

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

3030 SCOMM 137: HOUSE SPECIAL COMMITTEE ON EDUCATION 2005-2006

SCOMM

137:15

MEMORANDUM

State of Alaska
Department of Education
& Early Development

To: The Honorable Mark Neuman, Chair
House Special Committee on Education

Date: January 26, 2005

Phone: 465-2802

FAX: 465-4156

From: Roger Sampson
Commissioner

Subject: Request for Hearing
HB 65 & HB 73

House Bill 65, Appropriations: K-12 Public Education and House Bill 73, increasing the amount of the base student allocation, have been assigned to the House Special Committee on Education. The Department of Education & Early Development would like to request they be calendared and heard as soon as possible.

Dick Luther, the department's legislative liaison will be happy to work with you or your staff to schedule a committee hearing on HB 65 and HB 73. Please contact Dick at 465-2803 or Richard_Luther@eed.state.ak.us.

Thank you for your consideration.

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 12, 2005

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making special appropriations for the support of K-12 public education in the state.

I am asking the Legislature to not only make permanent the \$84 million increase to K-12 education approved for fiscal year 2005, but to increase education by another \$127 million over the next two fiscal years. I am asking that the Legislature give the education budget priority by passing appropriations for fiscal years 2006 and 2007 during the first regular session of this Legislature.

I want to avoid the unnecessary cycle of districts sending pink slips to teachers each school year as a means of anticipating possible budget cuts. It is my sincere hope that this early funding package will let schools focus on teaching over the next two fiscal years instead of worrying about how to make ends meet.

This bill would cover fixed retirement costs, higher-than-expected costs of fuel oil, and other inflationary costs as well as providing the money necessary to pay the core costs of classroom education. These appropriations would be conditioned on the enactment of an increase of \$304 in the base student allocation for fiscal year 2006 and another increase of \$310 for fiscal year 2007 and subsequent years. Meeting these costs and enacting the increases to the base student allocation would address the needs of school districts in the state by allowing them to stabilize their administrative planning and concentrate their efforts and resources on increasing student achievement and efficiently running the state's K-12 educational system.

I urge your favorable consideration of this bill.

Sincerely yours,

A handwritten signature of Frank H. Murkowski in dark ink.
Frank H. Murkowski
Governor

Enclosure

HOUSE BILL NO. 65

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/18/05

Referred: House Special Committee on Education, Health, Education and Social Services, Finance

Funding Information:	General Fund	\$919,276,100
	Other Funds	32,738,300
	Total	\$952,014,400

A BILL**FOR AN ACT ENTITLED**

1 "An Act making special appropriations for the support of K-12 public education in the
2 state; and providing for an effective date."

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

4 * **Section 1.** DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT - K-12
5 SUPPORT FOR FY 2006. (a) The sum of \$825,103,900 is appropriated to the Department
6 of Education and Early Development from the general fund and from other sources in the
7 amounts set out in (b) of this section, for the following purposes and allocated in the amounts
8 listed, for the fiscal year ending June 30, 2006:

9	PURPOSE	ALLOCATION
10	Foundation program	\$762,255,200
11	Boarding home grants	185,900
12	Youth in Detention	1,100,000
13	Special schools	7,469,600
14	Pupil transportation	54,093,200

1 (b) Following are the fund sources and amounts for the appropriation made by (a) of
2 this section:

3	FUND SOURCE	AMOUNT
4	General fund receipts	\$792,365,600
5	Federal impact aid for K-12 schools	20,791,000
6	Public school trust fund	11,947,300

7 (c) Subject to sec. 3(a)(1) of this Act, the sum of \$62,058,400 is appropriated from the
8 general fund to the Department of Education and Early Development for the foundation
9 program for the fiscal year ending June 30, 2006.

10 (d) Subject to sec. 3(a)(1) of this Act, the sum of \$425,100 is appropriated from the
11 general fund to the Department of Education and Early Development, special schools, for the
12 Alaska military youth academy for the fiscal year ending June 30, 2006.

13 * **Sec. 2. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT - K-12**
14 **SUPPORT FOR FY 2007.** (a) Subject to sec. 3(a)(2) of this Act, the sum of \$63,993,500 is
15 appropriated from the general fund to the Department of Education and Early Development
16 for the foundation program for the fiscal year ending June 30, 2007.

17 (b) Subject to sec. 3(a)(2) of this Act, the sum of \$433,500 is appropriated from the
18 general fund to the Department of Education and Early Development, special schools, for the
19 Alaska military youth academy for the fiscal year ending June 30, 2007.

20 * **Sec. 3. CONTINGENCY.** (a) The appropriations made by secs. 1(c), 1(d), 2(a), and 2(b)
21 of this Act are contingent upon the passage by the Twenty-Fourth Alaska State Legislature
22 and enactment into law before July 1, 2005, of a bill that increases the base student allocation
23 under AS 14.17.470 to at least

24 (1) \$4,880 for the fiscal year ending June 30, 2006; and

25 (2) \$5,190 for the fiscal year ending June 30, 2007.

26 (b) If the contingency set out in (a)(1) of this section is not satisfied, the
27 appropriations made by secs. 1(c) and 1(d) of this Act are void and of no effect. If the
28 contingency set out in (a)(2) of this section is not satisfied, the appropriations made by secs.
29 2(a) and 2(b) of this Act are void and of no effect.

30 * **Sec. 4.** Sections 1(a) and 1(b) of this Act take effect July 1, 2005.

31 * **Sec. 5.** Sections 1(c), 1(d), 2(a), 2(b), and 3 of this Act take effect June 30, 2005.

Governor Murkowski's K-12 Funding Package

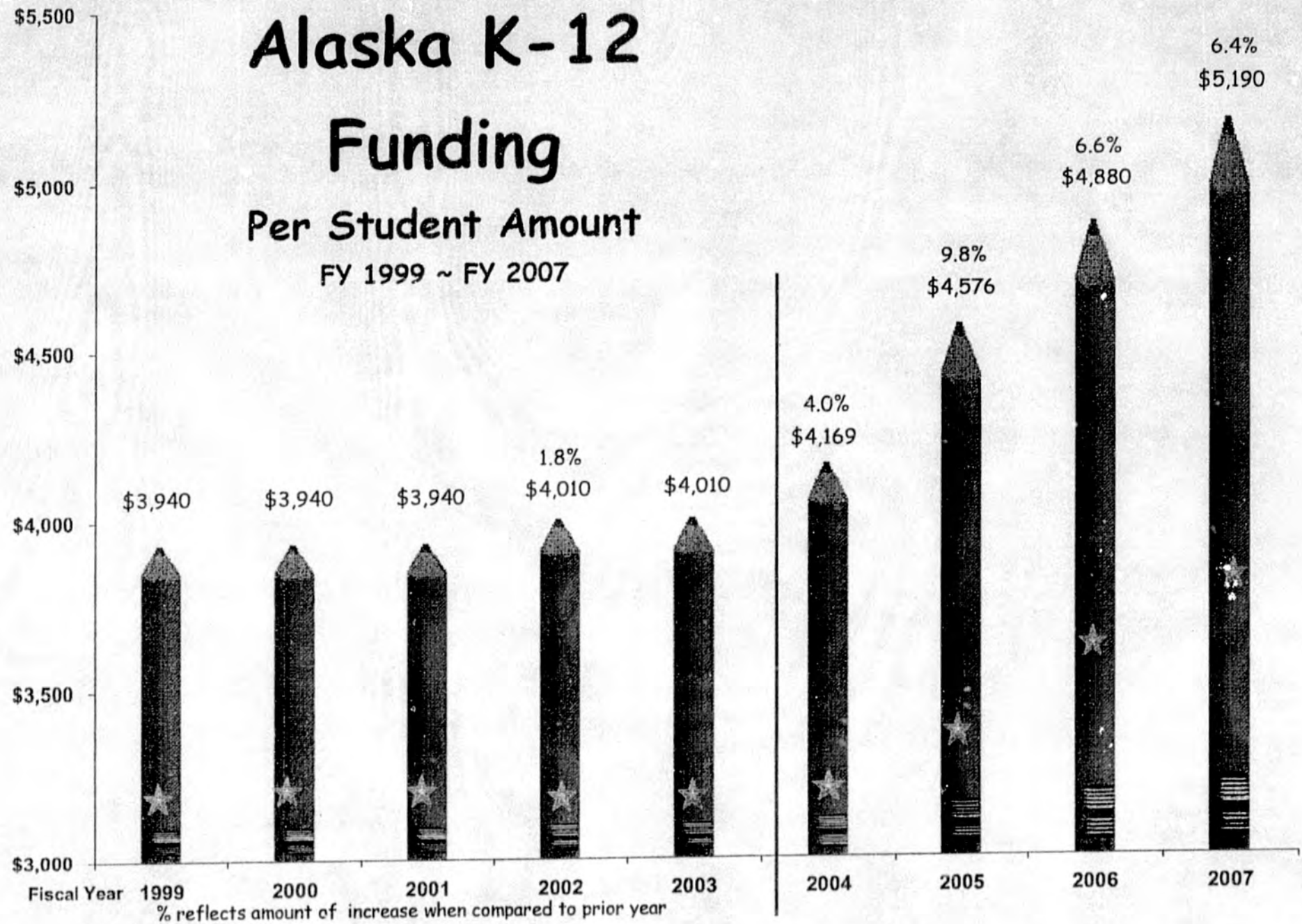
- **Predictability in future funding.**
Approve two years of funding (Fiscal Year 2006 and 2007) instead of only one year so school districts will know on how much state funding they can rely.
- **State pays PERS and TRS increases.**
The state will cover the increased retirement system costs for school districts, estimated to increase \$38 million next year and another \$39 million the year after.
- **More state funds to cover other increased costs.**
Additional funding to cover increased costs of day-to-day delivery of education. Using a three year average for Anchorage CPI, this would provide an estimated \$24 million in increased funding next year and another \$25 million increase the following year.
- **Increase state's "student base allocation."**
Increase the per student education funding formula by \$304 (to \$4,880) next year and by another \$310 (to \$5,190) the following year.
- **The bottom line: \$208 million more for K-12 schools**
The state's support per student will have increased 29% during the first four years of this Administration. This translates into a \$208 million increase in state support for education.

Commitment. Accountability.

Alaska K-12 Funding

Per Student Amount

FY 1999 ~ FY 2007



SCOMM

137:16

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

January 12, 2005

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would raise the base student allocation for students attending public school grade levels kindergarten through 12 (K-12) over the next two years. This bill is an important component of my effort to forward-finance K-12 public education at a level that meets the increased costs our school districts have seen in recent years.

Under the bill, the base student allocation would increase to \$4,880 for fiscal year 2006, and to \$5,190 for fiscal year 2007 and subsequent years. Currently, the base student allocation is set at \$4,576. My proposal will result in a \$62 million increase for school districts in FY 06 and a \$64 million increase in FY 07.

In FY 06, school districts will face an estimated \$39 million increase in Public Employees' Retirement System and Teachers' Retirement System with an additional \$40 million increase in FY 07. Combined with inflation, the escalating price of keeping our promise to retired teachers and school employees has unintentionally placed our public school system in a budget crisis. School districts are forced to eliminate essential programs and staff making it increasingly more difficult to provide the highest quality of education possible for our children. The funding blueprint I am presenting in this bill will cover those burdensome cost increases over the next two years, allowing our school administrators to proactively manage their budgets so teachers can focus on improving student achievement.

I urge your prompt and favorable action on this measure, so very important to the future of Alaska's public schools and our children.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Frank H. Murkowski".
Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 73
(H) Publish Date: 1/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
Title An act increasing the base student allocation RDU K-12 Support
for state financing of public schools; and providing for an ... Component Special Schools
Sponsor Rules Committee
Requester Governor Component No. 2735

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	425.1	433.5	0.0	0.0	0.0	0.0
Miscellaneous						
TOTAL OPERATING	425.1	433.5	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	425.1	433.5	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	425.1	433.5	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the Base Student Allocation over the next two fiscal years from \$4,576 to \$4,880 for FY06 and from \$4,880 to \$5,190 for FY07.

