5.55%	5.41%	58.76%	28.66%	10.06%	3.66%	48.67%	16.46%
SMMJ Fees	\$18,105	\$20,833	\$24,573	\$24,598	\$27,787	\$37,080	\$57,874	\$54,783
% of Net Questioned Fees	3.55%	3.40%	56.76%	26.68%	8.06%	1.66%	46.67%	14.48%

Stuart, Maue, Mitchell & James, Ltd.

SUMMARY OF SERVICES

I. DESK AUDIT

The desk audit is performed at the offices of SMMJ in Saint Louis, Missouri. The desk audit determines the mathematical accuracy of both the fee and expense portions of the law firm's billing statements; classifies billing entries within the law firm's billing statements according to the activities described; determines approximate amounts of time devoted to each of several broad classifications of litigation activity; to quantify the activities which the fee-paying client may wish to review further to determine their compensability (e.g., multiple attendance, vague billing entries, etc.), and to identify expense items billed by the law firm which are more properly considered overhead items or otherwise not directly related to a particular matter or client.

II. MODIFIED DESK AUDIT

The modified desk audit option is similar to the analysis performed on the on-site audit but does not incorporate a visit to the law firm. The modified desk audit does, however, include an analysis of the law firm's work product, expense documentation, original daily time sheets, as well as an analysis of any interim billing steps used by the law firm such as prebills or billing memorandum. These items will have to be obtained and sent to our offices in Saint Louis, Missouri. With this documentation, SMMJ accounting personnel can ascertain whether any markups or write-downs in billed hours have occurred and whether any changes/alterations in original task descriptions have occurred between the original source document (time sheet) and the final billing statement.

III. ON-SITE AUDIT

The on-site legal audit is performed in part at the office location of the law firm subject of the on-site audit. It involves (i) a review by SMMJ of all entries for fees and expenses contained in the subject bills; (ii) a review of work product, expense documentation, prebills and time sheets, and interviews of key law firm personnel; and (iii) the preparation of a detailed audit report of SMMJ's findings. SMMJ's audit report is trial ready and suitable for use in arbitration, mediation, or litigation.

IV. EXPERT TESTIMONY

The testimony of SMMJ professionals (attorneys, accountants, and computer professionals) is available to provide expert testimony regarding the methodology of legal auditing in general as well as expert testimony regarding the specific findings derived from any audit performed on behalf of the client.

V. LIBRA™ COMPLIANCE AUDITS

LIBRA™ (Legal Invoice/Billing Review and Analysis) is a sophisticated, state-of-the-art auditing system utilizing proprietary software and methodology developed and maintained by SMMJ exclusively for legal auditing. The LIBRA™ software is designed to perform those

Stuart, Maue, Mitchell & James, Ltd.

functions in the legal audit process that will aid the user in the analysis of legal fees and expenses and then summarize the audit information derived in the form of exhibits and audit summaries. With the LIBRA™ System, computer-assisted compliance audits can be performed by either SMMJ's professionals or on-line by the client's personnel in the familiar Windows environment. By utilizing the LIBRA™ System, the user can review, analyze, and process large volumes of billing statements on a continuing basis and provide recommendations regarding prompt payment of charges that conform to the client's requirements and billing guidelines (compliance audits). The LIBRA™ System is specifically designed to process data in an efficient and cost-effective manner and to produce exception reports within a time frame that conforms to the client's normal pay cycle. The steps of the audit process can be adjusted to meet the needs and expectations of the individual client.

VI. ACCESS TO LIBRA™ SYSTEM

Additionally, a connection can be established between the LIBRA™ System and your offices to provide you on-line access to the LIBRA™ System on any Windows-based desktop computers while retaining efficiency, speed, and data security. The connection to SMMJ's application and database servers, maintained at SMMJ's headquarters in Saint Louis, Missouri, can be achieved through any of the presently available technologies, including the Internet, frame relay, or other electronic means. The connection allows the client access to the LIBRA™ System as a thin-client that provides your client with parallel auditing capabilities. When connected into the LIBRA™ System, your client's personnel can perform the same compliance audit functions as SMMJ's professionals and obtain immediate on-line access to SMMJ's compliance audit findings. The LIBRA™ exception report and associated exhibits can be tailored to conform with your client's specific billing guidelines and reporting expectations. SMMJ will also train your client's personnel in the use of the LIBRA™ System and SMMJ's audit methodology.

VII. DATA WAREHOUSING AND MANAGEMENT REPORTS

In addition to the immediate goal of auditing the law firms' billing, the data provided from the individual fee and expense billing entries, UTBMS codes, audit results, or pertinent claim data can be incorporated by SMMJ into a data warehouse to create high-level management reports for trend analysis. For example, this information can enable the client to evaluate the litigation costs of various law firms performing similar representation functions. The data elements warehoused for future benchmarking purposes may vary between clients depending upon the individual needs of each client and reports generated can be custom-tailored to any specifications. This information is always available through the connection mentioned above.

VIII. WEB SITE DEVELOPMENT

Finally, SMMJ can develop and maintain a web site identified in the manner you direct for all audit-related information needed to be available to all law firms subject to review under the compliance audit program. We would anticipate this would include announcements, billing guidelines, policies, reporting procedures, and any other information you considered pertinent.

Stuart, Maue, Mitchell & James, Ltd.

A M I S S O U R I C O R P O R A T I O N

LEGAL AUDITORS AND CONSULTANTS

SAINT LOUIS, MISSOURI, U.S.A.

INTRODUCTION

Stuart, Maue, Mitchell & James, Ltd. has built its legal auditing, litigation management, and claims auditing business with great care and attention to the needs of our clients. We have made a significant investment in assembling a staff of quality professionals and in equipping our staff with sophisticated computer capabilities. This investment reflects our dedication to quality, service, cost effectiveness, and industry leadership. We believe our success and growth are measures of our clients' satisfaction. We invite you to review the following pages describing some of our capabilities, to visit our offices, and finally, to come to know and trust Stuart, Maue, Mitchell & James, Ltd.

"The nation's oldest legal auditing firm."

THE COMPANY

Stuart, Maue, Mitchell & James, Ltd.'s offices are located in Saint Louis, Missouri. Our offices are fully staffed with professionals holding law degrees and advanced degrees in business and accounting.

CONFIDENTIALITY

At Stuart, Maue, Mitchell & James, Ltd., we recognize that maintaining the confidentiality of the information provided to us is critical. We also make every effort to perform our assignments with a minimum of disruption to our clients and to the law firms whose bills are being analyzed.

INDEPENDENCE

Stuart, Maue, Mitchell & James, Ltd. is a Missouri corporation that is independently owned and operated. No client has an ownership interest in our company, and we hold no ownership interest in any of our clients. No assignments are undertaken that would impair our independence and objectivity.



HARRY J. MAUE, J.D., Ph.D.

Chairman and Managing Director

Legal auditing involves the complete review of all entries contained in a law firm's billing statements, and the complete review of all receipts that are billed as expenses. Legal auditing is premised on the belief that a law firm's billing should accurately and adequately inform the client of the services provided and the fees and disbursements billed. The law firm's bill should be verifiable as an itemized statement.

The traditional bill-by-the-hour approach for legal billing fosters inefficiencies: over-staffing; duplication of effort; excessive review, analysis, and research; and work inconsistent with billing guidelines and scope of employment. Mounting pressure to increase law firm revenue may also lead to inappropriate and excessive claims for reimbursement of expenses, in excess of necessary and actual costs.

We believe long-standing relationships built on trust and cooperation are important. Our analysis and approach is neither confrontational nor accusatory. Stuart, Maue, Mitchell & James, Ltd.'s goal is to enhance the relationship between you and your outside counsel by improving communications and establishing a

mutual understanding of acceptable billing practices.

OUR APPROACH

Stuart, Maue, Mitchell & James, Ltd. is the industry leader in analyzing legal bills for complex litigation and other legal matters. Our staff of professionals and our sophisticated computer capabilities provide our clients with an independent, timely, and thorough review of their law firm's billing statements.

Our depth of knowledge and experience enables our professionals to design a program precisely tailored to each client's situation and requirements. Whether our staff conducts an on-site audit, a desk audit, or a compliance review, we have the

flexibility to help clients maximize savings for their investment.

The problem has always been how to identify and quantify questionable billing practices. Stuart, Maue, Mitchell & James, Ltd. has solved that problem. What distinguishes our legal auditing process is our sophisticated, proprietary computer system and the experience and credentials of our legal auditors.

We have developed a custom software program of unmatched versatility to analyze law firm billing statements. A software program alone, no matter how sophisticated, is only a tool. The quality of the legal audit depends on the quality of the legal auditors. At Stuart, Maue, Mitchell & James, Ltd., we are engaged in the business of

"Stuart, Maue was crucial in uncovering billing abuses."

legal auditing with a full-time staff of professionals (lawyers, accountants, computer specialists, and a statistician). Our lawyers are all former corporate counsel and litigators from law firms and the public sector.

Stuart, Maue, Mitchell & James, Ltd. is not a law or accounting firm. Although many of our associates have law degrees and legal backgrounds, we do not offer legal advice or second guess your chosen lawyers. Instead, we will use our legal expertise to help you locate and eliminate unnecessary and wasteful legal expenses, without sacrificing the quality of your legal representation. Many clients can save thousands of dollars simply by eliminating duplication of legal services and marked up expenses. However, that's only the beginning.

M E T H O D O L O G Y

Our legal audit is a professional analysis, aided by our proprietary computer system, which identifies and quantifies inefficiencies and other improper charges in legal bills. Those bills typically consist of unintelligible computer printouts of attorney daily time reports. We enter this data, in its entirety, into



our computer system for analysis and then organize it in a usable and understandable form. Our custom designed, proprietary software program permits nearly limitless varieties of examination of law firms' billing data.

"Audit teams" are created for each legal audit performed. Usually, at least one attorney and one accountant are teamed together. The teams may be larger, depending on the size of the bill and the amount of documentation to be verified. We begin by doing a standard set of analyses. We then examine the data "by time-

keeper" and "by project activity" to identify categories such as: duplicative staffing; projects or activities with no utility to the defense of the client; and administrative clerical tasks. Claimed reimbursable expenses are also examined for excessive or unnecessary charges. Your input is important as you may have in-house responsibility for the project and know what was done, how it was done, and the attorneys who were involved. In close consultation with you, our legal auditors continue the analysis in directions suggested by the results of the earlier preliminary work. Where

helpful, the assigned auditor will be knowledgeable and experienced in the subject matter specialty such as: banking; environmental law; product liability; etc.

The audit team, after review and analysis of the data, prepares a report of its findings. The audit report analytically profiles the project, draws conclusions, and makes specific recommendations as to fee adjustments, all fully documented and supported by graphs, charts, tables, and exhibits.

We believe it is extremely important to be able to support our audit findings utilizing a sound, proven methodological approach.