The funding for the Alaska Challenge Youth Academy is authorized under AS 14.30.740. The funding of this program is directly linked to the based student allocation set out in AS 14.17.470.

Prepared by: Eddy Jeans, Director Phone 465-8679
Division School Finance Date/Time 1/13/05 10:28 AM
Approved by: _____ Date 1/13/2005
Agency Education & Early Development

ALASKA MILITARY YOUTH ACADEMY

FY06 PROJECTION

175 x \$4880 x 7 =	5,978,000
289 x \$4880 x .6 =	846,192
less \$2,100,000	(2,100,000)
	4,724,192
FY06 Current Entitlement:	4,299,078
FY06 INCREASE TO AMYA:	\$ 425,114

FY07 PROJECTION

175 x \$5190 x 7 =	6,357,750
289 x \$5190 x .6 =	899,946
less \$2,100,000	(2,100,000)
	5,157,696
FY06 NEW Entitlement:	4,724,192
FY07 INCREASE TO AMYA:	\$ 433,504

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 73
(H) Publish Date: 1/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
Title An act increasing the base student allocation RDU K-12 Support
for state financing of public schools; and providing for an ... Component Foundation Program
Sponsor Rules Committee
Requester Governor Component No. 141

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	62,058.4	63,993.5	0.0	0.0	0.0	0.0
Miscellaneous						
TOTAL OPERATING	62,058.4	63,993.5	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	62,058.4	63,993.5	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	62,058.4	63,993.5	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the Base Student Allocation over the next two fiscal years from \$4,576 to \$4,880 for FY06 and from \$4,880 to \$5,190 for FY07.

Prepared by: Eddy Jeans, Director
Division: School Finance
Approved by: _____
Agency: Education & Early Development

Phone 465-8679
Date/Time 1/13/05 10:33 AM
Date 1/13/2005

School District	FY06	FY06	Difference
	Projection @ \$4,576	Projection @ \$4,880	
Alaska Gateway	4,915,667	5,161,718	246,051
Aleutian Region	1,059,727	1,104,869	45,142
Aleutians East Borough	3,501,788	3,777,227	275,439
Anchorage	223,154,797	243,373,633	20,218,836
Annette Island	1,398,131	1,571,490	173,359
Bering Strait	17,205,353	18,796,143	1,590,790
Bristol Bay Borough	1,239,140	1,369,912	130,772
Chatham	1,733,593	1,856,336	122,743
Chugach	1,905,637	1,969,843	64,206
Copper River	6,032,438	6,445,060	412,622
Cordova	3,087,845	3,339,819	251,974
Craig	3,698,050	3,973,547	275,497
Delta/Greely	8,942,900	9,535,207	592,307
Denali Borough	4,597,598	4,939,735	342,137
Dillingham	4,263,506	4,600,943	337,437
Fairbanks N. Star Borough	72,823,842	79,436,784	6,612,942
Galena	16,058,992	16,686,534	627,542
Haines Borough	1,563,785	1,722,750	158,965
Hoonah	1,535,829	1,653,683	117,854
Hydaburg	767,366	798,961	31,595
Iditarod Area	4,427,089	4,603,109	176,020
Juneau Borough	23,648,457	25,954,620	2,306,163
Kake	1,190,539	1,281,545	91,006
Kashunamiut	2,546,629	2,802,011	255,382
Kenai Peninsula Borough	46,190,906	50,514,996	4,324,090
Ketchikan Gateway Borough	11,703,837	12,770,595	1,066,758
Klawock	1,331,394	1,391,932	60,538
Kodiak Island Borough	15,580,674	16,922,238	1,341,564
Kuspuk	4,610,680	4,999,560	388,880
Lake & Peninsula Borough	5,980,874	6,409,095	428,221
Lower Kuskokwim	39,975,145	42,567,221	2,592,076
Lower Yukon	18,120,223	19,757,175	1,636,952
Mat-Su Borough	83,064,699	89,599,885	6,535,186
Nenana	3,922,379	4,186,859	264,480
Nome	6,359,841	6,835,890	476,049
North Slope Borough	8,451,990	9,737,296	1,285,306
Northwest Arctic Borough	22,227,553	23,924,563	1,697,010
Pelican	404,184	416,277	12,093
Petersburg	3,691,527	4,004,504	312,977
Pribilof	1,258,266	1,377,750	119,484
Saint Mary's	1,992,370	2,125,513	133,143
Sitka Borough	7,265,034	7,932,557	667,523
Skagway	710,547	778,544	67,997
Southeast Island	3,069,832	3,185,815	115,983
Southwest Region	6,817,409	7,431,595	614,186
Tanana	1,027,629	1,099,303	71,674
Unalaska	2,405,593	2,636,945	231,352
Valdez	3,684,508	3,988,019	303,511
Wrangell	2,276,815	2,467,009	190,194
Yakutat	991,431	1,068,893	77,462
Yukon Flats	4,617,236	4,829,756	212,520
Yukon/Koyukuk	11,059,848	11,875,754	815,906
Yupit	4,225,753	4,612,237	386,484
Mt. Edgecumbe High School	1,842,250	2,014,290	172,040
Other	26,096,100	26,096,100	
Total	762,255,225	824,313,645	62,058,420

G:\DistSup\S06Foundation\FiscalNotes\FY06-07Gov4880and5190.xls]STATE \$62 Million increase

School District	FY06	FY07	Difference
	Projection @ \$4,880	Projection @ \$5,190	
Alaska Gateway	5,161,718	5,489,826	328,108
Aleutian Region	1,104,869	1,150,902	46,033
Aleutians East Borough	3,777,227	4,058,103	280,876
Anchorage	243,373,533	263,991,526	20,617,993
Annette Island	1,571,490	1,748,270	176,780
Bering Strait	18,796,143	20,418,329	1,622,186
Bristol Bay Borough	1,369,912	1,503,264	133,352
Chatham	1,856,336	1,981,501	125,165
Chugach	1,969,843	2,035,317	65,474
Copper River	6,445,060	6,865,826	420,766
Cordova	3,339,819	3,596,765	256,946
Craig	3,973,547	4,254,482	280,935
Delta/Greely	9,535,207	10,139,205	603,998
Denali Borough	4,939,735	5,288,625	348,890
Dillingham	4,600,943	4,945,040	344,097
Fairbanks N. Star Borough	79,436,784	86,180,245	6,743,461
Galena	16,686,534	17,306,017	619,483
Haines Borough	1,722,750	1,884,852	162,102
Hoonah	1,653,683	1,773,864	120,181
Hydaburg	798,961	831,180	32,219
Iditarod Area	4,603,109	4,782,603	179,494
Juneau Borough	25,954,620	28,306,300	2,351,680
Kake	1,281,545	1,374,346	92,801
Kashunamiut	2,802,011	3,062,432	260,421
Kenai Peninsula Borough	50,514,996	54,924,430	4,409,434
Ketchikan Gateway Borough	12,770,595	13,858,406	1,087,811
Klawock	1,391,932	1,453,666	61,734
Kodiak Island Borough	16,922,238	18,290,281	1,368,043
Kuspuk	4,999,560	5,396,115	396,555
Lake & Peninsula Borough	6,409,095	6,845,767	436,672
Lower Kuskokwim	42,567,221	45,839,736	3,272,515
Lower Yukon	19,757,175	21,426,435	1,669,260
Mat-Su Borough	89,599,885	96,264,054	6,664,169
Nenana	4,186,859	4,456,559	269,700
Nome	6,835,890	7,321,335	485,445
North Slope Borough	9,737,296	11,047,970	1,310,674
Northwest Arctic Borough	23,924,563	25,655,066	1,730,503
Pelican	416,277	428,609	12,332
Petersburg	4,004,504	4,323,659	319,155
Pribilof	1,377,750	1,499,593	121,843
Saint Mary's	2,125,513	2,261,283	135,770
Sitka Borough	7,932,557	8,613,255	680,698
Skagway	778,544	823,361	44,817
Southeast Island	3,185,815	3,302,015	116,200
Southwest Region	7,431,595	8,057,904	626,309
Tanana	1,099,303	1,172,391	73,088
Unalaska	2,636,945	2,899,856	262,911
Valdez	3,988,019	4,321,283	333,264
Wrangell	2,467,009	2,660,958	193,949
Yakutat	1,068,893	1,147,884	78,991
Yukon Flats	4,829,756	5,046,470	216,714
Yukon/Koyukuk	11,875,754	12,707,763	832,009
Yupit	4,612,237	5,006,350	394,113
Mt. Edgecumbe High School	2,014,290	2,189,725	175,435
Other	26,096,100	26,096,100	
Total	824,313,645	888,307,099	63,993,454

G:\DistSup\S06Foundation\FiscalNotes\FY06-07Gov4880and5190.xls)STATE \$64 Million increase

Governor Murkowski's K-12 Funding Package

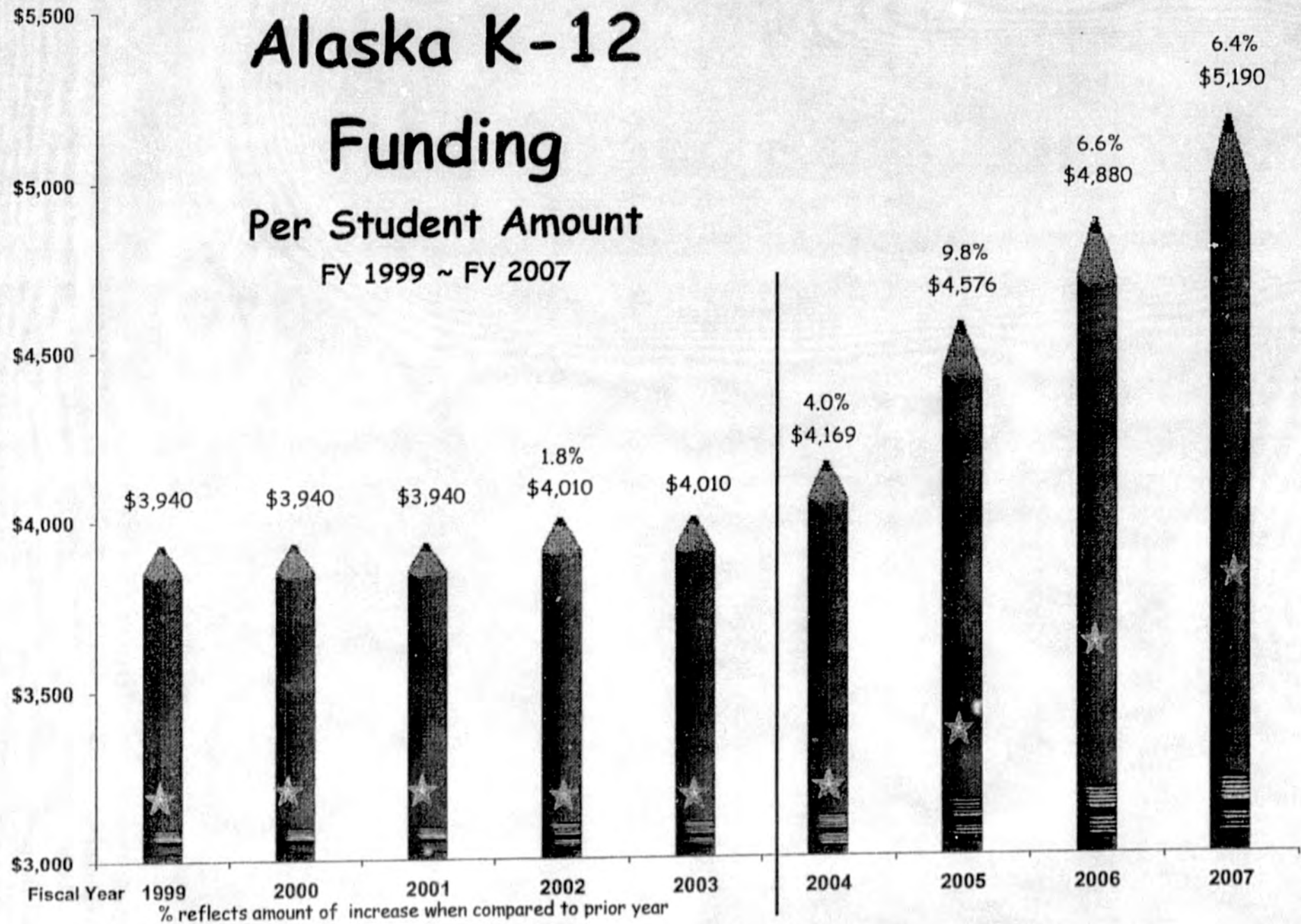
- **Predictability in future funding.**
Approve two years of funding (Fiscal Year 2006 and 2007) instead of only one year so school districts will know on how much state funding they can rely.
- **State pays PERS and TRS increases.**
The state will cover the increased retirement system costs for school districts, estimated to increase \$38 million next year and another \$39 million the year after.
- **More state funds to cover other increased costs.**
Additional funding to cover increased costs of day-to-day delivery of education. Using a three year average for Anchorage CPI, this would provide an estimated \$24 million in increased funding next year and another \$25 million increase the following year.
- **Increase state's "student base allocation."**
Increase the per student education funding formula by \$304 (to \$4,880) next year and by another \$310 (to \$5,190) the following year.
- **The bottom line: \$208 million more for K-12 schools**
The state's support per student will have increased 29% during the first four years of this Administration. This translates into a \$208 million increase in state support for education.

Commitment. Accountability.

Alaska K-12 Funding

Per Student Amount

FY 1999 ~ FY 2007



Rep. Mark Neuman
Chair, House Special Committee on Education
State Capitol, Room 409
Juneau, Alaska 99801-1182
April 18, 2005

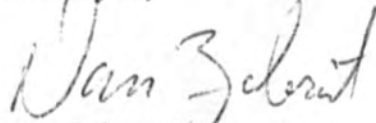
RE: HB 173, Area Cost Differentials for School Districts

Dear Representative Neuman:

As a parent, and on behalf of the Chatham School District, I urge you to support HB 173, Area Cost Differential for Schools, by the Legislative Budget and Audit Committee. According to the *School District Cost Study Update* completed a few months ago by ISER, Chatham School District will be short \$736,098 due to an outdated and incorrect cost index used to allocate state foundation monies. Rising costs in transportation, fuel, electricity and other factors generated by the remoteness of our Alaska locations punish our students when such errors in the district cost factors are left uncorrected.

We sincerely appreciate your efforts to increase funding for our students' K-12 education, as proposed in HB1, adjusting the base student allocation (BSA) upwards to \$4,919. Passing HB 1 and HB 173 will help greatly to provide safe and well functioning schools for our kids.

Thank you,

A handwritten signature in cursive script, appearing to read "Dan Zobrist".

Dan Zobrist, Treasurer
Chatham School Board

SCOMM

137:17

Alaska State Legislature

Juneau

State Capitol Bldg., Rm. 434
Juneau, AK 99811-1182
Phone (907) 465-4976
Fax (907) 465-3883
Toll Free 866-465-4976



Fairbanks

119 N Cushman, Ste 213
Fairbanks, AK 99701
Phone (907) 452-6084
Fax (907) 452-6096

Representative Mike Kelly *House District 7*

MEMORANDUM

To: Rex Shattuck, Committee Aide – House Special Committee on Education
From: Heath Hilyard, staff to Rep. Mike Kelly
Date: February 7, 2005
Re: Committee Hearing Request – House Bill 92

Attached you will find the most recent version of HB 92 - "*An Act relating to the purchase of interests in corporations, including limited liability companies, by the University of Alaska.*", and a current sponsor statement. At this time, we have no further materials to be included as part of a committee packet. In addition to myself who will present the bill before the committee, I will have Pete Kelly from the university's state relations department, and Meg Greene who is the acting general counsel for the University of Alaska, available to testify.

If I can provide any other relevant information or answer any immediate questions you might have, feel free to contact me directly at extension 6890.

Thank you.

Alaska State Legislature

Juneau

State Capitol Bldg., Rm. 434
Juneau, AK 99801-1182
Phone (907) 465-4976
Fax (907) 465-3883
Toll Free 866-465-4976



Fairbanks

119 N Cushman, Ste 213
Fairbanks, AK 99701
Phone (907) 452-6084
Fax (907) 452-6096

Representative Mike Kelly

House District 7

HB 92

"An Act relating to the purchase of interests in corporations, including limited liability companies, by the University of Alaska."

The University of Alaska has proven to be a valuable tool in Alaska's economic development. In a desire to allow the university to continue and expand its vital role in this area, we propose a much needed change in Alaska's corporate liability laws intended to protect the university from liability arising from the "piercing the corporate veil" concept.

The "piercing the corporate veil" concept is *"a judicial process whereby the court will disregard the usual immunity of corporate entities from liability for wrongful corporate activities perpetrated fraud. The doctrine which holds that the corporate structure with its attendant limited liability of stockholders may be disregarded and personal liability imposed on stockholders, officers, and directors in the case of fraud or other wrongful acts done in the name of the corporation."*¹ Generally, we believe this is a sound policy intended to protect consumers from fraudulent corporate abuses and encourage good corporate citizenship. However, in the university context the application of this theory has the unintended consequence of discouraging university investment in new corporate endeavors resulting from intellectual property generated by faculty research.

The university cannot support various types of economic development initiatives or associate with public groups through nonprofit corporations without the fear of liability under the "piercing the corporate veil" theory. As described above, the university could become liable for the tort obligations of a corporate entity it may start up, where the entity was not adequately capitalized or insured. In one such immediate example the university rejected a 501 (c)(3) nonprofit corporation to lead the business enterprise institute because of potential corporate veil liability. Likewise, the university has not been supportive of efforts by faculty members with intellectual property to start up corporations, recognizing that if liability were incurred by such a corporation, there would be substantial risk that such liability could pass on to the university.

Our intent with HB 92 is to specifically define a university/corporate liability structure intended to encourage new university investment in limited liability and nonprofit corporations resulting from research-generated intellectual property or companies created and managed on university lands.

The University of Alaska is a valuable component to Alaska's economic engine and this bill will go to great lengths to expand its ability to increase economic development in our state.

¹ Nolan, J.R., & Nolan-Haley, J. M. (1990) Piercing the corporate veil In *Black's Law Dictionary*. (pp. 1147-1148). St. Paul, MN: West.

Mark R. Hamilton, President
Phone: (907) 450-8000
Fax: (907) 450-8012
EMAIL: sypres@alaska.edu



UNIVERSITY
of ALASKA
Many Traditions One Alaska

202 Butrovich Building
910 Yukon Drive
P.O. Box 755000
Fairbanks, AK 99775-5000

April 11, 2005

The Honorable Mark Neuman
Chair, House Education Committee
House of Representatives, State Capitol
Juneau, Alaska 99801-1182

Dear Representative Neuman:

Thank you for hearing HB 92 in committee last week. I understand you have some concerns regarding this bill and have asked how important it is to the university.

Actually, this bill is very important, particularly in light of the university's re-energized mission to make research a viable industry in Alaska. I am sure you are aware of the recent successes UA has had in attracting outside private and public money to the state. In fact, research now provides Alaska with over 2,300 jobs and an \$80 million per year payroll.

Outside entities are beginning to recognize the unique advantages Alaska possesses for a myriad of research interest. UA is seeing rapid growth in research dollars for everything from biomedical research to electronic miniaturization.

Research is often an entrepreneurial enterprise and researchers throughout the United States are often given the opportunity to profit from their area of expertise. Universities often join with their faculty to help incubate potential enterprises that may come from the intellectual endeavors of their researchers. Unfortunately, Alaska's indemnity laws are cumbersome in this regard and it would leave the university over exposed to law suits for those who may be in search of deep pockets.

I was told there were questions in committee regarding safeguards to keep the university from entering into unwise investments. This is an excellent point, and I would like to assure you that any investments the university makes must pass approval from the sponsoring campus, the university president, and the eleven member board of regents who deliberate through a public process.

I believe this bill is clearly in the best interest of the state of Alaska especially as we move closer to the exciting economic opportunities of the 21st century. That is why I respectfully request your support for Representative Kelly's bill.

Sincerely,

Mark R. Hamilton
President

MRH/pe

cc: Representative Mike Kelly

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 13, 2005

SUBJECT: Bill relating to University of Alaska's relationships with other corporations (Work Order No. 24-LS0344\A)

TO: Representative Mike Kelly
Attn: Heath

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Issues. I have not found any obvious constitutional problems with the bill's provisions as long as the purchase of the shares or the membership is for a public purpose of the University (as required in the bill). Under art. IX, sec. 6, of the state's constitution, public money may only be transferred for a public purpose. Whether a public purpose is being served must be decided as each case arises and in the light of the particular facts and circumstances of each case.¹ And the test for public purpose depends on the character of the use to which the property will be put, not on the nature of the entity that will handle the property.² With regard to for-profit corporations, purchasing shares as an investment may serve the public purpose of preserving and increasing state money, but purchasing shares to achieve a commercial purpose of the corporation could be questionable unless the commercial purpose also achieved a public purpose.

The bill handles the potential conflict with other statutes caused by limiting the University's liability by removing the applicability of those statutes. This is done by the "notwithstanding" clause.

2. Corporations covered. The work order did not indicate which corporations it applies to beyond the two broad categories. With regard to for-profit corporations, did you have in mind corporations from other states or limited liability companies? With regard to nonprofit corporations, did you have in mind corporations from other states, and did you want the corporation to be qualified as a nonprofit corporation under federal tax laws?

If I can be of further assistance, please advise.

TLB:med
05-027.med

Enclosure

¹ DeArmond v. Alaska State Dev. Corp., 376 P.2d 717, 721 (Alaska 1962).

² See Lien v. City of Ketchikan, 383 P.2d 721, 722 (Alaska 1963).

Piercing the Corporate Veil

A.) Generally, in a corporate situation, the liability of the shareholders is limited to the amount that they contribute in exchange for an equity interest (i.e. the amount of money they paid to get shares in the corporation).

- a. Creditors cannot satisfy the debts of the corporation by going after the personal assets of the shareholders.

B.) A CORPORATION IS CONSIDERED A SEPARATE ENTITY UNTIL:

- a. UNITY OF INTEREST
- b. CONTINUED RECOGNITION OF THE CORPORATION WOULD BE UNJUST

- i. This doctrine is known as "piercing the corporate veil" (often used to protect the public from fraudulent and illegal acts)

1. FACTORS that justify piercing the corporate veil are:

- a. Fraudulent representation by the corporation's directors
- b. Undercapitalization
- c. Failure to observe corporate formalities
- d. Absence of corporate records
- e. Payment by the corporation of individual obligations → Angelie Corp. pays Billy Bob's credit card bills

- f. Use of corporation to promote fraud, injustice, or illegalities
- g. Commingling of funds and other assets with those of an individual shareholder → commonly found in smaller corporations (Billy Bob uses his corporate account as his personal account as well.)
- h. Personal use of corporate funds
- i. Concealment or misrepresentation of the identity of the ownership or management of the corporation.
 - i. These factors vary from state to state but are generally the same.

C.) All corporations and shareholders are subject to the piercing the corporate veil doctrine. It is a commonly known risk.

- a. HOWEVER, it is rarely done and very difficult for the plaintiff to prove. There is a STRONG presumption that shareholders are not personally liable for the actions of the corporation. The courts want to promote business ventures and if shareholders were commonly found to be liable it would discourage this.
 - i. HB 92 → So if it is so hard to pierce the corporate veil then what is the University worried about?
 - 1. If you want to play the investment game you have to take the same risks as everyone else.

2. HB 92 would protect the University from most risks involved in investing in businesses.

UNFAIR????

6 April 2005

Memorandum

TO: the House Education Committee, Chair Mark Neuman

RE: HB92 comments from Craig Dorman, Vice President for Research and Academic Affairs, University of Alaska Statewide System

Thank you for the opportunity to testify briefly last evening on the proposed change to AS 14.40.458, University Corporate Relations. Per your request, I will briefly reiterate my points:

The authorization requested is limited to ownership of stock, or membership in a corporation, that would "advance the mission of the University of Alaska, pursuant to the policies of the Board of Regents". Thus, such ownership or membership would be undertaken only to advance the instructional and research responsibilities of the university, and not principally as a money-making enterprise.