Our methodology includes, but is not limited to, the following:

- *Reconciliation of all fees, hours, and expenses billed per statement:*
- *Interviews with key billing personnel at the law firm:*
- *Verification of all the activities referenced in the billing statements. This includes confirming the existence of work product and scrutinizing billing entries chronologically, by individual, and by project/activity:*
- *Examination of all expenses charged in the legal bills, a reconciliation of these expenses against underlying receipts, and the identification of any mark-ups:*

■ *Quantifying (in both dollars and hours) all billing activities and expenses that cannot be verified by our methodology: and*

■ *Preparation of a final written confidential report containing our findings, along with supporting exhibits.*

SCOPE

The savings that result from legal auditing can be substantial. Stuart, Maue, Mitchell & James, Ltd. can custom design an audit to fit your needs and budget. To provide our clients with cost-effective solutions to rising legal costs, Stuart, Maue, Mitchell & James, Ltd. offers five different levels of legal audits tailored to each client's particular needs and budget.

First, the "on-site" audit, which is an analysis presented in final report form, based on a review of 100% of the law firm's fee and expense entries. It entails a visit to the law firm for the purposes of review of law firm work product, expense documentation, pre-bills, and time sheets, as well as an opportunity to interview key law firm personnel.

Second, we offer a "modified desk" audit, which is an analysis containing

preliminary findings, based on a review of 100% of the law firm's fee and expense entries, together with a review of such expense documentation, work product, pre-bills, and time sheets as may be provided by the client, but without the on-site portion of the audit.

Third, the standard "desk" audit, which is an analysis containing preliminary findings, based on a review of 100% of the law firm's fee and expense entries, but without both the on-site portion of the audit and the review of any expense documentation, work product, pre-bills, or time sheets. The modified desk audit as well as the standard desk audit are performed at our offices in Saint Louis, Missouri.

Fourth, after examination of the bills, we issue "letter reports" which are analyses addressing specific concerns or issues and which are less extensive in scope and length than the previously described audit reports.

Fifth, we have introduced a "compliance review," which is an analysis of outside counsel's billing statements via manual and computerized methods designed to determine the law firm's compliance with pre-existing client billing guidelines. The client is provided with a quantification of both

"Stuart, Maue will interview employees and sift through time sheets, taxi vouchers, and even building lobby sign in sheets to determine whether clients received the services for which they were billed."

hours and fees for those task descriptions that appear to violate established billing guidelines. This type of review is less comprehensive in scope and length than a legal audit; however, a compliance review is an extremely valuable tool both to determine law firm adherence with established policies and procedures, and to control legal costs.

Additionally, your audit strategy should take into consideration that:

■ *Stuart, Maue, Mitchell & James, Ltd. accepts auditing assignments from clients on the basis that we will absorb, and not pass through to the client, the following costs: word processing, postage, facsimile charges, Federal Express charges, and long distance telephone charges;*

■ *Stuart, Maue, Mitchell & James, Ltd. will provide 10 to 15 hours of technical backup, free of charge, in order to answer any of your or the audited law firm's questions regarding the final audit report; and*

■ *Stuart, Maue, Mitchell & James, Ltd. sends the assigned lead auditor, whenever possible, to give sworn testimony on behalf of the client at any arbitration or court hearing that may ensue over any potential fee dispute.*

What further distinguishes us from our competitors is our respon-



siveness, our complete independence, our 100% audit capability, our turnaround time, our proprietary software, and our experienced, professional staff.

COST

Stuart, Maue, Mitchell & James, Ltd.'s fees are determined on a client-by-client basis. Our fee is generally based on the total fees and expenses audited and the type of audit selected.

Depending on the needs of the client and the scope of the project,

some of the above audit options may lend themselves to an hourly billing rate arrangement, a percentage of total fees and expenses audited, or a flat rate.

CONCLUSION

We believe Stuart, Maue, Mitchell & James, Ltd.'s approach provides the most thorough, informative, objective, and, therefore, the most reliable results from our legal audits.

Although legal bill audits may be your premier tool for reduction of legal fees by identification of questionable billing patterns and practices, to be most effective, legal auditing should be part of a coordinated litigation management program.

Litigation Management is the application of methods and systems designed to ensure informed management control over the activities of the law firm during all phases of a case, with the objective of minimizing legal fees and expenses.

Through the effective use of litigation management, every client can take specific action to significantly reduce legal fees and expenses. A properly implemented litigation management program will lead to:

- *Informed strategy decisions;*
- *Avoidance of problems and surprises throughout the litigation process; and*
- *Improved cost-benefit analysis and decision making.*

Stuart, Maue, Mitchell & James, Ltd.'s professional staff will aid you by custom designing a litigation management program incorporating the following elements:

1. Guidelines for Billing Cycles and Billing Statement Format

Stuart, Maue, Mitchell & James, Ltd. will help you implement an interim billing process to assist in the recognition of how and why fees and expenses are incurred and to monitor fees and expenses throughout the litigation process.

2. Meaningful Billing Guidelines for Outside Counsel

Specific guidelines should be designed to ensure appropriate staffing levels. What is appropriate will, of course, depend on the complexity of the issues involved and the expertise of counsel. Care should be taken to ensure that the litigation is not used as a proving ground for young, inexperienced attorneys.

In addition to monitoring who is working on the litigation, guidelines should specify activities that are and

are not considered compensable. The purpose of guidelines in this area is to ensure that activities billed at professional rates make a substantive contribution to the litigation.

Billing guidelines should also address the expenses billed by a law firm. The actual costs of expense items directly related to the litigation are typically charged through to the client. Guidelines for expenses should ensure that you are not subsidizing the law firm beyond hourly rate charges by paying overhead costs, by paying a mark-up on expense items, by paying for expenses that cannot be fully documented, or by paying expenses that are not directly related to the litigation.

3. Litigation Plans, Budgets, and Reporting Requirements

The law firm should be required to prepare a suit plan and budget for each matter. This plan and budget

"Stuart, Maue has the most sophisticated software and computer capabilities."

should include an outline of all anticipated discovery and the estimated costs. Work that is outside the scope of the plan and budget, once submitted, should be approved in advance to be compensable. It is extremely important for the law firm to provide periodic status reports to enable proper evaluation of options and to assess potential liability. Reports should be provided every 90-120 days.

Our staff of trained professionals will help you develop and implement requirements for litigation plans, litigation budgets, and law firm reporting procedures.

4. Periodic Legal Audits of Outside Counsel

Legal audits of outside counsel's billing statements are an efficient and cost-effective way for clients to convert incomprehensible legal bills into meaningful data. Legal auditing involves the analysis of legal bills by computerized and manual techniques to reorganize them by projects and activities as well as by timekeeper. Work product, expense documentation, and billing backup (i.e., time sheets, pre-bills, billing memoranda) may also be reviewed.



5. Routine Monitoring of Billing Statements for Compliance with Billing Guidelines

Stuart, Maue, Mitchell & James, Ltd.'s staff will periodically review and analyze outside counsel's billing statements to evaluate compliance with pre-existing client billing guidelines. The client is provided

with a report quantifying both fees and hours for those task descriptions that appear to violate established billing guidelines. Although less comprehensive than a legal audit, routine monitoring for compliance with billing guidelines is an extremely cost-effective method to control legal costs.

Stuart, Maue, Mitchell & James, Ltd. recognizes that an important element of the management process is the control or reduction of possible catastrophic costs through better loss adjusting techniques. Direct savings from proper claims management can take the form of retrospective or dividend returns, lower self-insured claim costs, or lower future insurance premiums.

WHO USES THESE SERVICES

1. Entities with self-insured programs of workers' compensation, public or fleet liability...to improve efficiency and reduce direct costs.
2. Insured entities...to improve efficiency and reduce insurance costs of loss-responsive programs.
3. Insurance companies who wish to have an independent claims audit of their claims operations.
4. Claims Administrators and self-insureds who want to have their internal systems reviewed for overall claims handling efficiency.
5. Excess insurance companies who want to have the primary insurance carrier's claims handling practices audited.

CLAIMS AUDIT GOALS

1. Reduce claim payments.
2. Reduce claim handling expenses.
3. Test accuracy of reserves and loss reports.
4. Improve accuracy of reserves and loss reports.
5. Improve administrative efficiency.

An experienced Stuart, Maue, Mitchell & James, Ltd. claims auditor will investigate, report on, and attempt to reach conclusions concerning the following areas of concern:

- Initial handling of the claim/case:
- Early resolution and/or settlement attempts:
- Timeliness of notice of loss:

- Adjustor response to claim notification:
- Adjustor handling prior to litigation:
- Timeliness of file assignment to counsel:
- Adjustor/attorney relationship:
- Timeliness and appropriateness of initial reserve levels and subsequent adjustments:
- Handling of medical, employment, and other relevant records:
- Handling of necessary investigations:
- and
- File maintenance practices.

"Stuart, Maine conducted a very in-depth audit."

EVALUATION OF CLAIMS ADMINISTRATORS

To obtain the lowest cost and most effective claim handling, whether provided by employed claims adjusters or by a contract claims administrator, our staff of experienced professionals will utilize the following criteria to evaluate your claims administrator:

1. Self-Administration Costs

Personnel qualifications

Claims manual

Reporting procedures

*Check and settlement
authorities*

Controls

Loss reports

Implementation

Case loads

2. Contract Claim

Administration Services

Services required

Remuneration method

Trust funds

*Check and settlement
authorities*

Service contract review

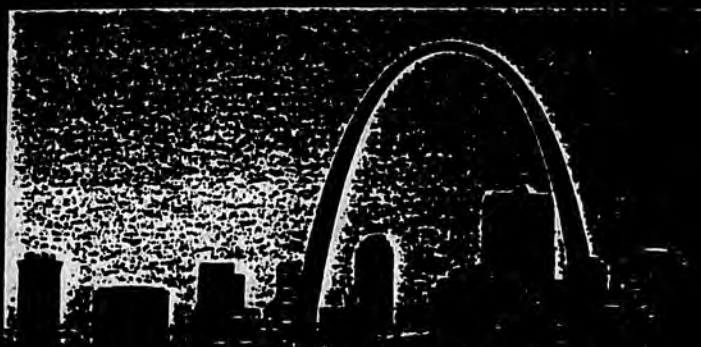
Case loads



"Stuart, Maue will give you an audit report that is untouchable."

PETER D. LICHTMAN, ESQ., PARTNER

LICHTMAN & BRUNING



Stuart, Maue, Mitchell & James, Ltd.

A MISSOURI CORPORATION

3840 MCKELVEY ROAD

SAINT LOUIS, MISSOURI 63044 USA

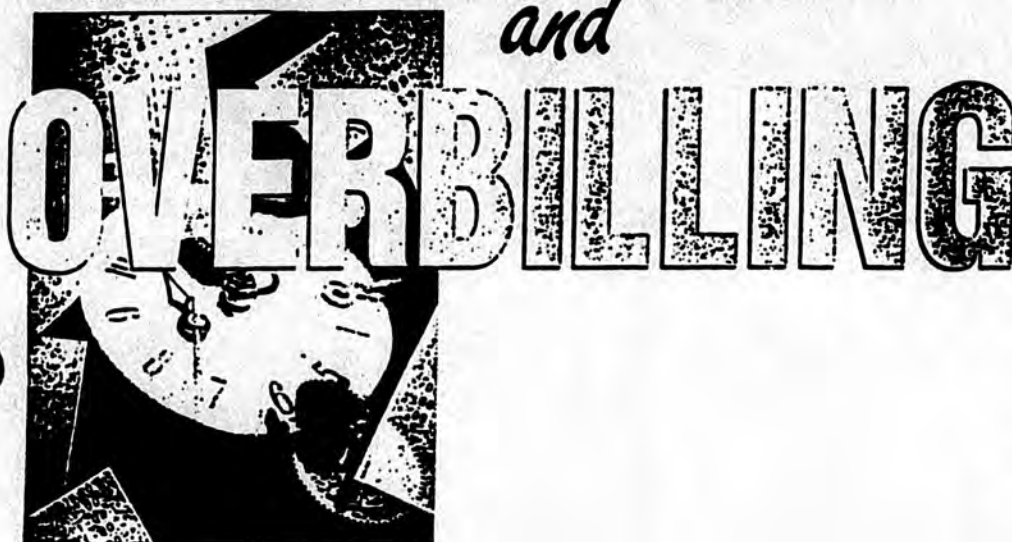
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JOURNAL

THE LAWYER'S MAGAZINE/AUGUST 1994

GREED, IGNORANCE

and



SOME LAWYERS HAVE GIVEN NEW MEANING TO THE TERM 'LEGAL FICTION.' NOW THE PROFESSION IS ASKING WHY, HOW WIDESPREAD AND HOW DO WE STOP IT?