The motivation for participation in ownership of a corporation derives basically from PL- 96-517 of 1980 (and amendments in PL 98-620 of 1984), commonly referred to as the Bayh-Dole Act. This Act permits universities to elect ownership of inventions made under federal funding, and to become directly involved in the commercialization process. In the quarter century since its enactment, this Act has fundamentally changed university-industrial relationships, and has resulted in the introduction of many new technologies into public use. While there are a variety of ways that universities can transfer their technology to industry, the incubation of new small businesses has proven very successful in enhancing local, state and national economic development, particularly in the vicinity of university campuses. As part of that incubation process, universities may encourage and even assist their faculty to take an equity interest in bringing one of their inventions or ideas into public use; and since under Bayh-Dole the ownership of the invention accrues to the university (with sharing rights as detailed in the testimony of Judge Greene), universities may (and many do) elect to invest their non-general fund resources to encourage such activity. All such arrangements are conducted as business arrangements with full review by University General Counsel, and the proposed provision in AS 14.40 seeks to limit the University's liability to the obligations specified in those agreements.

The university is seeking this provision at this time because of recently enhanced emphasis on support of state needs, and in particular our interest in supporting diversified economic development in the state. As I have stated in earlier testimony to the House and Senate Finance Committees, nationally, industry conducts 70% of R&D, and universities conduct 14%. In Alaska, UA conducts 55% of R&D, and industries only 10%. This disparity suggests the need for even greater diligence on the part of UA than is typical for universities, in taking an

active role in the development and incubation of new business. Recent actions to this end include both external and internal reviews of our technology transfer procedures, the formation of the Business Enterprise Institute (BEI) at the College of Business and Public Policy at UAA, the establishment of the Office of Electronic Miniaturization and search for a Vice Chancellor for Research and Economic Development at UAF, and UAF collaboration with local groups in Fairbanks in the establishment of the "NanookTech Technology Accelerator".

BEI and NanookTech are examples of entities that may evolve into non-profit corporations in which the university may wish to participate. As with stock ownership, the intent of the proposed change to AS 14.40 is to limit the university's liability to those obligations to which it explicitly agrees as a condition of its membership. Another example, which I briefly mentioned during my oral testimony, is the Alaska Ocean Observing System (AOOS), one of a number of such regional systems around the U.S., as recommended by the U.S. Commission on Ocean Policy. AOOS is designed to support safety of life at sea, improved weather forecasting, fisheries, and safety of marine transportation, and the University has played a leading role in its establishment and development. As AOOS and the associated national associations and federal funding mechanisms mature, it will likely become a 501(c)(3) corporation, and again the University would like to be able to continue to participate without the fear of liability reaching beyond its explicit obligations as a member.

UNIVERSITY OF ALASKA RULES REGARDING PATENTS

How patents and royalties are allocated depends on whether the inventor belongs to a union and how the invention was created, i.e., with University resources, independently, or with University sponsorship. This summarizes the various rules.

United Academics members:

For a faculty member who is a member of the United Academics union (almost all faculty researchers in the University fall within this category):

- If the faculty member creates the invention independently without use of University resources or time, the faculty member will own the patent and has the right to determine the disposition of the invention and the royalties paid. The faculty member and the President may agree that the patent may be pursued by the University and the net proceeds shared.
- If the faculty has used University support in creating the invention, the patent belongs to the University and the net proceeds after deduction of expenses to obtain the patent and to market the invention are shared under this formula:

Total Net Proceeds	To Inventor	To department	To UA
First \$10,000	100%	0	0
\$10,001-19,999	80%	20%	0
\$20,000-250,000	40%	25%	35%
\$250,000 +	20%	20%	60%

ACCFT members and UA staff:

The rules for patent ownership for faculty members of the ACCFT union and University staff employees follow:

- If the faculty member or employee creates the invention independently of the University, the creator owns the patent.
- If there is use of University resources or grant funds and contracts obtained by the University, the patent is owned by the University. The royalties for the patents owned by the University are shared with the inventor under this formula:

Total Net Royalty Per Invention	Inventor's Share	University Share
First \$10,000	100%	0%
> \$10,000	50%	50%

Exceptions:

The University may not share the proceeds under either formula if there are restrictions placed on the money that was used to create the invention, such as requirements of grants or third party contracts.



Association of American Universities

1200 New York Avenue, NW, Suite 550 Washington, DC 20005 202.408.7500

An association of 62 leading research universities in the United States and Canada

University Technology Transfer of Government-Funded Research Has Wide Public Benefits

Federal government agencies now provide more than \$14 billion a year to university researchers around the country to conduct scientific research. That continuing investment expands human knowledge and helps educate the next generation of science and technology leaders. New discoveries from university research also form the basis for many new products and processes that benefit the nation and its citizens. In fact, several studies have shown that technological innovation and the scientific research on which it is based are responsible for more than half of the nation's productivity growth in the past 50 years.

But new products and processes do not spring fully formed from the basic research performed at universities. They require not only good ideas, but further development, capital, marketing, and manufacturing capability. That is where technology transfer comes in.

How Does the Public Benefit From Technology Transfer? University technology transfer has helped create new industries and opened new markets. The Association of University Technology Managers (AUTM) estimates that university technology transfer added nearly \$25 billion to the economy in 1996. Products developed from university technology transfer include the gene splicing technology that initiated the biotechnology industry, diagnostic tests for breast cancer and osteoporosis, vaccines, faster computer modems, new Internet search engines, improved building materials, and environmentally-friendly technologies.

How Does University Technology Transfer Work? Under federal law, as embodied in the Bayh-Dole Act of 1980, nonprofit organizations—including universities—may patent and retain title to inventions created from research funded by the government. In general, the university must disclose each new invention to the federal funding agency within two months of the inventor disclosing it to the university, decide whether or not to retain title to the invention, and then file a **patent** application within one year of electing to seek title. Universities must **license** the rights to innovations to industry for commercial development; small businesses receive preference. The federal government also receives a nonexclusive, irrevocable license to the invention. Universities must share with the inventor any income eventually derived from the patent. Any remaining income, after technology management expenses, must support scientific research or education.

A principal value of having universities retain control of patent rights is that it ensures that research findings remain available for further use in the laboratory and classroom.

Why Does the Government Allow Universities to Keep Control of Government-Funded Inventions? In the 1960s and 1970s, there was great concern that too little federally funded research was being commercialized. Tight restrictions on licensing, varying patent policies among federal agencies, and the lack of exclusive manufacturing rights for government-owned patents made product development a risky proposition for companies. In 1980, only five percent of government-owned patents resulted in new or improved products.

To remedy this bottleneck, the Congress in 1980 passed the Bayh-Dole Act. The Act established a uniform government patent policy and allowed universities and other nonprofit organizations to retain title to federally-funded inventions and to work with companies in bringing them to market. The Act thus promoted technology transfer by creating incentives for university researchers to consider the practical applications of their discoveries, and for universities to search out potential companies to develop them. By enabling corporations to negotiate exclusive licenses of promising technologies, the Act encouraged them to invest in the additional research, development, and manufacturing capabilities needed to bring new products to market.

Has Bayh-Dole Proved Successful? Before passage of the Bayh-Dole Act, fewer than 250 patents were issued to U.S. universities each year. Sixteen years later in 1996, universities received more than 2,000 new patents, executed nearly 2,200 licensing agreements, and received royalty income from licensing of \$242 million. Since 1980, more than 1,500 start-up companies have been formed based on technologies discovered at academic institutions.

How are License Fees and Royalties Determined? Universities and potential licensees negotiate the fees. They are rarely large because most of the technology is rudimentary and risky, thus requiring considerable investment by the company to turn it into a useful product or process. Larger fees and royalty rates can be negotiated for those few technologies that have clear commercial applications and large potential markets. However, license fees generally range from a few thousand to a few tens of thousands of dollars; very few reach into six figures. Royalties range from less than one percent of net sales up to about eight percent, but the majority of royalty rates range from three to six percent of net sales.

How Do Universities Use Royalties From Licensed Technologies? After covering expenses for technology transfer activities-such as paying a portion of legal fees associated with patenting and licensing and supporting the technology transfer office-universities share royalties with university inventors and reinvest revenues in education and research. The reinvested revenues support graduate students, buy research equipment, and fund additional research.

Are Universities Handling Technology Transfer Well? A May, 1998, General Accounting Office (GAO) review of technology transfer activities at 10 major research universities showed programs working well. The universities were selected on the basis of their high volume of federal funding, high level of licensing income, or both. The GAO reported that the universities had designated units and personnel to oversee invention activities, and had established formal policies and procedures to ensure compliance with the Bayh-Dole Act's reporting requirements. The institutions were pursuing licensing opportunities to the extent possible, and royalties were being shared with those responsible for the inventions.

What About Financial Conflict-of-Interest? Conflicts may surface when university researchers or universities themselves have an opportunity for financial gain through private use of research results or private relationships with companies exploiting the research results. Since October 1995, universities receiving funds from the National Institutes of Health or the National Science Foundation-the two largest federal supporters of university research-have been required to have in place appropriate policies and procedures for identifying and managing conflicts. In some cases, appropriate conflict-of-interest management may mean eliminating the conflict; in other cases, it may mean careful monitoring and reporting of research activities, data, and documentation. Such policies are essential for ensuring confidence in the integrity of scholarly activities, and protecting the mission of the university.

--*Association of American Universities, June 2, 1998*

 NASULGC National Association of State Universities and Land-Grant Colleges	Upcoming Events
Search Site Map Contact Us	

THE FIRST TWO DECADES OF THE BAYH-DOLE ACT AS PUBLIC POLICY

by Howard W. Bremer,
November 11, 2001

At the outset it is interesting to note that the length of time the Bayh-Dole Act has been in effect is now the approximate time that it took to achieve its passage.

This presentation is given in the context of a plaque affixed near the entrance to the National Archives in Washington, D.C. The plaque reads:

"the heritage of the past is the seed that brings forth the harvest of all the future"

Today, we are witnessing 20 years of living with the Bayh-Dole Act and, I believe, can truly celebrate the technology transfer harvest that sprang from the seeds of efforts to revise government patent policies.

Whereas, technology transfer, as we know it today was little understood or practiced 20 years ago, it is now a recognized profession both within and outside of the university community. Of all the controversial subjects which have been addressed by members of Congress and discussed by newspaper editors and columnists over the years none appears to be less understood than the allocation and disposition of rights to inventions arising from government-funded research and development. In addition, the U.S. patent system has always seemed to be mysterious to the lay public as well as its duly elected representatives. In the words of Howard Markey, Chief Judge of the Court of Appeals for the Federal Circuit "no institution has done so much for so many with so little public and judicial understanding as has the American patent system." That dichotomy on disposition of rights to inventions and the lack of understanding of the operation and contribution of the patent system to the benefit of the public persists today.

What were the origins of technology transfer and the Bayh-Dole Act?

**PRESENTATION TO NATIONAL ASSOCIATION OF STATE UNIVERSITIES
AND LAND GRANT COLLEGES**
Nov. 11, 2001
Washington, D.C.

I. Concept

Technology Transfer—the transfer of research results from universities to the commercial sector—is closely linked to fundamental research activities in United States universities, and, now, globally.

The concept is said to have its origin in a report entitled "Science—The Endless Frontier" which was written by Vannevar Bush for the President of the United States in 1945. At that time the success of various projects had demonstrated the importance of university-conducted research to the national defense effort.

Vannevar Bush, however, recognized the value of university research as a means for enhancing the economy by increasing the flow of knowledge to be used by industry through support of basic science.

Dr. Bush's report became instrumental in providing a substantial and continuing increase in funding of basic research by the federal government. It stimulated the formation of the National Institutes of Health (NIH), the National Science Foundation (NSF), and the Office of Naval Research (ONR). Because of the success of these and other governmental agencies in utilizing universities to conduct research, the funding of basic research is now considered to be a vital role of the federal government.