BY DARLENE RICKER

Sixty-hour days, documents that don't exist, clerical work that fetches \$300 an hour. It's not an Alice-in-Wonderland fantasy, but a peek through the looking glass into the kaleidoscope world of law firm overbilling.

It is a world in which everything, even the most nonsensical, can—and does—happen. You can be two places at once: on an airplane 35,000 feet above St. Louis and at a law library in Los Angeles. Four hours on an airplane become four hours of travel for Client A and four hours of legal research for Client B. Before you even

step off the plane, you have billed an eight-hour day.

If such timekeeping seems to defy logic (and the dictates of a 1993 ABA ethics opinion), that fact hasn't been lost on clients and firms. With clients crying foul over vague bills for "services rendered," firms (including Hillary Clinton's former Rose Law Firm) are trying to distance themselves from partners who may have billed not wisely, but too well.

The issue clambered onto the stage of American public opinion and its assessment of lawyers when Webster Hubbell resigned in February as U.S. associate attorney general.

Partners at the Rose Law Firm were just then beginning to investigate charges that Hubbell, their former managing partner, had billed under his name for work performed by associates, paid personal expenses from a client account, and billed taxpayers more than \$20,000 for work on a savings and loan case in which he claimed to have averaged more than eight billable hours every day for three weeks, without resting even one weekend day.

Such allegations are not uncommon, nor are they limited to large corporate law firms. Other high profile cases include criminal defense attorney William Perrone, who pleaded guilty during July 1993 to overbilling the city of Philadelphia \$130,000 for representing indigent clients.

In Los Angeles, overbilling on appointed death penalty cases last year prompted the county to replace an hourly fee system with flat fees, after officials learned they paid some lawyers almost \$1 million a year to represent indigents on death row.

But beyond the notoriety, are such high-profile cases the tip of an iceberg or isolated instances of abuse? The truth is that without authoritative studies, no one knows. Louis R. Aidala, chair of the New York Criminal Bar Association's committee on indigent representation, suggests the perception of overbilling—particularly in appointed cases—is overblown.

He notes that a 1992 New York City comptroller's audit of payments to assigned counsel for the preceding five years found "only a handful" of suspected overbillings. "It may be that the lack of success in investigating the problem is due to the lack of a problem," he says.

At least one study, however, has indicated that lawyers *believe* the problem is pervasive. William Ross, a professor at the Cumberland School of Law at Samford University in Birmingham, Ala., conducted a survey on perceptions of overbilling, publishing it as an appendix to a 1991 *Rutgers Law Review* article on ethics of billing.

Ross' data came from 272 private attorneys and 80 corporate counsel selected from a nationwide cross-section—from solo practitioners to firms with more than 200 lawyers; corporations with annual sales from \$500,000 to \$30 billion; and lawyers in practice from one to 45 years, with a balance of racial, ethnic, gender and geographic backgrounds.

About 92 percent of respondents said they believed lawyers intentionally pad their hours; more than 60 percent admitted they had specific knowledge of such padding. About 50 percent of private-practice attorneys and 70 percent of corporate counsel said they have billed, or believe others have billed, two clients for work performed at the same time.

Despite respondents' widespread perception of overbilling, considerably fewer—12.3 percent of private practitioners and 15.3 percent of corporate counsel—said they believe lawyers "frequently" pad hours to bill clients deliberately for work never performed.

One respondent, in written comments, insisted that he and most other lawyers who bill more than 3,600 hours per year—equivalent to 52 69-hour weeks—do not perform unnecessary work nor exaggerate hours. But to Ross, the only way to explain such a view other than by "preternatural stamina or lying" is to presume that lawyers are so accustomed to rationalizing billing practices they may not recognize sometimes questionable ethics.

Ross estimates that in some firms, 50 percent of work on large cases is legally unnecessary, but he says that "very few attorneys consciously pad their hours." Rather, he chalks up the majority of overbilling to overzealous representation.

"Although fraudulent billing is more common than most lawyers are willing to admit, most dishonesty is the result of self-deception rather than conscious fraud," he says. "Big firm litigators have convinced themselves that the leave-no-stone-unturned approach and their Herculean hours serve their clients' best interest."

Ross' findings square with observations of those who regularly audit legal bills and say that only five to 10 percent of audited bills reveal outright fraud. Often, overbilling occurs at an unconscious level as a response to subtle pressure by firms to rack up hours. As Chief Justice William Rehnquist noted in a 1987 *Indiana Law Journal* article on the legal profession: "If one is expected to bill more than 2,000 hours per year, there are bound to be temptations to exaggerate the hours actually put in."

In other cases, lawyers may be sloppy about timekeeping, are ignorant of ethical bans on double-billing or feel justified tacking on a margin to disbursements. "Let's not



cut hairs too finely," says Hofstra Law School ethics professor Roy Simon. "Whether it's [calculated] as costs or hours, it's the same thing. It's wrong."

High hourly billing does appear to be a common denominator in many overbilling cases. Hotel magnate Leona Helmsley, previously convicted of tax evasion, claimed in a multimillion-dollar fee fight this year that former real estate lawyers Dreyer and Traub of New York City billed her for a 43-hour day. Jack S. Malkin, an Illinois solo practitioner convicted in 1992 of overbilling more than \$5,000 on appointed cases, once billed more than 22 hours in a day.

Consecutive days billing more than 10 hours each is generally a red flag for legal auditors, but auditors are split on whether time-based billing is the engine driving the overbilling machine.

The notion of detailed, task-based billing "may make you feel warm and fuzzy inside, but it's no panacea" to cure overbilling, says Dr. Harry Maue, chairman and managing director of Stuart, Maue, Mitchell & James, a legal auditing firm based in St. Louis. "Everyone can get lost in a 4-inch thick [task-based] bill. It's just another way to obfuscate the obvious."

Often what Maue uncovers is a pattern of improper billing practices over the course of the litigation, rather than a single, standout transgression.

About 85 percent of his audits, he says, revealed billing for work product that cannot be located, too many lawyers at conferences or depositions, and vague time entries such as "review file." Twenty to 35 percent showed "unverified" or "questionable"

William Ross: 'Most dishonesty is the result of self-deception rather than conscious fraud.'

billing, such as a law firm that researched the work "occurrence" in an insurance case and saw fit to bill every one of its clients for that time because a copy of the research memo went into each file.

About 10 percent of Maue's audits found actual fraud, he says, which attorneys often do not attempt to cover up. Some appalling examples: the initials "ERJ" on a bill, when no such person existed; a managing attorney who subcontracted work outside the firm, which turned out to be a \$700,000 windfall to a partner's brother who did no work on the file; billing a file that was not yet opened or that had been closed two years previously; and, of course, shamelessly padding hours (in one case, he found an attorney billing 62 hours in a single day).

The ABA's first formal opinion on billing practices (No. 93-379, issued Dec. 6, 1993), slams the door on "overstaffing a project for the purpose of churning out hours" and prohibits double-dipping on recycled work product, work done on travel time and simultaneous court appearances. It states:

"Rather than looking to profit from the fortuity of coincidental scheduling, the desire to get work done rather than watch a move [on an airplane], or the luck of being asked the identical question twice, the lawyer who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economies on to the client. ... It goes without

saying that a lawyer who has under taken to bill on an hourly basis is never justified in charging a client for hours not actually expended."

Apparently that needed to be said. Consider once-celebrated Park Avenue attorney Harvey Myerson, who was convicted in 1992 of bilking more than \$2 million from his firm's major client, Shearson Lehman Hutton. In addition to testimony by three young partners that Myerson had ordered them to inflate their hours (in one instance charging 10 hours of fees for 12 minutes of work) or lose their jobs, there was evidence that Myerson had billed for personal expenses, such as family vacations, travel on the Concorde, even dry-cleaning for his toupee. Myerson was sentenced to 70 months in prison.

A very different—but equally troubling—picture emerged when billing practices of Chicago lawyer Richard A. Salomon came to light several months ago, prompting his employer, Mayer, Brown & Platt, to reimburse 10 corporate litigation clients almost \$500,000. Salomon, a rising-star young partner who consistently billed more than 3,000 hours annually, has claimed that a psychological disorder and large-firm billing pressures led him to adopt a routine of reclassifying nonrecoverable client costs for billing purposes.

After hiring the national accounting firm Price Waterhouse to conduct an independent audit of Salomon's bills, Mayer, Brown placed him on leave in February and contacted the Illinois Attorney Registration and Disciplinary Commission which began an investigation.

Salomon's formal hearing before the commission was scheduled for June 30.

Commission chief counsel James Grogan says he was "less startled" with the facts of the Salomon case than he would have been earlier in his career. "We're starting to see more and more top lawyers and prestigious firms get in trouble [with overbilling]. If you had told me about this 15 years ago, I'd have said, 'No way is this possible.'"

Today it is not only possible but sadly predictable that some amount of overbilling happens, judging by reports to state bar disciplinary units. Billing abuses generally fall into two categories of complaints: those involving fee disputes (such as unfair, excessive or unearned fees) and fraud (such as lying, falsifying documents or stealing). In Illinois, Grogan says, about one-third of complaints against lawyers that reach a board hearing involve one of those categories.

Tony Boggs, director of lawyer regulation for The Florida Bar, says the majority of complaints that go to hearing in his office involve allegations of excessive fees or fraudulent activity. In the past three years, his office has received 600 to 700 fee com-



Dr. Harry Maue (above): Task-

based billing 'may make you feel

warm and fuzzy inside,' but it won't

cure overbilling.

James Schratz (below): 'Curiously,

the problem is not decreasing—if

anything, it has worsened.'

plaints annually. Only 2.2 percent of fee cases resulted in disciplinary action. Truly fraudulent billing is not very common, he says.

Although overbilling has not been widely reported by clients, it is being reported by law firms themselves. Grogan says that cases are increasingly coming to him through firms concerned about some of their colleagues, as happened in the Salomon case.

Most billing abuses, say experts, occur in large firms that have high overhead expenses—and that have grown accustomed to the type of high profit margin that allowed Myerson to enjoy a lavish lifestyle. Many blame the financial heydays of the 1980s for causing lawyers to feel an undue entitlement to the high life.

"The rationale seemed to be, '[financiers] Michael Milken and Ivan Boesky are making \$5 million a year, so I should be able to make \$2 million—and if I have to overbill the client, that's okay,'" says James Schratz of Santa Rosa, Calif., a litigation-management specialist who investigates billing irregularities and has testified as an expert witness in numerous overbilling cases.

Although the freewheeling '80s have long since been dampened by recession, Schratz says that law firms have been slow to adjust. "Curiously, the [frequency] of the problem is not decreasing. If anything, it has worsened."

What could lead attorneys to believe that any amount of fraudulent billing is acceptable? "A firm's focus used to be on advocacy. You did the best job you could for your clients, then added up the money at the end of the year. If it was a good year, so much the better..."



A decade ago...firms began to see themselves as revenue-generators and professionalism became secondary. "The '80s were a bizarre time and the changes from that time have become endemic now."

Law firms today..."would manufacture widgets if they could make a profit on them. We've become victims of our own quest to become better businesspeople."

Greed aside, Schratz also attributes overbilling to market factors. When he was vice president for major litigation at Fireman's Fund Insurance Co., where he investigated law firm overbilling, he found the problem was particularly widespread. "One attorney told me he felt justified in billing more than 24 hours in a day because insurance companies pay such low rates."

While such practices are unethical, of course, clients "have to understand that you basically get what you pay for. Part of the solution [to overbilling] is the client's responsibility," Schratz says. That responsibility, he says, includes demanding law firm accountability for billing that appears improper and publicizing instances of overbilling.

The overbilling of Fireman's Fund, part of the so-called Alliance fraud case in California (in which a ring of nearly two dozen lawyers prolonged cases in order to bill more hours and bilked insurers of between \$50 million and \$200 million) received so much publicity that Schratz feels "anyone who overbills Fireman's Fund should be prosecuted for stupidity rather than fraud."

Yet the likelihood is that the practice will continue until clients take active steps to protect themselves. Few clients, however, can afford to retain a second legal counsel to investigate the first firm for suspected overbilling. Some successfully have used private investigators to debrief former law firm support staff, such as bookkeepers, secretaries and paralegals, who are often eager to purge their souls of troubling information.

A gem came that way to Schratz's investigator, who was told of an attorney who had purportedly worked on 5,000 cases in a single day. The attorney performed one task and had his secretary bill it at two-tenths of an hour to each of the files in a massive asbestos litigation matter. Without the inside information, says Schratz, such "creative" abuses are nearly impossible to detect.

Jack Pierce, managing partner at Burger & Wolen in San Francisco, has successfully litigated many incursions of billing abuse and has testified on the subject as an expert witness. Greed, he says, is a "significant motivating factor" in many such cases.

"In every law firm, a moral tone is set at the top. If there is an element of greed or overreaching, that is passed on below. The

sad part is that too few lawyers have decided to set their own moral compass. They have followed the partner over the cliff," says Pierce.

Stephen Gillers, an ethics professor at New York University School of Law, has spent 12 years counseling attorneys with ethical dilemmas. He cannot recall being asked about overbilling until the past two years, when five such instances were brought to his attention. Most often the issue has been fictitious billing, of which he said the motives ranged from "venal to just carelessness."

Whatever the cause, how can new generations of lawyers be taught not to overbill? Gillers does not think law school ethics classes are the full answer. Overbilling, he says, comes from "a basic character flaw. It's like telling law students it's wrong to perjure yourself. You should know it's wrong to steal by the end of grammar school."

Tell that to Edward S. Digges Jr., an attorney who was sued in 1989 in U.S. District Court in Maryland by former client Dresser Industries for overbilling in an asbestos litigation. In addition to more than \$1 million in time-based bill excesses, the court found that Digges had billed his client more than \$66,000 for Lexis research services that had actually cost \$395.

If that charge sounds criminal, in some cases overbilling results in exactly that—criminal charges. While most clients who sue

former law firms rely on such civil ground as breach of contract, breach of fiduciary duty or misrepresentation, others have cooperated with prosecutors in bringing criminal charges.

Last year the government prosecuted the San Francisco law firm of Crymes, Hardie & Heer and two of its partners on federal mail fraud charges. During a two-year period of workers' compensation cases, the firm padded billable hours and charged 15 percent of each bill for direct costs. The result: The firm's income increased more than 20 percent.

That \$2 million windfall, however, was short-lived. The firm pleaded guilty to 12 counts of felony mail fraud and paid \$25,000 in fines and \$125,000 in restitution. Charges against the partners were dropped.

Some believe it is only by prosecutions and publicity that overbilling will be curbed. For that reason, Pierce of Burger & Wolen says he generally does not advise clients to agree to confidential settlements with law firms that overbilled.

"The public has a right to know," he says. "For too many years, lawyer overbilling has been swept under the carpet. We can't solve the problem until we admit there is one."

Darlene Ricker, a lawyer, is a writer and editor for the Los Angeles Times.

AUDITING LAWYERS FOR A LIVING

Attorney overbilling has had a profitable—and legitimate—spinoff: legal auditing firms. While the "big eight" accounting firms are still hired guns in many legal billing disputes, clients increasingly have enlisted the aid of these specialized industry watchdogs, most of whom are attorneys with an accounting background.

About 70 percent of legal auditing firms' clients are insurance companies; the remainder are large corporations along with even a few law firms. (The firms oversee complex litigation for clients and have the authority to hire local counsel in different states.) Most auditors charge a flat fee (usually \$10,000 to \$20,000 for a lengthy audit) some charge hourly rates of \$125 and up. Among the major players in the legal auditing field:

- Stuart, Maue, Mitchell & James based in St. Louis. Attorney Harry Maue, chairman and managing director, founded the firm in 1981. It employs about 50 full-time auditors, more than a dozen of whom are attorneys.

- In 1991, after an audit by Stuart, Maue, the Los Angeles office of Buchalter, Nemer, Fields & Younger agreed to write off \$2.7 million in fees

disputed by its largest client, insurer American International Group Inc.

Another highly publicized case was the fee dispute between Fireman's Fund Insurance Co. and the San Francisco law firm of Tarkington, O'Connor & O'Neill. Last year, based on a Stuart, Maue audit, an arbitrator penalized the firm for misrepresenting time and tasks billed by cutting \$463,579 from Tarkington's request for fees and expenses of \$870,241.

- Jim Schratz & Associates of Santa Rosa, Calif. When he was vice president of major claims for Fireman's Fund, Schratz hired Stuart, Maue to audit a number of suspicious legal bills the company had received from lawyers in San Diego. The 1987 audit uncovered the so-called "Alliance" conspiracy, which resulted in about 20 attorneys being convicted of racketeering and mail fraud.

At Fireman's Fund, Schratz was responsible for management of all cases with an exposure of \$3 million or more, including the highly publicized *Art Buchwald v. Paramount Pictures* and *Brian Wilson v. A & M Records*. In January he established his own firm, where he works as a litigation-management specialist, investigates billing irregularities, and testifies as an expert witness in lawyer overbilling cases. ...

—Darlene Ricker

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signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there amendments to Section 14? Mr. Barr.

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BARR: Mr. President, I have an amendment to insert after Section 13. It is on the Secretary's desk.

PRESIDENT EGAN: Between Section 13 and Section 14?

BARR: Yes, it will be a new Section 14.

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PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

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CHIEF CLERK: "Page 6, line 16, after Section 13, insert a new Section 14, and renumber the following sections accordingly: "An Attorney General shall be elected at the same time and in the same manner as the Governor, and his term of office shall be four years. He shall be the chief law officer of the State, shall represent the State in all courts of law, and shall see that all laws are uniformly and adequately enforced throughout the State. He shall be legal advisor to the Legislature and all State officers, and shall perform such other duties as may be prescribed by law. He shall be responsible to the Governor and the Legislature for the faithful performance of his duties. The Attorney General shall receive for his services a compensation fixed by the Legislature which shall not be increased or diminished during his term of office. He shall devote his full time to his office and shall not receive any salary, fees or other compensation from any other source. In case of vacancy in the office of Attorney General for any cause, the Governor shall appoint his successor to complete the term of office with the consent of a majority of both Houses of the Legislature in joint session assembled, or, when not in session, a poll of the members may be taken by mail by the President of the Senate and Speaker of the House."

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PRESIDENT EGAN: What is your pleasure, Mr. Barr?

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BARR: I move the adoption of this amendment.

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PRESIDENT EGAN: Mr. Barr moves the adoption of the amendment. Is there a second to the motion?

KNIGHT: I'll second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. The amendment is open for discussion. Mr. Barr.

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BARR: Mr. President, as this is rather a long amendment --

PRESIDENT EGAN: The Chair would like to make an announcement at this time, before you proceed, Mr. Barr. The News Miner just called and Guy Rivers, brother of Vic and Ralph, was found alive and safe about 30 minutes ago. (Applause) He has been picked up and is now on his way back to Fairbanks. Mr. Barr.

BARR: I have had placed on all the delegates' desks a mimeographed copy of the text of this amendment. It is not the complete amendment showing the lines and paragraph, it is merely the text. It provides for the election of the attorney general, that is the gist of it. He shall be elected at the same time and manner as the governor. He shall be legal adviser to the legislature and all state officers, and shall perform such other duties as may be prescribed by law. It outlines his duties and it provides for his replacement in case there is a vacancy. Now, in presenting this amendment, I do not go against the thought of the Executive Committee in that we should have a strong executive. Some people will think so. I went along with their committee report and I still do not disagree with it; however, the reason I decided finally to put this amendment in was the fact that I met innumerable people, speaking to them privately, who thought that the attorney general should be elected. In fact, they stated it in broader terms, they said they would like to elect more officials than the state governor. None of them stated that they wanted to elect as many as we have now, that they wanted to reduce the governor's power, but they thought they should elect enough so that they felt they had a hand in the government themselves. I felt that if another official should be elected, it should be the attorney general. Why the attorney general? Because all these other department heads are there expressly to carry out the governor's program and should agree with him in every detail on his policy. That makes up a good working team. The attorney general also should work with the governor, he is the governor's legal counsel and the legislature's legal counsel and also counsel for all the department heads, but he has one other duty that does not quite conform to the usual idea of a department head's duty under administration and that is, he is called upon to interpret the law at times. That is a semijudiciary function, I would call it, although it's not final. It is a temporary decision and may be taken into the courts. In interpreting the law, he should be impartial. Many times, of course, the governor might ask him to interpret the law to be sure that he is on the right ground when he proposes something. In case we had a governor who wanted to bulldoze something through anyhow, if it were a little bit questionable, the attorney general might feel that he was obligated to the governor if he were appointed and his opinion might be biased a little bit. I wouldn't say that he would flout the law, but he could be biased a little bit to either one side or the other.

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And even if he were entirely honest and tried to render an impartial decision, I'm afraid his conscience would hurt him a little bit because he was obligated to the governor and went against the governor's wishes, so to remove him from that embarrassing position, I think that he should be elected. Now I grant you in electing any man we cannot be sure that we will get a good man, and on the other hand, by appointment we cannot insure that we will get a good man, but I believe that if we are going to elect another official because the people want it, then it should be the attorney general.

PRESIDENT EGAN: Any further discussion? Mr. Marston.