II. Technology Transfer Defined

Long before the Vannevar Bush concept, but without federal support for their research efforts, United States universities had been engaged in the transfer of technology, although that specific term may not have been applied to their activities.

Their greatest technology transfer efforts have probably been expended in preparing papers on research results for publication in scientific journals. Another area involves the activities of the Extension Services, particularly the Agricultural Extension Services, which communicates a great variety of useful information, largely technical, but also in social and economic fields, to many users, both rural and urban.

Another area of communication of information lies in the continuing education programs, e.g. in law, medicine, pharmacy, engineering, to keep professionals in those fields abreast of the latest developments.

Technical consultantships provide technology transfer in both directions—the consultant imparts information to whomever is engaging him while the consultant, in turn, can expect some professional enrichment from that activity.

Still another means for transferring technology is by making a tangible product of research available to others with or without a view toward commercialization. For example, seedling plants for propagation by others, appropriate fragments of tissue for tissue culture, cell lines, hybridomas, and seeds as well as mechanical or electronic prototypes and computer programs.

Thus, technology transfer occurs in many ways—through writings, the simple spoken word, the physical transfer of a tangible product of research or through the relative complexity of an intellectual property licensing program.

Although all of these forms of technology transfer have been and are being practiced today in the university sector in the United States and now many other countries the focus of this presentation is upon the transfer of technology as represented by the transfer of a property right as the result of ownership of the intellectual property generated during the conduct of research. Such ownership may be manifested by patents, copyrights, trademarks, trade secrets or a proprietary right in the tangible products of research.

III. Intellectual Property

A. Constitutional Basis

The fundamental basis for the university technology transfer programs in the

United States lies in the Constitution of the United States in the language of Article 1, Section 8 of that document:

"The Congress shall have Power—To promote the Progress of Science and useful arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respecting Writings and Discoveries."

Under this specific power the present patent statute, Title 35 of the United States Code (35 U.S.C.) was enacted. It is significant that the face of a U.S. patent document contains the following statement:

"—these Letters Patent are to grant unto the said claimant(s)—the right to exclude others from making, using, or selling the said invention throughout the United States."

and that 35 U.S.C. 261 characterizes this right to exclude as a property right. The technology transfer function is in great part based upon the recognition of and the specific provision for that very special property right.

B. Nature of University Research

The universities were, of course, organized as teaching institutions with any research conducted being directed to that end. Little thought or impetus was given to the transfer of the results of that research to the public other than through the academically acceptable route of publication in scientific journals. In fact, a researcher who accepted corporate support was thought by his academic colleagues to have been diverted from his basic research to serve corporate interests. The perception then was because the researcher had accepted corporate money his research would no longer be directed to the seeking of new knowledge but by the money-driven need to solve current problems in the real world, even to the development of products and processes to a market-ready condition.

That was the prevailing attitude at the University of Wisconsin when, in 1924, it was suggested that a plan be developed to make use of patentable inventions generated by faculty members which would:

- (1) protect the intellectual property of the individual taking out the patent;
- (2) insure proper use of the patent; and at the same time
- (3) bring financial help to the University to aid in its further research efforts.

The fears that the implementation of such a plan would divert the university researcher from his basic research did not materialize. There was no great rush toward patenting; there was no mass movement toward applied research tied directly to product development; nor was there any pronounced change in the researchers' attitudes. University research then, as now, remained essentially basic in character and directed primarily to the seeking of new knowledge.

The generation of inventions is almost never the main objective of basic research. If inventions do flow from that research activity, it is a largely fortuitous

happening that takes place because the researcher, or perhaps, an associate, has the ability to see some special relationship between his scholarly work product and the public need. It is from the recognition of this connection, which can convert a discovery or invention into a patentable invention, that innovation arises.

It was not too many years ago that there was little appreciation of the value of intellectual property generated during the course of research being conducted on the university campus or of the value of that intellectual property to the university if properly transferred to the private sector for development and marketing through appropriate arrangements. In fact, on numbers of campuses those activities would have even been unwelcome as an incursion into academic pursuits as was the early experience at Wisconsin. Nevertheless, prior to the legislative initiatives under which, today, most universities engage in the protection and licensing of intellectual property, several universities and organizations carried out such practices with the attendant opportunity to generate funds to aid in supporting research efforts. Prominent among such institutions were the University of California, Iowa State University, Battelle Development Corporation, Research Corporation, which represented a number of universities and the University of Wisconsin through its patent management organization the Wisconsin Alumni Research Foundation established in 1925.

C. The Government Vector

During the early history of the United States very little technical development work was done by the Government and therefore, as a practical matter, the question of the Government owning a patent never arose. Gradually, federal agencies began to undertake the practical kind of development work which led to inventions. Since prior to World War II almost all Government-financed research and development work was conducted in federal laboratories by full-time Government employees, there was a small but recurring problem of what to do with inventions resulting from such work—inventions which, if made by private parties, would have become the subject of patent applications.

This situation changed rapidly during and after World War II when the technological demands imposed by more and more sophisticated military requirements, as well as the increasing complexity of support services, made it quickly evident that there were not sufficient resources within the Government to undertake all the scientific projects necessary to a winning war effort. The absolute necessity to utilize the best technical ability available, regardless of its locus, spawned a rapid proliferation of Government-sponsored and -funded research and development contracts.

The proper disposition of rights to patents resulting from this work was theoretically as important then as now but was never seriously addressed as a major problem because of the exigencies of wartime needs.

The basic issue was whether the Government should always take the commercial rights to patentable inventions generated under a Government-sponsored contract or from Government-funded research or whether such rights would be better left with the contractor or grant recipient to permit utilizing the patent system for transferring the technology developed to the public sector for its use and benefit.

Post World War II the rapid technological strides made under the impetus of a wartime footing and the obvious necessity for continuing technological superiority, at least in defense-oriented efforts, made it imperative to continue to provide public support for science. Nor was this support limited to the military. For example, in 1950 Congress finally provided an annual budget of \$15 million

for the National Science Foundation to conduct basic scientific research at universities.

During this same period, hundreds of millions of dollars were appropriated by the Government in the area of medical research in the beginnings of an all-out attack on disease.

With the rapid expansion of scientific projects being undertaken and supported by the Government, the same shortage of technical ability and facilities continued to prevail as had been experienced under the pressures of World War II. Since the Government could not do all the necessary work in its own facilities, qualified private companies, universities and nonprofit organizations were sought out to perform many of the programs through contractual arrangements. In each arrangement, the same old problem of ownership of patent rights existed but was seldom, if ever, directly addressed. In the case of universities and other non-profit organizations, few were engaged at the time in patenting the results of research and in technology transfer activities. Since one of the prime objectives of such an institution was to support its respective research efforts and since the government was a ready source of funds for supporting such efforts, the prevailing attitude was simply to accept the readily available government support with little thought being given to the underlying property rights and the value of those rights in the long term.

The Government itself had not developed a uniform patent policy for all of its agencies regarding the disposition of rights in intellectual property generated during the course of research supported by those agencies. In fact, there was no existing statutory authority which gave the agencies the right to hold patents or license technology. Such acts were viewed as objectives of the agency mission. Consequently, each governmental agency which supported a research and/or development effort, through either or both of contractual or grant arrangements, developed its own policy. The ultimate result was that many and varied policies evolved to the point that there were some 26 different agency policies. Also, since to support a given research project, funds from different agencies were often co-mingled within universities, the most restrictive agency policy became the controlling policy.

Operating under the various agency policies, the Government had accumulated in its patent portfolio about 30,000 patents of which only about 5% had been licensed to industry with an even smaller percentage reflected in products or processes in commercial use. Thus, with the Government, as represented by its agencies, adopting, in general, a non-exclusive licensing policy the experience of licensing Government-owned patent had without question been one of non-use of the technology. For example, in 1978 the National Aeronautics and Space Administration (NASA) reported that through 1978 it had had 31,357 contractor inventions reported to it. Of those, title had been waived to the contractor in 1,254 cases, or less than 4%. The results of NASA's own licensing program were said to have been disappointing representing a commercialization rate of less than 1%. In contrast, the rate of commercialization of the waived inventions was consistently in the 18-20% range. Therefore, the intended benefits which were to flow to the public in the form of new products and processes as a result of federal support of research both within the government itself and in the university sector were left unrealized.

Moreover, under the agency policies then in place, Government ownership of a patent was in a sense an anomaly. The patent system was created as an incentive to invent, develop, and exploit new technology to promote science and useful arts for the benefit of the public. When the government held title to those many inventions under the policy that the inventions should be freely available to all, much the same as if the invention had been disclosed in a publication, the

patent system could not operate in the manner in which it was intended. The incentive inherent in the right to exclude conferred upon the private owner of the patent, and which is the inducement to development efforts necessary to the marketing of new products or the use of new processes, was simply not available. What is available to everyone is of interest to no one.

The ineffectiveness and inadvisability of such agency policies and their adverse effect on the public benefit should have been apparent.

D. Government Policy—Move Towards Uniformity

In 1963, Jerome Weisner, President Kennedy's Science Advisor, recognized a need for some guidelines to effect a more uniform Government policy toward inventions and patents on a Government-wide basis. The results of Dr. Weisner's study culminated in the Policy Statement issued on October 10, 1963 by President Kennedy to establish Government-wide objectives and criteria, subject to existing statutory requirements, for the allocation of rights to inventions as between the Government and its contractors, which would best serve the overall public interest while encouraging development and utilization of the inventions.

The ensuing studies and experience culminated in the issuance of a revised Statement of Government Patent Policy by President Nixon on August 23, 1971. The thrust of that statement was:

A single presumption of ownership of patent rights to government-sponsored inventions either in the government or its contractors is not a satisfactory basis for government patent policy and, that a flexible, government-wide policy best serves the public interest.

The considerations basic to the Statement of Government Patent Policy were the following:

- (1) The Government expends large sums for the conduct of research and development which results in a considerable number of inventions and discoveries.
- (2) The inventions in scientific and technological fields resulting from work performed under Government contracts constitute a valuable national resource.
- (3) The use and practice of these inventions and discoveries should stimulate inventors, meet the needs of the government, recognize the equities of the contractor, and serve the public interest.
- (4) The public interest in a dynamic and efficient economy requires that efforts be made to encourage the expeditious development and civilian use of these inventions. Both the need for incentives to draw forth private initiatives to this end, and the need to promote healthy competition in industry must be weighed in the disposition of patent rights under government contracts. Where the contractor acquires exclusive rights, he remains subject to the provisions of the antitrust laws.
- (5) The public interest is also served by sharing of benefits of

Government-financed research and development with foreign countries to a degree consistent with our international programs and with the objectives of U.S. foreign policy.

(6) There is growing importance attaching to the acquisition of foreign patent rights in furtherance of the interest of U.S. industry and the Government.

(7) The prudent administration of Government research and development calls for a Government-wide policy on the disposition of inventions made under Government contracts. The policy must recognize the need for flexibility to accommodate special situations.

Although there is evidence that the guidelines did bring the patent practices of the Agencies into greater harmony, divergent policies still existed and there was a strong presumption, if not evidence, in terms of the transfer of technology to the public sector, that the more restrictive the policy of the Agency, i.e. the more an Agency was inclined to take title to inventions and patents generated under its funding, the less was the likelihood that the technology would be transferred for the public benefit.

E. Institutional Patent Agreements

During the period from 1963 to 1971, while experience with the Weisner-Kennedy effort was being gained, further efforts were being made to persuade several federal agencies, specifically the Department of Health, Education and Welfare (now Health and Human Services [HHS]) and the National Science Foundation, to enter into Institutional Patent Agreements, (IPAs) with universities. The policies of both of these agencies permitted a waiver of rights to the inventions made with their funds (referred to as an 8.2(b) grant of greater rights). However, on the very few occasions where such a waiver was granted, it was under such restrictive provisions that it presented an unworkable basis for transferring technology to the private sector. No commercial firm was willing, under the conditions imposed under many of the waivers, to risk the expenditure of the necessary development funds.

Subsequently, after five years of negotiation, the then Department of Health, Education and Welfare, in 1968, issued its first new IPA to the University of Wisconsin. This was followed in 1973, after another five years of effort, by an Institutional Patent Agreement between the National Science Foundation and the University of Wisconsin. The first ever of such agreements with that agency.