MARSTON: Mr. President, if my recollection is right, in the past 14 years that I have definite recollection of, there have been only two attorney generals and the reason is that they just can't get attorneys to run for that job. I'd want to know that there are attorneys that will step up and lend themselves to be elected to that job before we pass on this. I have no argument with the mover of this amendment, Mr. Barr, except that is information that I would like to have. Maybe we have some lawyers here that could enlighten me on that.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: Mr. President, I think I could answer that. All the lawyers that favor the amendment will probably stand up, and those who don't will sit down. (Laughter)

PRESIDENT EGAN: The Convention will come to order. Is there further discussion of the proposed amendment? Mr. Nolan.

NOLAN: Mr. President, at a meeting that I had, I think there were 12 people there on an hour and a half's notice, that was the one thing they were unanimous on. They wanted the attorney general elected by the people. They seem to think it was the one independent arm that they would have, and for that reason they were unanimous that the attorney general should be elected, and therefore I think I will support Mr. Barr's amendment.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Mr. President, I voted against the governor and secretary of state as co-runners on the belief that we had merely one elective office in the executive arm and that would suffice, because my other voting had been predicated, and other proposals had been predicated, on that belief we were going to have a strong executive. This is merely the introduction to other offices. I notice we have a Delegate Proposal No. 45 submitted by Mr. Barr, and we have a Delegate Proposal No. 44 also,

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providing for the election of a commissioner of labor. If we yield ground in one respect, we might as well elect our commissioner of welfare, our commissioner of education, and having provided those, I feel that we should go right down the list and completely dissipate the theory upon which the voting has taken place. It was with reluctance that I even voted in favor of the secretary of state as a co-runner for the governor. I am violently opposed to the election of the attorney general. I don't think the election of him accomplishes any purpose. The blunt fact is that there is a general misconception as to the function of the attorney general. The attorney general is a lawyer and his opinion is the equivalent of any other lawyer's. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's impressive upon the state and the officials are bound by it until some irate taxpayer attacks it and the actions taken under the authority of it, and the courts can promptly overrule it. There is a misconception about the function of the attorney general, his functions are not quasi-judicial. He is another attorney giving an opinion, and if you could assure yourselves that he would have the wisdom of a deus, those lawyers don't exist in Alaska as it has been evidenced by the variety of opinions expressed here before this body. I do oppose it, I think if we are going to have an attorney general, the power should be vested in the governor to appoint him, and that is without any screening by any judicial council or anything of the sort. If you're going to elect him, elect him, but by and large if you're creating a strong executive, then give him the power to appoint his own attorney general. The discrepancy has been pointed out in New York under the series, Governors and Administration of New York, which is put out under the American Commonwealth Series, it's pointed out that because of the fact that the attorney general is an elective office under the constitution, that is, the governor, in substance, has to rely on a legislative act passed in 1900 authorizing him to have private counsel. You're putting a diverse and possibly a discordant element into the executive branch. It isn't necessary. The courts can protect the government from the opinions of an attorney general appointed by the governor, and that attorney general does, in a sense, bear the same relationship to the governor as any attorney bears to his private client. It is an attorney-client relationship and the relationship has to be based on faith and personal selection. I would strongly recommend that there be no other elective offices in the state.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, may I be allowed to close?

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PRESIDENT EGAN: If there is no other person who wishes to be heard. Mr. Stewart.

STEWART: Mr. President, may I ask Mr. McLaughlin a question?

PRESIDENT EGAN: You may, Mr. Stewart.

STEWART: Is it your idea that the attorney general, as such, he is or should act as the counsel for the legislature, as well as for the executive?

McLAUGHLIN: He should, in substance, act as counsel for the legislature. In many respects, you also have the unusual circumstance where the attorney general is of one party and the legislature is predominantly of another party.

STEWART: He may have to give decisions in one case that might favor the executive and in another case might favor the legislature?

McLAUGHLIN: That's right.

STEWART: I think that is an unwholesome situation, and should be corrected by having the attorney general purely and simply the adviser for the executive.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, this has developed to the point where I want to say a few words. I wasn't going to, but when I was attorney general, that office was legislative counsel for the legislature, advised the members of the legislature, advised the various administrative departments under the governor, and advised the governor, and wrote legal opinions interpreting the law. Since that time the legislature has created a Legislative Council, that Legislative Council has a political scientist in charge, Jack McKay. It could very well have a lawyer and is authorized to engage any legal services that may be required. The legislature has full power to hire all the legal assistance it needs during the sessions so that I believe that Mr. Stewart's thought is well taken, that the attorney general will be the attorney for the executive arm of the government and that if we have the governor appoint an attorney general, he is not going to be the adviser to the legislature nor the drafter of legislative bills. Now, he may draft proposed legislation for the administrative departments. If the department of health wants a bill, the governor will tell the attorney general to get out a good bill or the commissioner of health, or as the case may be. They'll fall back on the attorney general for some bill draft.

for the governmental departments, but the legislature from now on and under this setup, is not going to have the attorney general doing its bill drafting. It's going to have its own legal counsel. The present Attorney General, because of the press of business, gave up being legislative counsel for the legislature three years ago and told them they were too busy and were just looking after the executive department, and that they were to figure out how to get their own bills drafted. Two years ago that situation got so acute that the Legislative Council was created and it serves a very useful need, but I think that Mr. McLaughlin actually emphasized the wrong answer when he said that the attorney general would be the counsel for the legislature as well as for the executive arm, because under the present development with Legislative Council, he will be the attorney for the executive branch and the legislature can take care of itself. I might also say that I wrestled with this, I started out advocating that the attorney general be elected, but I wrestled with it, I told Mr. Barr that I felt the way he did four or five days ago. Because of my doubts though, I have talked to many people, they have said if you are going to let the governor's administration be held responsible for the conduct of that administration, you have got to at least give the governor an attorney of his own choice. Under this setup he might get an attorney of the opposite political faith. He might get one of his own party who is either inadequate or who is hostile to him, or who doesn't see eye-to-eye with him. In either case, the governor could say at the end of his term, if things haven't gone well, "We had a good program but that attorney general you foisted upon me wrecked our program." There again, you have got passing the buck as to who was to blame because things didn't go well. Now then, if we want to be sure that the strong executive who is going to have the responsibility of carrying out a successful administration is going to get the blame if he doesn't have a successful administration, let us not give him any outs. Let's not take him off the hook by giving him an attorney general that he can put the blame on.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, I don't intend being an applicant for the position of attorney general either by appointment or election, but I don't quite see Delegate Marston's point that there are no attorneys in the Territory who are willing to run to be elected attorney general. I can't see how there would be any attorneys who would be willing to accept the appointment. I support Mr. Barr's position in this matter. I, too, am in favor of a strong executive, but I don't think that the mere fact that because under the appointive system of governorships that the governor virtually has no powers, that we should let that carry

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us too far away. I think that it is a good thing for the people, to have their own elected attorney general who can check the legislation which the governor proposes to introduce and have introduced, and for that reason I am going to vote for this amendment.

BARR: Mr. President, may I close now?

PRESIDENT EGAN: You may, Mr. Barr.

BARR: I was also going to answer Colonel Marston much as Mr. Robertson did. If lawyers aren't available, they aren't available period. Mr. Rivers was talking about an entirely different thing. He mentioned our present Legislative Council. There is not a lawyer in charge. They do draft bills for the legislature. They have taken over a duty which the attorney general formerly did, that is as it should be. There is a lot of detailed work there, but it isn't legal work. If the legislature wants to ask a legal opinion, they will not go to our political science experts, they will go to the attorney general. Now he also stated that if an attorney general of the opposite political party were elected, the governor could pass the buck and say, "Well, you people see what you saddled me with here. I couldn't do anything. He wouldn't let me." Well, if there was an attorney general of the opposite political party there, he would make the governor toe the line pretty well as far as the law was concerned. All the governor could say to the people is, "You see that attorney general, he made me conform with the law." That's all this is designed to do. It isn't supposed to restrict his actions otherwise, just to conform with the law. Now, as Mr. McLaughlin said, because he was the legal counsel for the governor period, that this would not accomplish any particular purpose. It will accomplish several purposes. It is up to you people to decide how important they are. It might provide a little brake on the governor if he wants to go too far. If he wants to over-step the law just a little bit, but the principal purpose it has, the principal objective it will achieve is that it will allow the people to have more hand in the government and that is what we want.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: I request a roll call on this vote and will raise my hand to indicate that request. Under these rules, 10 people have to --

PRESIDENT EGAN: No, that rule failed of passage.

HELLENTHAL: Oh, I see.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Barr be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 12 - Barr, Collins, H. Fischer, Laws, McNealy, Metcalf, Nolan, Robertson, Smith, Sweeney, Taylor, Walsh.

Nays: 40 - Armstrong, Awes, Boswell, Buckalew, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Stewart, Sundborg, White, Mr. President.

Absent: 3 - Coghill, VanderLeest, Wien.)

CHIEF CLERK: 12 yeas, 40 nays, and 3 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Mr. Barr.

BARR: Mr. President, I had another amendment which I had intended introducing providing for the election of a commissioner of labor. I would just like to state that the reason for that was that without destroying the powers of a strong executive, I thought the people would like to have a number of officials elected someplace between the number of two and four, but I can see that this body does not believe that that should be done.

McCUTCHEON: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order, Mr. McCutcheon.

McCUTCHEON: Isn't Mr. Barr speaking to a matter of personal privilege?

PRESIDENT EGAN: Do you ask to speak on a matter of personal privilege, Mr. Barr?

BARR: Yes, I will, if the tape is left on.

HURLEY: I'll move that Mr. Barr be allowed to speak on a matter of personal privilege.

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PRESIDENT EGAN: If there is no objection, the rules will be suspended and Mr. Barr may have the floor on personal privilege.

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BARR: I want to explain that since it is very clearly the intention of this body to have two elected officials, there is no point in me introducing this other amendment and holding up proceedings. I never intend to hold up proceedings at all. I realize the shortness of time here, so I will not introduce that amendment at this time, although in my own heart, I believe that we should have an attorney general and commissioner of labor elected.

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PRESIDENT EGAN: Mr. Sundborg.

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SUNDBORG: Mr. President, I believe this would be an appropriate place to bring up the matter which has been bothering our Committee on Style and Drafting, if I may have the floor on that matter.

PRESIDENT EGAN: Yes, if there is no objection, you may have the floor.

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SUNDBORG: I would like to know if we are creating anywhere in this constitution the office of the attorney general? And I ask it because in our article on direct legislation there is a provision that petitions for referendum and recall and the like, shall be filed with the attorney general who shall certify it to its sufficiency as to form, etc. Since we have not created that office, and I don't believe we should do it by indirection by assigning duties to the man whose office has not been created, I would like to be recognized at the end of this statement under the item of personal privilege, to make a motion and the motion would be that the rules be suspended and the Committee on Style and Drafting be instructed to make a substantive amendment in the article on direct legislation to provide that wherever the words "attorney general" appear, that they be changed to "secretary of state". I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least, besides the governor. He will be called the secretary of state. I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least besides the governor. He will be called the secretary of state. It occurred to us in Style and Drafting that it would be entirely proper that the secretary of state should be the officer of the state with whom petitions under the initiative and under the referendum should be filed, that if he required legal services in order to satisfy himself that they were sufficient as to form, etc., he could get them from whatever officer of the state might be provided by

legislation or otherwise for that purpose, but I think we are probably being inconsistent and maybe we are making a mistake if we set up duties for an official called the "attorney general" and don't set up the office itself in the constitution.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, believing as Mr. Sundborg does --

V. RIVERS: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order, Mr. Rivers.

V. RIVERS: Mr. Sundborg was talking under personal privilege.

BARR: Excuse me.

SUNDBORG: I will now, Mr. President, I am at the end of my statement under personal privilege, am I recognized to make a motion?

PRESIDENT EGAN: You are, if there is no objection, Mr. Sundborg.

V. RIVERS: I object. I wish to make a statement first.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Under personal privilege, there was a minority group in the Committee who felt that the attorney general should be mentioned in the executive article and that rather than have any individual who had obligations to repay to the governor or had favors to receive from the governor by reason of political support, that he should have a certain amount of screening, he should not be limited to one individual. Now I have an amendment available as we get to the end of Section 14 which would cover that, if the body so decides to adopt it, or if the desire to wipe out the screening principle, it still would cover the appointive attorney general and the method by which he might or might not be removed from office. The present executive article is identical in the matter of not mentioning the attorney general, it is identical with the State of Hawaii Constitution in that they also did not set up an attorney general specifically, they allowed the departments to be established as we have done here, but in order to carry out the consistency in connection with the fact that we have mentioned certain duties of the attorney general, we have got prepared, or Mr. Harris and I have prepared here an amendment for discussion covering that point.

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SUNDBORG: Mr. President, in view of Mr. Rivers' statement, I will withhold making my motion until the body decides whether it does wish to constitute the office of attorney general.

PRESIDENT EGAN: Are there amendments to Section 14? Mr. Buckalew.

BUCKALEW: I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment to Section 14.

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CHIEF CLERK: "Line 23 and line 24, page 6, strike 'quasi' and 'judicial'."

PRESIDENT EGAN: Mr. Buckalew, what is your pleasure?

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BUCKALEW: Mr. President, I move its adoption. Also, strike the "and".

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PRESIDENT EGAN: If there is no objection, it may be added to the amendment.

BUCKALEW: I move its adoption, Mr. President.

PRESIDENT EGAN: Mr. Buckalew moves the adoption of the proposed amendment.

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AWES: I'll second the motion.

PRESIDENT EGAN: Miss Awes seconds the motion. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 14, line 23, page 6, strike 'and quasi' and line 24, strike 'judicial'."

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PRESIDENT EGAN: Mr. Buckalew.

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BUCKALEW: The reason I introduced this amendment is for the reason that there has been a dangerous tendency in the last 20 years to establish all kinds of boards that act almost in the capacity of a court. They have the power to fine, revoke licenses, and take all kinds of action. I think that it is setting a dangerous policy in the constitution to mention "quasi-judicial" boards with no limitations on it at all. I am opposed to quasi-judicial bodies and looking at this section with the rest of the sections, it seems to me you find yourself in the position of where you would have a fisheries board, for example, and then have at the same time have a board going

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on a matter that is far removed from Convention business.

PRESIDENT EGAN: Mrs. Hermann, if there is no objection.

(Mrs. Hermann spoke on a matter of privilege.)

PRESIDENT EGAN: Thank you, Mrs. Hermann. Did we have two reconsiderations of amendments that had been adopted, pending or was there one? The Chair only brings it up at this time inasmuch as it might be best if we consider any reconsiderations on this proposal as quickly as we can. That is, it would be up to the maker of the motion actually, but were there two reconsiderations or one?

CHIEF CLERK: One, I think.

PRESIDENT EGAN: If the Chair remembers it, Mr. Kilcher I think reconsidered on the last proposed amendment, but I had the feeling there had been another notice given during the day. If not, we will continue. Mr. Victor Rivers.

V. RIVERS: I have an amendment.

PRESIDENT EGAN: You have an amendment by the Committee?

V. RIVERS: By a minority group of the Committee, myself and Mr. Harris.

PRESIDENT EGAN: Mr. Victor Rivers, you may present your proposed amendment. The Chief Clerk may present the proposed amendment.

CHIEF CLERK: "After Section 14, page 7 of Committee Proposal No. 10/a, insert a new section as follows: 'Section 15.

The Attorney General shall be appointed by the Governor from two or more qualified persons nominated in the same manner as judges by the judicial council. He shall have been admitted to practice law in the State and shall have the other qualifications prescribed herein for heads of principal departments and shall be subject to approval by the Legislature in a similar manner.

The Attorney General may be removed by the Governor with the consent and approval of both houses of the Legislature meeting jointly.' Renumber successive sections to conform to the above insertion."

V. RIVERS: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves the adoption of the amendment. Are there copies available for the delegates? Is there a second to Mr. Rivers' motion?

HARRIS: I second the motion.

PRESIDENT EGAN: Mr. Harris seconds the motion. The matter is open for discussion. Mr. Victor Rivers.

V. RIVERS: Mr. President, this matter of the office of attorney general came up for a good deal of discussion in connection with the strong executive and in connection with the matter of having some screening for the man who would be the attorney general. Some of the Committee felt that it would interfere with the strength of the executive. Others of the Committee felt they wanted to see the attorney general elective and not removable by the governor. It seemed that the only thing that was of main concern to a great many of us was that while we recognize the value of the strong executive, we are not naive enough to think that the governor who is elected will not have certain obligations, commitments, endorsements to meet when he goes into office. We realize that on all the other department heads there may have to be on his part some compromise with his desires under this plan as we have it. We did, however, want to try to eliminate any matter of the return favors or endorsements or obligations to the man who he appointed as attorney general. We are trying to remove that particular office by a screening process we have set up here, so the man who went in there, his appointment would be based on merit and not on any other consideration. As you will note, we have recommended that the attorney general be screened by the Legislative Council in regard to his qualifications, that two or more be screened in accordance with the requirements to fill the job satisfactorily both on the basis of qualifications and on the basis of the governor's desires. The only intent in this is that the attorney general shall be one who is appointed not from the point of view of any obligations from the governor to him, and also the other intent is that the attorney general cannot be removed by the governor without also the approval of the legislature meeting jointly as they approved the appointment of the attorney general at the time he was actually put into office. He would be removed in the same manner, and by that manner only. There has been a good deal said here about diluting the power of the strong executive. I am of the opinion that perhaps a governor going into office where he had to make a large number of appointments, where he had been supported in his campaigns by many individuals who might be men of high degree of competence or average competence, I would be of an opinion that a governor in that position would probably welcome the possibility of the chance of appointing one office in such a manner that he would not have to repay any obligations or indebtedness or favors in that particular appointment. I for one feel the attorney general's office should have removed from it the need for making any concession to competence or qualifications because of political support on the part of the applicant to the governor in seeking election. That is my opinion and I feel there is sound justification for that opinion. I realize there are many divergent opinions here on that subject.

PRESIDENT EGAN: Is there further discussion? Mr. Buckalew.

BUCKALEW: Mr. President, from the beginning I would like to state that I don't like this proposal. The first objection I see is that we are shoving off on the judicial council a function that is not one of their duties. The judicial council was created by Mr. McLaughlin's department. He set up a judiciary. Now we are going to let Mr. McLaughlin's department select an attorney general. Not only does the attorney general have to be approved by the judicial council, the attorney general then has to be approved by the legislature. If the governor wants to remove him he has to get the consent of the legislature. Now, I don't think this matter would even have come up if we had not discovered that the initiative and referendum article referred to the attorney general. The reason I bring that up is that I think Mr. Sundborg had an excellent suggestion that we just insert the words "secretary of state". That is probably one of his functions. That is the only reason I think this business came up. We decided yesterday that we were not going to elect the attorney general. The argument put up by the Committee was they wanted to have a strong executive and today they are going to water it down a little. I think we ought to be consistent and vote this amendment down.

V. RIVERS: I rise to a point of order. I stated this matter had been discussed some time ago in Committee. It did not arise yesterday. This amendment was prepared during the time of the discussion. I also object to referring to any department of this constitution as being the department of some one individual. I don't believe it is either Mr. McLaughlin's or mine or anybody else's; it is the constitution of all the people of Alaska.

PRESIDENT EGAN: Mr. Harris.

HARRIS: I was going to correct Mr. Buckalew, but since Mr. Rivers has already done so, I will only state that I would favor this amendment. We talked about this quite a bit in Committee, and it is a check on the governor. It makes a bit of difference when the attorney general's word becomes law. It actually is law, unless it is disputed in court and found to be not exactly as it is supposed to be, then it is used as law. Therefore, we feel the attorney general should be a qualified man and in order to insure that his qualifications are up to par we needed some type of screening process. Now, we did not screen the man because we wanted to connect him with the judicial department as Mr. Buckalew suggests. The only reason for using the judicial council we feel is that the judicial council is qualified to screen the attorney general. Therefore, that was the reason for bringing up this amendment.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: I agree with Mr. Victor Rivers that the judicial

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council is not the idea that it was limited to one person; it was the product of the Judiciary Committee's combined thought. I am personally opposed to such a method of selection. Within my knowledge there is only one equivalent method of selection of the attorney general, and that is probably in New Hampshire where the attorney general is selected by the justices of the supreme court. I believe that Mr. Buckalew is right in that he says that the attorney general is not otherwise mentioned in the constitution except in the initiative and referendum, and if you can recall, the only reason he was mentioned in the article on the initiative and referendum was originally they had a proposal as it came out of committee, my recollection is, that the 10 qualified voters could submit a proposition to the attorney general, and secure his opinion as to its legality. That is why the attorney general was mentioned. We chopped the portion requiring an opinion of legality from the attorney general, we chopped the portion, if I recall, requiring review of his opinion, and in substance what we did is we made it a function as it stands now, the true function of the secretary of state. The attorney general is in there by happenstance and no other reason. Yesterday we determined that the attorney general should not be elected and implicitly what we determined was it should be within the discretion of the governor subject possibly to confirmation that the governor alone in his discretion would select the attorney general and would be responsible for him. The attorney general, apparently, under the concept that we have implicitly accepted, is an attorney largely for the executive department. In any event, he is a political appointee, he is an executive appointee. I don't believe that we should be putting him through a means test and running him in substance through the judicial council. Under such circumstances, the governor may well say when the attorney general proves unsatisfactory to the electorate at large, the governor should have the direct responsibility, he should not be able to evade it by saying, "It was not my selection." I am opposed to it. The judicial council was designed in the constitution deliberately for one reason. That was for the selection of the justices of the superior and supreme courts, when in substance we are now utilizing them to provide a rather cathartic attorney general. I think that this is a mere compromise, it is not a majority opinion of the Committee on the executive and certainly it has not been considered by the Judiciary Committee. I cannot speak for them, but I feel sure that the majority would feel the same way. Our choice is not a compromise. He is either elected or he is appointed. If he is appointive and if he is going to be one of the consorts of the governor and one of his confidants, he should be selected directly by the governor and the governor should be responsible. If we accept this, then in premise we should accept a screening of every other public official appointed by the governor in his cabinet. I believe the attorney general, if he has to be mentioned, and I don't think it necessary, I don't think he should be embodied in the constitution. The attorney general should be like the attorney general of the

United States, appointed by the executive and the executive is responsible for him. This is, frankly, I think on its face, a compromise measure and I believe the attorney general is without our sphere, and in substance should not even be mentioned in the constitution, let alone nominated by the judicial council.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: May I ask a question of Mr. McLaughlin? Would we gather from your statements that the judicial council is limited only in its purpose to the selection or the recommendation of judges?