That evidence of not only the availability of an IPA, but that those two agencies would actually grant them, appeared to provide some impetus to universities to engage in the technology transfer business. Nevertheless, some of the provisions of the IPAs available from those two agencies were unacceptable under some universities' policies, while many other governmental agencies still clung tenaciously to the policy of taking title to all inventions made with funds they had supplied.

Fundamental to the success of technology transfer under the IPAs was the certainty that the universities would be the owner of the inventions made under those agreements. That factor and, in addition, the ability of universities to grant exclusive licenses were instrumental to the subsequent willingness of private sector industry to engage in licensing arrangements with universities that had IPAs.

Although limited to two agencies, the NIH and NSF, the IPAs were not only important as manifesting a change in the attitude of those agencies and potential licensees but, more importantly, as establishing, through negotiation, terms and provisions which were carried into and set the tone for the legislative effort which resulted in the passage of Public Law 96-517, the Patent and Trademark Law Amendments Act, in 1980 (the Bayh-Dole Act). In fact, that law is often looked upon as a codification of the terms and provisions of the IPAs.

F. The Bayh-Dole Act

The passage of the Bayh-Dole Act was the reward for almost 20 years of effort by the non-profit sector to stimulate the transfer of technology through the vehicle of the patent system. It was the culmination of the many pieces of legislation introduced over many years that had sought to establish a uniform patent policy within the government. It should be considered a landmark piece of legislation in that, after many false starts and unsuccessful efforts it was, finally, a recognition by Congress:

- (1) that imagination and creativity are truly a national resource;
- (2) that the patent system is the vehicle which permits the delivery of that resource to the public;
- (3) that placing the stewardship of the results of basic research in the hands of universities and small business is in the public interest; and, significantly,
- (4) that the existing federal patent policy was placing the nation in peril during a time when intellectual property rights and innovation were becoming the preferred currency in foreign affairs.

The most significant feature of the Bayh-Dole Act was that it changed the presumption of title in and to any invention made in whole or in part with the use of government-supplied funds from the government to the universities.

This was the final step in establishing the strong university-industry connection which today exists in the United States.

It is also not universally recognized that the Bayh-Dole Act provided, for the very first time, statutory authority for the Government to apply for, obtain and maintain patents on inventions in both the United States and foreign countries and to license those inventions on a non-exclusive, partially exclusive or exclusive basis. Even where the government contractor (a university or other non-profit entity or a small business) chooses to retain title to an invention under the Bayh-Dole Act the government always receives an irrevocable royalty-free license to practice such invention for governmental purposes. The government also reserved march-in rights for non-performance. In the face of such circumstances there is, in reality, a university-industry-government relationship.

IV. The Economic Climate

To more fully appreciate what has evolved through the sequence of events which has been enumerated, it must be kept in mind that through this period, the economy of the country as a whole, as well as the economy of each state, was and still is in transition. Today, universities operate in an economic climate which:

- (1) is knowledge based—not capital based (although, without question, availability of capital is a necessity);
- (2) is entrepreneurially based—witness the large numbers of new companies created in recent years;
- (3) involves world markets—the international aspect of protection for intellectual property generated through the research function must be a consideration;
- (4) reflects continuous and often radical technology changes;
- (5) is becoming more decentralized—making state and local options and initiatives more significant;
- (6) is an economy of appropriateness not one of scale—i.e., merely increasing the size of a production plant will not necessarily reduce the cost of product or increase its quality;
- (7) is increasingly competitive on a global scale—witness the advent of the European economic community and other geographic economic blocks.

In view of this continually evolving economic climate, and since new products arise from new fundamental ideas as well as from new applications of existing technology, the necessity for supporting research is evident. However, support of research is not enough. That support must be coupled with a creative technology transfer capability because inventions are of little value to society unless and until they are utilized by society. To quote Thomas Edison:

"The value of an idea lies
in the using of it."

With the passage of the Bayh-Dole Act and, in the same year, the decision of the United States Supreme Court in the Chakrabarty Case, which stood for the proposition that merely because something was alive (in that case a bacterium) it was not precluded from being patentable, along with the evolution of genetic engineering concepts, the universities were literally propelled into an awareness of the potential economic value of the technology that was being generated in their research programs.

Because the government has been and still is the primary source of the funds supporting the research effort at universities, the passage of the Bayh-Dole Act permitted the universities to position themselves, through the establishment or expansion of technology transfer capabilities, to transfer the technology generated during the course of government-funded research to the public, generally through the licensing of an industrial partner, for the public's use and benefit—the transfer of a property right.

The patent system is the most viable means for accomplishing the transfer of technology since it offers protection to the intellectual property base while at the same time providing an incentive to the industrial partner because of the right it conveys to exclude other than the licensee from practicing the invention patented. Consequently, full and careful consideration must be given to the making of any policy which will affect the transfer of technology that has been generated by government-funded research. In addition, careful consideration must also be given to any proposed changes in patent laws including treaty accommodations, which could adversely affect technology transfer capabilities.

The most pertinent question to ask is:

In whose hands will the vestiture of primary rights to inventions serve to transfer the inventive technology most quickly to the public for its use and benefit?

In the U.S. the answer has been the university-private sector partnership.

In the United States five events, led by the passage of the Bayh-Dole Act, reshaped government patent policies which, in turn, shaped university technology transfer as we practice it today.

- (1) The passage of the Bayh-Dole Act itself.
- (2) The issuance in 1982 by the Office of Management and Budget (OMB) policy guidance to federal agencies for implementing that Act.
- (3) The issuance of a Presidential Memorandum on Government Policy under which federal agencies were directed to extend the terms and provisions of the Bayh-Dole Act to all government contractors.
- (4) The amendment of the Bayh-Dole Act by Public Law 98-620 to remove some politically-motivated restrictions on exclusive licensing placed in the original Act (PL96-517).
- (5) Publication of rulemaking by the Department of Commerce. This did not occur until 1987.

Also in this same period, one should not overlook the establishment in 1982 of the Court of Appeals for the Federal Circuit which, under the able leadership of Chief Judge Howard Markey, gave further impetus to the value of patents and a uniformity to their interpretation which put to rest the disparities which existed among the Judicial Circuits and had led to forum shopping in patent litigation.

These events, led by the passage of the Bayh-Dole Act created the revolution in university technology transfer.

That reshaping of government patent policies has had a highly significant effect upon the academic sector because of the extensive federal support for research carried out in that sector and particularly for basic research. The relative amounts of research dollars in the university sector by source of those funds and by the performers of that basic research presents an interesting contrast.

(double-click on graphs to view enlarged versions)



Fund for Basic Research
(millions of current dollars)

<u>Source of Funds</u>	<u>Amount</u>	<u>Performer</u>
Fed. Government	\$20,235	\$2,920
Industry	\$11,313	\$9,625
Univ. & Coll	\$3,164	\$18,101
U & C FFRDC's		\$2,721
Non-Profits	\$1,850	\$2,584

V. The Impact of the Bayh-Dole Act

How can the practical impact of the Bayh-Dole Act on university technology transfer be measured?



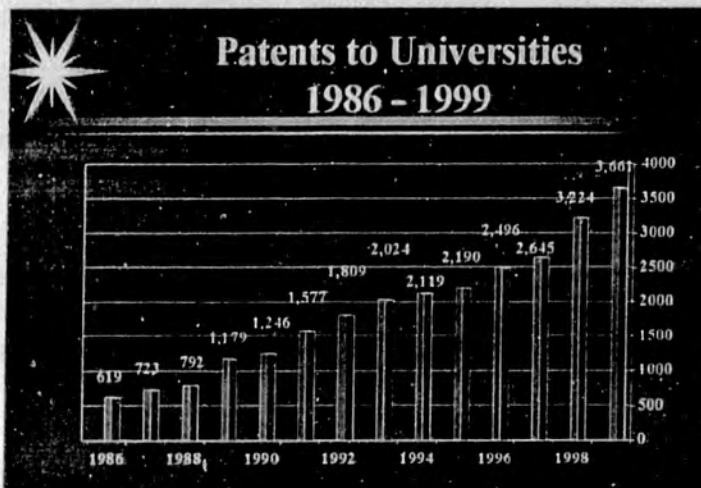
Institutions Having Technology Transfer Programs

1972	30
1977	275

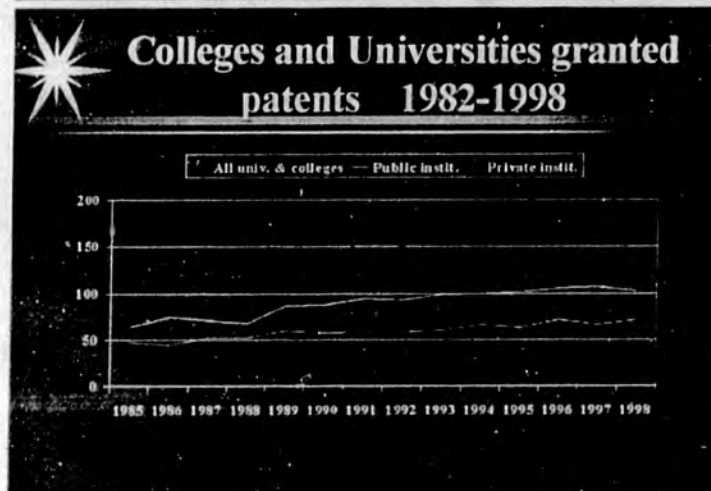
The number of institutions engaged in technology transfer efforts has increased dramatically.

Since we are dealing for the most part with the transfer of technology from a protected base, i.e., patents and other forms of intellectual property protection, an obvious answer is to look at the change in the number of patents issued to universities and other non-profit entities, e.g. teaching hospitals, since the effective date of the Bayh-Dole Act in 1981.

In addition, because more institutions have the technology transfer programs,



a greater number of institutions are receiving patents. The growth and trend lines are evident. The university sector now receives about 3% of all United States origin patents issued.



The real measure of technology transfer is not, of course, the number of patents which the university sector holds, but the amount of technology represented in and by those patents which has been transferred to the private sector for further development into products and processes useful to mankind. In a study conducted in 1989 among executives in various industries, it was shown that a number of industries relied heavily on research conducted at universities for new products or for shortening the time necessary to bring a product or process into commercial use.

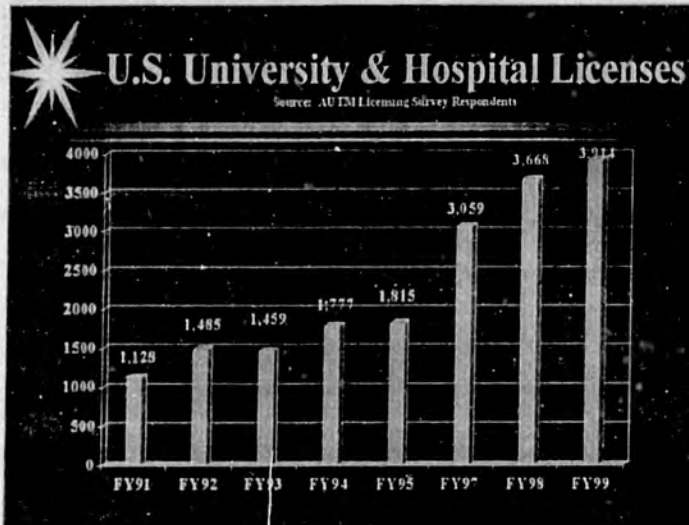
Although this was a study published in 1989 there are no indicators that this reliance has changed. In fact, with the downsizing in corporate America it would not be at all surprising that there is greater reliance on the university sector.