MCLAUGHLIN: That is not so, Mr. Rivers, because we have a specific provision in there saying that they shall perform such other duties as are provided by law. I am sure it was the intent of the Convention that their functions would be limited to the judicial. In fact, I think by error you did remark that the attorney general was selected by the Legislative Council when you supported this matter, but I would oppose it just as I would oppose the judicial council selecting the sites of the court houses. I think they are participating now in the executive functions of government and I believe the judicial council should be limited as it has been historically to judicial affairs and not to executive affairs.

V. RIVERS: Do you agree with the judicial council in the matter of screening this man as to qualifications, would be doing the same thing as if he were screening a judge? Isn't it for qualifications and to remove the judge from direct political election or appointment that we put up the judicial council? Isn't the process of screening identical in the two cases?

MCLAUGHLIN: Yes, the process of screening is identical except for this one thing. A judge is supposed to be dispassionate. He is not supposed to be acceptable to the people who appear before him. In the case of the attorney general the attorney general will have a client-attorney relationship to the governor and frankly I believe the governor should have wider choice and discretion. It is like selecting the presidential physician by vote of a selection board. The relationship is something that is intimate, and there is an intimacy of relationship that does not exist between the judiciary and the general public. We are selecting an attorney for the governor and saying, that's it, without regard to personality or anything of the sort.

V. RIVERS: I would like to ask another question, and that is, do you think the attorney general should also be removable at will by the governor at any time after he has been appointed and confirmed?

MCLAUGHLIN: I think that is so, yes.

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V. RIVERS: Do you think the attorney general represents the people of the Territory in the matter of his interpretations of law, or does he represent the administration? I realize the interests at most times are coincidental and the same, but at times when there is any divergence would you also say he represents the people?

MCLAUGHLIN: Frankly, I think the attorney general represents the executive department of the government.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I cannot follow the reasoning either of Mr. McLaughlin or Mr. Buckalew. I think the screening set up in this proposed amendment to Article 10/a is I think a happy choice. It may be a compromise, but I think it is a very fine compromise, in between the two propositions that have been advanced in choosing the attorney general. I believe the judicial council is the proper body to, what you call, screen the attorney general. The duties if given to the judicial council will be the same as they are in regard to the justices of the supreme court and the judges of the superior court. It is to select a competent lawyer to fill the office of attorney general just as they are duty bound to select the best men they can for judicial office. The office of attorney general is a very important office. There has been numerous times in the history of the Territory of Alaska when we have had an extremely weak attorney general and the Territory has suffered by it. If we have a capable attorney general I think we will be a great deal better off if the attorney general is vigorous and follows out the instructions of the governor in fulfilling his office. I feel the attorney general is only, his duties should primarily be the attorney for the executive branch of the state government. In the past there has been times that the attorney general has had to be the legal officer for the executive, Legislative Council, and the counsel for all departments of the Territory. That was extremely a difficult position. I know Mr. Rivers had it for a number of years and he can explain, perhaps better than I can, the difficulties of filling of positions such as that, but I believe primarily the attorney general is the attorney for the governor and the department heads, the departments established by this constitution and who would be under the direct supervision of the governor. I feel that some provision maybe should be made here or the legislature should make one for the employment of a legislative counsel during the sessions of the legislature, and so the attorney general would not have to take a part in that particular matter. I feel that the adoption of this amendment with the governor being given the right to remove the attorney general without the consent of the legislature would be a happy choice.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it seems to me from the arguments

we have heard that probably we are going at this backwards. The arguments have been as to how we should select an attorney general. Now it is my thought on the basis of the bill that we have here that probably what we want to decide is whether we want a constitutional attorney general or not. It seems to me on the executive department, as we have outlined it here so far, that we probably don't want a constitutional attorney general at all; that that matter should be left to the legislature as to whether we do or don't and to what his powers are when the legislature decides to set up an attorney general, and accordingly it seems to me pointless to discuss as to how the attorney general is to be selected. If it is wise in the view of the legislature when they set up an attorney general that he should be screened by the judicial council, these arguments could be made at that time, but at the minute we have not mentioned an attorney general, and it seems to me that the executive department is going to be a whole lot more what the Committee had in mind if we don't set up an attorney general as such in this article. Now I realize that if we don't set up an attorney general we are going to have to do something to the initiative, but that is a different problem and no problem from my standpoint.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: It has been said that perhaps we could omit mentioning an attorney general in this article and that the secretary of state could take over the function of the attorney general with regard to the initiative and referendum. In the initiative and referendum article we said that the initiative should consist of a petition with a proposed bill that the sponsors wished to have made into law and that the attorney general would scrutinize it as to sufficiency for form and the attorney general would condense the matter for appropriate petition heading so that the people that sign it would have an adequate draft as to what they are signing. Afterwards the attorney general shall prepare the ballot title, assuming that enough signatures were obtained and that this bill were to go before the voters. It is a little difficult I think for the secretary of state to engage in all of those legalities, and I think as far as the initiative and referendum is concerned, we ought to have that in the hands of the attorney general just as the initiative and referendum article suggests. However, I see difficulties with this proposed amendment. The judges are banned from politics. They are picked on an absolutely nonpartisan basis. The attorney general presumably should be a member of the same party as the governor. The attorney general, if he is a member of the same party, as attorney general, would take the normal part in politics, but if he is picked on a nonpartisan basis as the judges are, then we have to ban him from engaging in politics and he also could turn out to be somebody of the opposite party. So I believe we are getting crossed up if we try to put the attorney general through legislative council. I think we are getting -- the judicial

council I mean -- I think we are getting the judicial council into some little difficulties, etc., and from the political standpoint we want to keep them out of it. They can't hold any position or be active on the political scene. So if this particular amendment does not pan out, I am going to propose one as follows: The department heads appointed by the governor shall include an attorney general. Then we can leave the initiative and referendum functions right where they are.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, as it has been mentioned, this is a minority report from the Committee, and I think it is only right you hear from some of the rest of the Committee regarding this. We in our Committee felt that it would be the wishes of the majority of the Convention to have a strong executive. By that we did not mean a dictator, one who would get into power and be the absolute power in the state, but one who through appointive powers would be able to select his co-workers down through the various offices so that when the state's functions would be successful we could say that we had a good governor, and when they would not be successful we would know who to blame and could vote accordingly at the next election. Mention has been made not only here on the floor but also the same argument in the Committee that the governor would have certain obligations and would be expected to lean toward that obligation in the appointing of an attorney general, but I can't help but feel that that same trend of thought would run right down through the other departments, and I believe that there are other departments under the governor that are of equal importance and if the governor is going to bow to party obligations or other obligations in selecting of the attorney general, he will do the same thing all the way through his other department heads, and we won't have a man in there that we can be fully proud of, and I think we are going to want to elect a governor who will be able to stand on his own two feet and appoint the men that he feels should be in the office. I think if he is that type of man he will not only be respected by one party but by all of the people of the state. As far as the removal is concerned, if we worry that the governor may remove the man at will, if that is not best, we can always insert that he be removed with the consent of the legislature, that is another matter, but as far as the appointing is concerned, I think that is vital right now. As far as screening is concerned, I can see that it might have been good in the past to have the nominations for attorney general screened some way before they even face election by the people. Be that as it may, I think if we elect a governor it is his duty to screen and select a good attorney general. That is part of his job. We are electing him to do that very thing, and if he fails to select a good attorney general then he is that much more a failure as a governor, and he will stand that test in the coming election. If we feel that the attorney general must be screened so that we have the best possible attorney general, I think it is also

necessary that the head of the department of education, head of the department of welfare, health and labor, and all the other department heads be screened by somebody so that this governor gets the right men in his cabinet, so to speak. I certainly feel that he should be able to screen and select a good attorney general as well as select the other department heads. But I think there is one thing that is even more important and we discussed that in the Committee, and that is the matter of compatibility. We have felt in the past that we have not had attorney generals who have been entirely in sympathy with the governor and it has been due to the way the two have gotten to their office. We elect the one and the other is appointed out of Washington, and we have seen certain cases where they have not worked out in harmony. Now, if the attorney general is to represent the people alone, then of course he should be elected, but as he is to work under the executive department we want a man who is compatible with the governor and with his type of program that he wants to put over in the state, one that understands the governor, one that will work with the governor and ask the judicial council as set up, not to honor party politics but to work in a nonpartisan capacity. Yet I feel they will not be able to do that as far as the attorney general is concerned, and I don't believe there is any more reason to feel that a judicial council nominee would be any more compatible than one elected by the people of the state; if they are going to ask the governor, "Will this man work with you or will that man work with you, do you want this one or that one?" You might as well say, "Let the governor pick the man in the first place." If they are going to have the liberty to put up a man that will not work with a governor, then we spoil our whole plan for an effective administration. I believe, as Mr. Ralph Rivers mentioned, if we want the attorney general's office mentioned at all in the constitution, it would be very simple on Section 16, line 14, after "department" to insert the words "including the attorney general's office." That would make it very clear that the governor would have the appointive powers and that the attorney general's office would be one that he would have direct control over. That gives you, I believe, some of the Committee thinking regarding the attorney general being appointed by the governor.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: I would like to ask Mr. Rivers a question, if I may. Mr. Ralph Rivers, are the services of the attorney general available to the secretary of state in case he needs them?

R. RIVERS: Yes.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, I would like to ask Delegate Rivers a question through the Chair, if I may.

PRESIDENT EGAN: You may ask your question, Mr. Buckalew, if there is no objection.

BUCKALEW: Mr. Rivers, I notice that the proposal, that the caption is by Delegate Rivers. My question was whether this was a committee proposal or your separate individual proposal?

PRESIDENT EGAN: Mr. Rivers has already answered that question, Mr. Buckalew. He said that it was actually a proposal of his and of Mr. Harris. Mr. Victor Rivers.

V. RIVERS: In closing this discussion, I will make it brief. I just want to say, in my opinion it is no compromise opinion. If it had been a compromise we would not have this discussion on the floor. It has been pointed to as a compromise. Those of us who submitted this proposal honestly and actually think the attorney general should be screened. Now I wanted to clear up a point that Mr. McLaughlin made. He pointed out that certain appointive methods were used in the State of New Hampshire. They are. The attorney general is appointed by the governor and a council of five. In the State of Tennessee the attorney general is appointed for a period of eight years by the justices of the supreme court. In four states, as I am able to count, the attorney general is appointed by the governor by and with the consent of the legislature. In three states the attorney general is appointed by the governor and in the balance he is elected by the people. So if you add that up you will find about 38 states in which he is elected; in these two states I have mentioned, Tennessee and New Hampshire, he is appointed under a similar plan, and in the balance of the states he is appointed by the governor with or without the approval of the legislature, as the case may be. It is my thought, and I have observed this rather closely from some contact with the legislature, that while the attorney general is in essence not a judge, he does interpret the law which governs people until somebody challenges his interpretation, and then his decisions oftentimes and most of the time do have the force of law until they are upset or turned over or otherwise disturbed by having somebody appeal to the courts. It does not seem to me to be a bit out of line that the attorney general should be properly screened as to competence, and in the selection of the attorney general the governor should be relieved of the obligation to repay any favors or to make any particular discrimination in favor of any individual. It has been stated here that we tie the hands of the strong executive. Read this amendment over again. It does not say who the governor shall appoint. It says, "Two or more shall be screened by the judicial council and submitted to the governor for his appointment." He is not limited to the one man or two men or three men. If he can't make his choice he might even have four men, but he does have any obligation removed in making that appointment to any individual. It would be entirely free of a political aspect insofar as it affected the attorney general's competence. There is nothing in here that is counter to common practice, I refer

to the State of New Hampshire, the State of Tennessee, and others, but it costs you money if you go to court to upset an attorney general or any other similar official's opinion. That opinion as I have seen it many times, that opinion has the force of law and interpretation of any laws the legislature may have passed. While you might not view him as a judge, in essence he is a judge of what that law says until it's determined otherwise by the courts. In essence he is a judge of what certain things do that apply to the people. For that reason I think that he should be screened as to competence. I see nothing in that which weakens the strong executive. The governor might say of the first two appointees named, "I am unable to make a choice; submit me another name." There is nothing that stops him from doing that in the proceedings of the council. It seems to me that some determination which would relieve this office of having to be filled by any repayment of political favor or obligation should be set up, and that is why we have introduced this amendment. It is no compromise.