Dependence of Industry on Academic Research %

Industry	Products	Processes
Information Processing	28	27
Electrical	9	7
Chemical	8	6
Instruments	21	3
Drugs	44	37
Metals	22	21
Oil	2	2

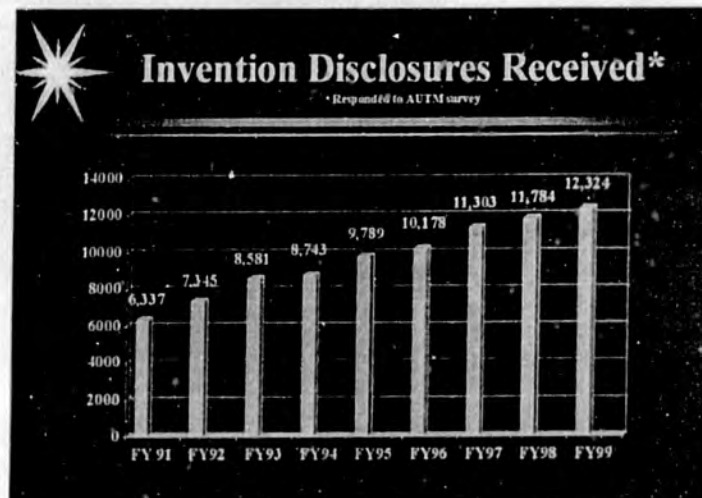
Source: Science & Engineering Indicators (1989) (Lafayette)

What has been the licensing experience?

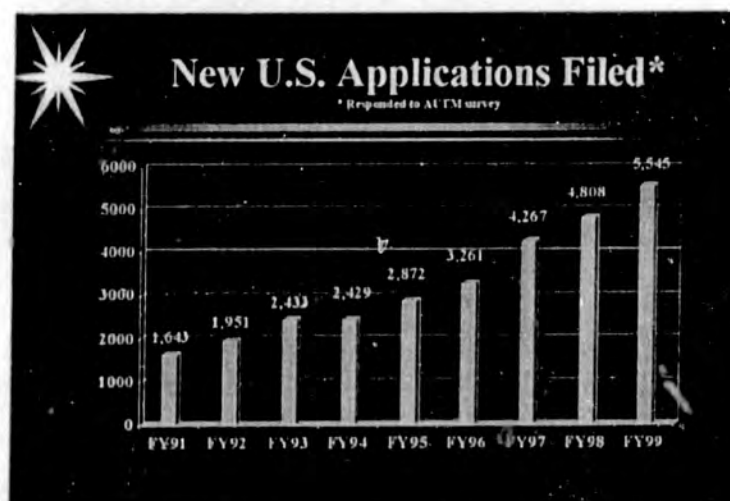


The most recent licensing survey by the Association of University Technology Managers (AUTM) shows a continuing growth in patenting and licensing activities by the university sector. At the end of fiscal year 1999, the university sector reported almost 18,617 active licenses or options.

The patenting and licensing activities are, of course, based upon the number of invention disclosures received and the patent applications filed. The invention disclosures received have been increasing every year and in 1999 reached 12,324.

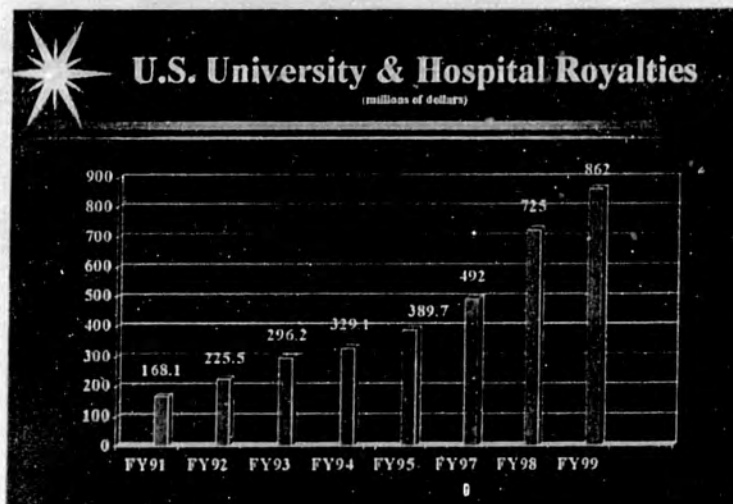


The number of new applications filed, as might be expected, have also increased year-to-year to a total of 5,545 new applications in 1999.



As a result of these patenting and licensing activities, university and hospital (teaching hospitals usually connected with universities) have experienced growing royalty income that reached 862 million dollars in 1999. For the most

part these monies, after sharing with the inventor or inventor group, are utilized to support further research within the university or hospital.



Another significant outgrowth of the university technology transfer programs are the number of new start-up companies which have been formed that find their basis in the technology generated during the course of basic research. The most visible example of this phenomenon has been in the field of biotechnology. In fact, the biotech industry evolved from basic university research. Since 1980 at least 2,922 new companies have been formed based on license from an academic institution, including 344 reported formed in 1999. With universities taking an equity position in such companies the potential for financial return over and above a royalty stream is increased. Moreover, the start-up companies offer the opportunity to enhance local or regional employment.

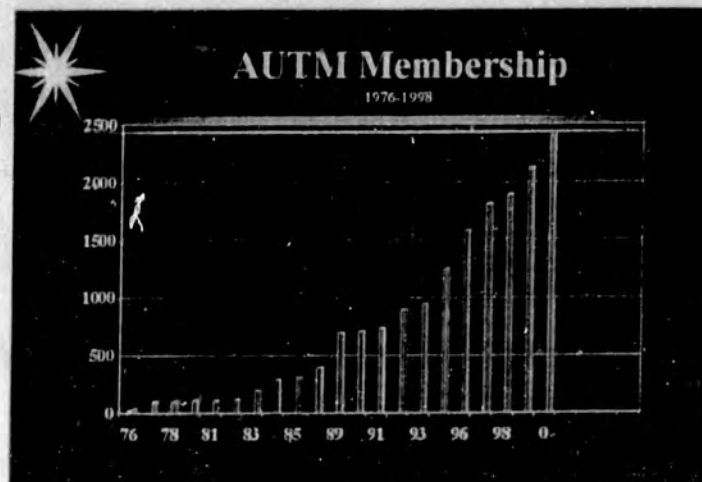
Start-Ups Formed
(N represents number of institutions providing a response, including a response of zero)

FY 1980- FY 1983 (N=154)	FY 1994 (N=156)	FY 1995 (N=172)	FY 1996 (N=168)	FY 1997 (N=171)	FY 1998 (N=176)	FY 1999 (N=188)	TOTAL FY 1980 to 1999
1,169	211	229	218	333	364	344	2,922

The impact of the Bayh-Dole Act is also seen in other indicators. For example, I believe that an excellent indicator which parallels the growth of the technology transfer function in the university sector is the growth of the membership in the Association of University Technology Managers (AUTM).

After the passage of
the Bayh-Dole Act,
and particularly after

the effective date of that Act in 1981, there has been a dramatic increase in the number of members to the current approximately 2700.



Growth in membership from overseas has also dramatically increased as countries recognize the contributions that their universities can make modeled on the United States experience.

Several things contributed to the success of the Bayh-Dole Act and the transfer of technology under it.

- (1) The continuing support for basic research by the federal government,
- (2) the ownership of the inventions by the universities as opposed to the government,
- (3) the inventor remains in the development picture, and
- (4) the uniformity to handling of intellectual property generated with federal support regardless of the federal agency from which the support funds were obtained.



Bayh-Dole Success

- Fundamental contributions to the success of the Bayh-Dole Act and technology transfer under it are:
 - Continuing support of basic research by the government.
 - Certainty of title in the inventions.
 - The inventor remains in the development picture.
 - There is uniformity in the handling of intellectual property under the law.
- Keep in mind that success was achieved without the cost to the taxpayer as occurs with other government programs.

One important factor, which is often overlooked, is that the success was achieved without cost to the taxpayer. In other words, no separate appropriation of government funds was needed to establish or manage the effort. In fact, it has been estimated that the economic benefits flowing from the universities' licensing activities adds about \$41 billion to the United States economy.

Significant as that dollar amount is, it should not be overlooked that university inventions, arising, as most of them do, from basic research, have led to many products which have or exhibit the capability of saving lives or of improving the lives, safety and health of the citizens of the United States and around the world. In that context their contribution to society is immeasurable.

VI. The Heritage of the Bayh-Dole Act

The Bayh-Dole Act can be given credit for focusing congressional interest on intellectual property-oriented legislation. With that focus established, the years since have seen many pieces of such legislation introduced. Some have become law, most have not. Of these, the Federal Technology Transfer Act (FTTA) of 1986 can be considered to have been a direct result of the Bayh-Dole Act and experience by universities under it. The FTTA was intended to promote the utilization of technology generated in government owned and operated laboratories. The FTTA was built on certain fundamental principles.

- (1) The federal government will continue to underwrite the cost of much important basic research in scientifically promising areas that takes place in the United States.
- (2) Transferring this research from the laboratory to the marketplace is primarily the job of the private sector, with which the federal government should not compete.
- (3) The federal government can encourage the private sector to undertake this effort by judicious reliance on market-oriented incentives and protection of proprietary interests.

That the university sector has made a tangible contribution to the competitiveness of the United States in a global market through the technology transfer function cannot be denied. The seminal piece of legislation which made that contribution possible was the Bayh-Dole Act. Without doubt, the objectives of the Act has been realized. Through operation under that Act:

- (1) Small business, which is frequently the test bed for embryonic university technologies, has benefited to a very large extent;
- (2) the government is comforted in knowing that taxpayer dollars, which support the bulk of basic research in the university sector, have lead to the development of products and the use of processes that have advanced the quality of life for its citizens.
- (3) industry can rely on a source of technology, data and information and a pipeline of manpower which fulfills its needs and feeds the production processes.

In sum, all sections of society enjoy both the protection and benefits afforded under the Bayh-Dole Act and its progeny. Moreover, academic institutions, after the government, provide the second largest share of academic R & D support. Because of the commingling of funds for the support of research the university sector's stake in the Bayh-Dole Act and operation under it is very direct.

We must understand that no matter how much money we spend on research and development the findings are not going to benefit the public unless there are suitable incentives to invest in commercialization. And because no one knows which venture will succeed, we must strive for a society and an environment ruled by the faith that the guarantee of reasonable profits from risk-

taking will call forth the endless stream of inventions, enterprise and art necessary to resolve society's problems.

In the Bayh-Dole Act, Congress made a determination that private (not government) ownership of inventions, motivated by the prospect of financial gain would lead to more efficient commercialization and distribution of federally funded technology.

We must not fail to recognize and to remember that the Bayh-Dole Act and the opportunities as well as the obligations which it presents to the university sector represents a blend of science and law – the two most important forces that have shaped our society as it exists today. These are and will continue to be the fundamental building blocks for the betterment of the human condition.

Endnotes

Vannevar Bush held the following positions in government: Chairman, National Defense Research Committee 1940; Director-Office of Scientific Research and Development 1941; Chairman-Joint Research and Development Board 1946-47; Member-Research and Development Board of National Military Establishment 1944-48

See Resume of U.S. Technology Policies—Dr. Betsy Ancker-Johnson-Les Nouvelles (Journal of the Licensing Executives society) Dec. 1976, Vol. XI No. 4, P. 186; Statement before the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, Dec. 11, 1976. (This latter document also contrasts the experience of universities in licensing patents owned by them some or most of which may have resulted from research supported in whole or part by Federal monies.)

Presidential Memorandum and Statement of Government Patent Policy (F.R. Vol. 28, No. 200, October 12, 1963).

Presidential Memorandum and Statement of Government Patent Policy (F.R. Vol. 66, No. 166, August 26, 1971).

For historical interest re Institutional Patent Agreements and early DHEW practice see Report to the Congress on "Problem Areas Affecting usefulness of Results of Government-Sponsored Research in Medicinal Chemistry" by the Comptroller General of the United States, August 12, 1968.

P.L. 96-517, Patent and Trademark Amendments Act of 1980. This law amended Title 35 United States Code by adding Chapter 18, Sections 200-212.

Diamond, Commissioner of Patents v. Chakrabarty, 206 USPO 193, U.S. Supreme Court. (A companion case to Chakrabarty was In re Bergy [1950USPO 344 (1977)] which held that "the fact that microorganisms . . . are alive. . . is without legal significance for purposes of the patent law." Certiorari was granted for both Bergy and Chakrabarty but Bergy was then dismissed as moot.)