PRESIDENT EGAN: Mr. Victor Rivers had stated he was closing. No one objected. Unless there is someone who has not spoken -- Mr. McLaughlin.

MCLAUGHLIN: I wanted to ask Mr. Rivers a question. Mr. Rivers, when you say the council in New Hampshire, you mean that five elected executive council who are elected by the people together with the governor?

V. RIVERS: I stated the council of five. The council of five is elected for two-year terms along with the governor and they determine with the governor the appointment of the attorney general.

MCLAUGHLIN: But that is not a judicial council at all, is it?

V. RIVERS: I don't know what their duties are. They are a council of five, but whether they are constituted as ours is, I do not know.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Victor Rivers and Mr. Harris be adopted by the Convention?"

HARRIS: I request a roll call.

PRESIDENT EGAN: Mr. Harris asks that we have a roll call. The Chief Clerk will call the roll on the question.

(The Chief Clerk called the roll with the following result:

Yeas: 18 - Barr, Collins, Cross, H. Fischer, Harris, Hinckel, Kilcher, Metcalf, Nerland, Nolan, Peratrovich, Reader, V. Rivers, Robertson,

his term of office and put him on the same basis as the judiciary.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Marston be adopted by the Convention?" All those in favor of adopting the proposed amendment will signify by saying "aye", all opposed "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 9? Section 10? Section 11? The Chief Clerk will please read the proposed amendment to Section 11.

CHIEF CLERK: Mr. Hellenenthal proposes the following amendment: "Section 11, strike lines 25 and 26, page 5, and strike lines 1, 2, and 3 on page 6, and substitute 'The governor, as provided by law, shall nominate, appoint and commission all officers of the armed forces.'"

PRESIDENT EGAN: What is your pleasure, Mr. Hellenenthal?

HELLENTHAL: I move the adoption of the amendment.

PRESIDENT EGAN: Is there a second to the motion?

KNIGHT: I second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. The motion is open for discussion. Mr. Hellenenthal.

HELLENTHAL: The present language dignifies flag officers and general officers in the state militia, I believe, out of proportion to the need. The matter is primarily legislative, especially on the state level and especially in a state where the federal government beyond any doubt would take full command of the military in case of trouble, and I just hate to think of some governor appointing Alaskan colonels or admirals in the Alaskan navy. I don't think it is necessary.

JOHNSON. Mr. President, may I inquire as to the exact wording of the suggested amendment?

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment.

CHIEF CLERK: "Strike lines 25 and 26, page 5, and strike lines 1, 2, and 3 on page 6, and substitute 'The governor, as provided by law, shall nominate, appoint and commission all officers of the armed forces.'"

JOHNSON: Mr. President, I think that I shall support this amendment because it takes away the necessity of the governor, apparently it does anyway, submitting these nominations for confirmation by a joint session of the legislature, and I am certainly in favor of that.

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PRESIDENT EGAN: Mr. Boswell.

BOSWELL: I note that the way the amendment reads, it seems a little incomplete. It reads "officers of the armed forces". I think it should have at least "of the state" in it.

HELLENTHAL: Yes, "of Alaska".

PRESIDENT EGAN: If there is no objection the words "of Alaska" will be made an addition to the proposed amendment. Is there objection? Is there objection to adding those two words? If not, it is ordered and the words have been added to the proposed amendment. Mr. Victor Rivers.

V. RIVERS: Is it on the floor for the discussion?

PRESIDENT EGAN: Yes.

V. RIVERS: All you are doing by the amendment, as I see it, is taking out the confirmation of the adjutant general, perhaps one or two other officers from the legislature. The governor here appoints the adjutant general under this amendment and he does not have to have the approval of the legislature for that appointment. That is a relatively important office in our Territory or what would be our state government. I oppose the amendment.

PRESIDENT EGAN: Mr. Barr.

BARR: I believe that Mr. Rivers overlooked one other thing. The amendment allows the governor to appoint and commission all officers. Now that would be the final authority. You just can't do that under the laws of the United States. These higher ranking officers, the appointment has to be sent in to Washington and approved there before they can be commissioned. That is why this committee report was worded this way. The higher ranking officers had to go to Washington for approval but the governor can appoint colonels and lower without that.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Now that everybody has got it fouled up, forgive me, I retract that whole statement. Mr. Chairman, I know something of the matter of which Mr. Barr speaks and the others. There are two types of services in the National Guard. You have the Alaska National Guard and you have the National Guard of the United States. It becomes too complex to discuss the matter. I would recommend the adjutant general of the state normally would be a brigadier general; properly he should be, and any flag officer is the equivalent of a brigadier general. General officers traditionally are provided in the state constitution for appointment by the governor and ratification by the senate. We are running counter, we are literally running

counter to the experience of most states in deliberately doing that. That is, I don't think the adjutant general should be any different from the head of a department, as he would be in the state, and I think that he should be ratified, and I believe that Mr. Hellenthal's objection largely is to an expression such as "flag officers". If that is an objection, it can be cleared up by generic words in Style and Drafting. I oppose the amendment as being contrary to what we have done here in the past as to other officers.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Hellenthal be adopted by the Convention?" All in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 10 or Section 11? If not, are there amendments to Section 12? Section 13? Section 14? Section 15? Section 16? Mr. Metcalf.

METCALF: May I ask Mr. Rivers a question?

PRESIDENT EGAN: You may, Mr. Metcalf.

METCALF: Mr. Victor Rivers, you say the head of each principal department, does that include the attorney general?

V. RIVERS: By specific mention of the will of this body the attorney general is not included in this section.

METCALF: Does he have to be confirmed by the senate at all, or the legislature?

V. RIVERS: Insofar as he would fall under the head of one of the principal departments, I assume he would.

METCALF: You assume he would be one of the heads of the principal departments?

V. RIVERS: It is merely an assumption.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: The attorney general question worries me very much, and I would like to submit a small amendment. It is three words, that is all.

PRESIDENT EGAN: Would you submit it please, Mr. Metcalf.

CHIEF CLERK: "Section 16, page 7, line 14, immediately following the word 'Department', insert the phrase 'including the attorney general'."

PRESIDENT EGAN: Mr. Metcalf, what is your pleasure?

METCALF: I move that it be adopted and ask unanimous consent.

BUCKALEW: Objection.

DOOGAN: Point of order.

PRESIDENT EGAN: Objection is heard. Your point of order, Mr. Doogan.

KNIGHT: I second the motion.

DOOGAN: My point of order is that we have already considered this matter once, and I take exception to the remarks by the Chairman of the Legislative Committee in that this body by their action implied that the attorney general would not be one of those principal departments. I take exception for this reason: that is, as it was so aptly pointed out by Mr. Davis, the thing they did not want to do was to set up the attorney general's office in the constitution but it could be set up as one of the principal departments.

PRESIDENT EGAN: As to the point of order raised by Mr. Doogan, we did consider spelling out that there be an attorney general once before in this section, did we not? Mr. Ralph Rivers.

R. RIVERS: I was about to offer an amendment so I got talked out of it, so it is the first time it has come up.

PRESIDENT EGAN: If this is the first time, the point of order would not be well taken at this time. Mr. Taylor.

TAYLOR: I was going to raise the same point of order as Mr. Doogan, but I think I am going to go even further because there was a specific amendment offered to provide for the establishment of an elected attorney general.

PRESIDENT EGAN: This does not say though, Mr. Taylor, that he would have to be an elected attorney general.

TAYLOR: Mr. Barr's motion to adopt an amendment to that effect would be.

PRESIDENT EGAN: But Mr. Metcalf's amendment does not include anything of that nature, so the amendment would be in order at this time, Mr. Taylor. Is there discussion of the proposed amendment as offered by Mr. Metcalf? Mr. Metcalf.

METCALF: I feel that mention of the attorney general's office should be made because we have mentioned it in the proposal under direct legislation, and in initiative and referendum, I think we mentioned it once or twice there. I am confused as to whether the senate is to ratify the nomination once every two years or once every four years. I am in a state of confusion

and I would like to have this spelled out a little more as far as this important office is concerned. That's my feeling on the matter.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: May I speak on this matter now. I don't believe that it is necessary to put an attorney general in there. If you do that you might as well put all the branches you are going to have, all the principal branches of the executive department in because it naturally falls into the category of one of the principal branches of the legislature, and I think we considered that the other day. It was felt that it was a legal department of the executive branch and should not be necessarily named because the governor would have the right under our present article to appoint the attorney general who sets up the legal department of the executive department, and I can't see whether if you add that attorney general on there including the attorney general, you had better put it including the highway department and all other things. I think we should leave it the way it is, and the other things will naturally follow and fall into the proper category.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Metcalf be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 16? If not, are there amendments to Section 17? Amendments to Section 18? Mr. Sundborg.

SUNDBORG: Mr. President, I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Sundborg.

CHIEF CLERK: "Strike Section 18 and substitute the following: 'Section 18. The Governor may make ad interim appointments to fill vacancies occurring during a recess of the legislature in offices requiring confirmation of either or both houses of the legislature. The duration of such appointments shall be prescribed by law.'"

SUNDBORG: Mr. President, I move the adoption of the amendment.

R. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Sundborg moves the adoption of the proposed amendment, Mr. Rivers seconds the motion. The motion is open for discussion. Mr. Sundborg.

SUNDBORG: Mr. President, a little while ago I submitted another

Sec. 44.23.010. Attorney general.

The principal executive officer of the Department of Law is the attorney general.

Sec. 44.23.020. Duties; and powers; waiver of immunity.

(a) The attorney general is the legal advisor of the state, including the governor and other state officers.

(b) The attorney general shall

(1) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(2) represent the state in all civil actions in which the state is a party;

(3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(4) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(5) draft legal instruments for the state;

(6) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

(7) perform all other duties required by law [OR WHICH USUALLY PERTAIN TO THE OFFICE OF ATTORNEY GENERAL IN A STATE]; and

(8) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law, division of consumer protection, before publication.

(c) The Attorney General may, subject to the power of the legislature to make appropriations, settle actions, matters and prosecutions under subsection (b) in which the Attorney General represents the state and in which the state is a party.

(d) Before January 1, 1999, the attorney general may, in a case that involves the state's title to submerged lands, or in any case in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080, waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States. The expiration on January 1, 1999, of the attorney general's authority to waive the state's Eleventh Amendment immunity does not affect existing waivers in ongoing cases.