§ 200. Policy and objective. "It is the policy and objective of the congress to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to ensure that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise; to promote commercialization and public availability of inventions made in the United States by United States industry and labor; to ensure that Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area."

OMB Circular A-124 was subsequently codified as 37CFR Part 401.

The Presidential Memorandum was incorporated into the text of OMB Circular A-124 on March 24, 1984.

PL-98-620, The Trademark Clarification Act amended Chapter 18 of Title 25 U.S.C.

Final rules were published on March 18, 1987 (52FR8552) and subsequently codified at 37CFR Part 401.1-401.16.

Court of Appeals for the Federal Circuit established effective October 1, 1982.

Home | Washington Watch | What's New | About NASULGC | Publications/Public Affairs
Issues | Minority & Human Resource Programs | Campus & Other Useful Links
State Watch | Initiatives | Kellogg Commission | Councils | Commissions

← Page up

©1999 NASULGC, 1307 New York Avenue, N.W.
Suite 400 / Washington, D.C. 20005-4722
Telephone: 202-478-6040 Fax: 202-478-6046

SPECIAL COMMITTEE ON EDUCATION
REP. NEUMAN, CHAIR

CONTINUED TESTIMONY OF MARY E. GREENE
ASSOCIATE GENERAL COUNSEL
UNIVERSITY OF ALASKA

I appreciate the opportunity to present a fuller explanation of some of the questions posed by members to me during the meeting held April 5, 2005, at 5:30 p.m.

One of the questions raised concerned why the University of Alaska should be treated differently than other corporations. There are several reasons. First, unlike most corporations, the University is a constitutional corporation created in Article VII, section 2 of the Alaska Constitution. That makes the University a part of the state unlike other corporations. The property of the State and the University is owned by the people of Alaska, not by a few shareholders. The University's mission is to serve the public interest, not provide dividends to investors like other corporations. Public money and public assets would be tapped if a plaintiff was able to pierce the corporate veil and reach University assets in addition to the money the University invested as a shareholder.

The effort of the University to avoid potential liability beyond those funds it voluntarily invests in a corporation is very much like the state's actions when it creates a state corporation or authority and refuses to pledge the credit of the state. That says to creditors of the authority or state corporation that they can only look to the assets the legislature has placed in the authority or corporation to pay the debts of the authority or corporation. The legislature has frequently used this tool to protect state assets while at the same time promote economic development or create a service that serves the public interest. For example, the legislature refused to pledge the credit of the state in the creation of the Alaska Railroad Corporation (AS 42.40.690), the Alaska Housing Finance Corporation (AS 18.56.170), corporations organized under the Business and Industrial Development Corporation Act (AS 10.10.190), the Alaska Student Loan Corporation (AS 14.42.260), the Alaska Medical Facility Authority (AS 18.26.150), Regional Electrical Authorities (AS 18.57.110), the Knik Arm Bridge and Toll Authority (bonds) (AS 19.75.241), state and municipal port authorities (AS 29.35.640), Regional Resource Development Authorities (bonds) (AS 30.13.090), Adak Reuse Authority (bonds) (AS 30.17.240), the Alaska Natural Gas Development Authority (AS 41.41.400), Alaska Energy Authority (bonds) (AS 44.83.130), the Alaska Municipal Bond Bank Authority (bonds and notes) (AS 44.85.130), and the Alaska Industrial Development and Export Authority (bonds) (AS 44.88.120). HB 92, if enacted, would do no more for University investments than the legislature has done in these instances. It would allow the University to voluntarily invest funds where the Board of Regents authorizes the investment AND the investment advances a public purpose. Those voluntarily invested funds would, of course, not be protected. They would be available for the payment of the corporation's debts. But a clever plaintiff would not be able to go beyond that

corporation's assets to the other assets of the University. That is, the University would not have to pledge its credit by investing in a project that advances a public purpose.

If granted this protection, the University could help its faculty develop their research ideas into marketable goods and promote the economic development of Alaska. It could participate in worthwhile non-profit corporations that meet a public purpose. It could do so without risking the public's money that is invested in the University.

Thank you.

Mary E. Greene

Associate General Counsel

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 92
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: University of Alaska
 Title University of Alaska and Corporations RDU _____
 Component _____
 Sponsor Representative Kelly Component No. _____
 Requester _____

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill limits the universitys' legal liability to the amount that the university invested into a separate corporation for the purpose of advancing the public purpose of the university. This bill would create no additional cost for the University.

Prepared by: Pat Pitney Phone 450-8191
 Division University of Alaska Date/Time 4/15/05 1:53 PM
 Approved by: Pat Pitney Date 4/15/2005
 Agency University of Alaska

SCOMM

137:18

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 4, 2005

FURTHER REFERRALS: HES
Finance

Date of Committee Action: 8 Mar 05

The HOUSE SPECIAL COMMITTEE ON EDUCATION considered:

HB 128

HOUSE BILL NO. 128

SCHOOLS PHYSICAL ACTIVITY TASK FORCE

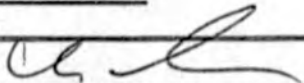
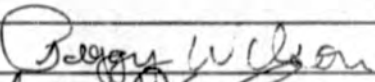
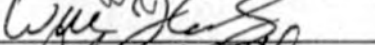
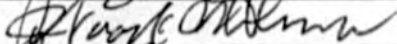
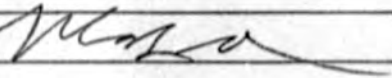
"An Act establishing the Alaska Schools Physical Activity Task Force."

Recommends it be replaced with ☐ HCS or ☐ CS for _____ (_____)
 For Senate Bills with new title: ☐ Technical Title ☐ New Title: HCR _____ ☐ Same Title ☐ New Title

- [] attach amendments
[] add new referral to _____ Committee
[] Letter of Intent _____ Committee

*List of
Abbrev
for
Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

[illegible][illegible]

Signing <u>with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Rep. Gance	✓			
	Rep. Gatto	✓			
	Rep. Wilson	✓			
	Rep. Thomas	✓			
	Rep. Salmon	✓			
	Rep. Lynn	X			
Chair: 	Rep. Newman	✓			
Chair:					



HOUSE SPECIAL COMMITTEE ON EDUCATION

STATE CAPITOL, ROOM 409
465-2696

MEMORANDUM

COMMITTEE MEMBERS

Rep. Mark Neuman,
Chairman
Room 102
465-2679

Rep. Carl Gatto
Vice-Chair
Room 411
465-3743

Rep. Bob Lynn
Room 415
465-4931

Rep. Bill Thomas
Room 428
465-3732

Rep. Peggy Wilson
Room 108
465-3824

Rep. Les Gara
Room 418
465-2647

Rep. Woodie Salmon
Room 114
465- 4527

Date: March 5, 2005

To: Members of House Special Committee on Education

From: Representative Mark Neuman, Chairman
House Special Committee on Education

Re: Committee Information

Tuesday, March 8th, 2005th

at 11:00 a.m. Room 106

HB 128 Alaska School Physical Activity Task Force

**Alaska Native K-12 Education Indicators Study
Presented by Alaska Native Policy Center**

Rex Shattuck

— Peg Warren —

From: Shalon Szymanski
Sent: Wednesday, March 02, 2005 1:15 PM
To: Rex Shattuck
Subject: List of people testifying on HB 128 tomorrow

Rex - Here is the list of people testifying tomorrow on HB 128. I didn't realize there were going to be so many people interested in testifying on this bill, but I am trying to limit the number of people so it's not an overkill on info. I will have a cleaner version of this list with specific titles within the next couple hours. Thanks so much for your patience. You rock! :-)

~Shalon

List of People Testifying:

Shalon Szymanski (presenting the bill)
Staff to Rep. Lesil McGuire

1 Peter Mjos, MD
The Anchorage Neighborhood Health Center

2 Jennifer App
Alaska Advocacy Director/Operation Heartbeat
American Heart Association

3 Emily Nenon
American Cancer Society of Alaska

4 Eileen Stankvich
Diabetes Association of Alaska

5 Tim Walstrom
University of Alaska-Anchorage



March 3, 2005

The American Cancer Society Supports HB 128 Schools Physical Activity Task Force

First a few facts:

- Behaviors such as tobacco use, poor eating habits, and physical inactivity greatly increase a child's risk of getting cancer in adulthood.
- For many kids, these and other harmful habits are already well established by the age of 13 years.
- Almost two-thirds of cancers could be prevented if these behaviors were never started.

It comes as no surprise that tobacco-use causes cancer. What is less widely known is that one-third of all cancers are related to poor diet and lack of physical activity. The American Cancer Society is committed to school health because the earlier children learn how to prevent illness, the healthier they will be. HB 128 is a critical first step in examining how to help young Alaskans grow up healthy.

The tools to make healthy decisions are learned during childhood and adolescence. It is far easier to practice a good habit from the beginning than it is to quit an unhealthy one. Furthermore, the school systems' goal to enrich the lives of students makes it a natural avenue for giving young people the knowledge, attitude, and skills they need to start, stop, or change health behaviors. For these reasons, the American Cancer Society has embraced school health as one of the most promising means of ensuring healthy children today and decreasing cancer illness and death in the future.

Physical activity affects cancer risk indirectly, through its role in helping to prevent overweight and obesity, and also plays a more direct role. For example, with colon cancer, physical activity accelerates the movement of food through the digestive system, which reduces the time that the lining of the bowel is exposed to potentially cancer-causing substances. (Colon cancer is the second leading cause of cancer death for Alaskan men and women.) Physical activity's likely role in breast cancer risk reduction is that it decreases the amount of exposure of breast tissue to circulating estrogen.

Based on this evidence, the Society guidelines call for adults to be active for at least thirty minutes on five or more days of the week, and children and teens need to be active for at least an hour every day. The task force called for in HB 128 is key to figuring out how to make these health goals attainable.

Respectfully submitted by Emily Nenon, Alaska Government Relations Director
Email: Emily.Nenon@cancer.org Phone: (907) 263-2097

AMENDMENT

OFFERED IN THE HOUSE

BY: REP. GARA

TO: HB 128

Page 4, lines 5-7

Delete all material.

Alaska State Legislature

Session
State Capitol Building, Room 118
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax 9907) 269-0249



Chair, Judiciary Committee

Vice-Chair, House Committee on
Economic Development,
Trade and Tourism

Member
Oil & Gas Committee

Representative Lesil McGuire *House District 28*

MEMORANDUM

To: Representative Neuman, Special Committee on Education Chair

From: Representative Lesil McGuire

A handwritten signature in dark ink, appearing to read "LM", is written over the name "Lesil McGuire" in the "From:" field.

Date: February 17, 2005

Re: Request for hearing, HB 128, "*An Act establishing Alaska Schools Physical Activity Task Force*"

I respectfully request that HB 128, "*An Act establishing Alaska Schools Physical Activity Task Force*" be scheduled for a hearing at your earliest convenience. Attached you will find the bill packet containing the most current version of the bill, sponsor statement, background information and letters of the support.

If you have any questions or concerns please feel free to contact me personally, or my staff, Shalon Szymanski at (907) 465-6841. Thank you for your time and consideration.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LESIL MCGUIRE
REPRESENTATIVE LES GARA

HB 128: Establishing the Alaska Schools Physical Activity Task Force

Sponsor Statement

According to the American Obesity Association, more than 30% of U.S. children and adolescents are overweight or obese. Overweight and obese children are more likely to become overweight and obese adults plagued by a litany of diseases including diabetes and all its complications, cardiovascular disease, cancers, depression, high cholesterol, hypertension, and severe arthritis.

Evidence has also shown a link between physical fitness and higher academic performance. Alaska does not currently impose any statewide standards for physical education in schools.

HB128 establishes a task force to come up with recommendations for the best approach to effectively and economically maximize physical activity in Alaska's schools within existing infrastructures.

The task force will be made up of school officials (from both urban and rural areas), physicians, a member from the Department of Education and Early Development, and legislators. They will be charged with coming up with a proposal for increasing physical education in schools that works within the existing infrastructure of Alaska's schools.

The task force will be asked to look at several possibilities including whether new laws or regulations are needed to allow schools to provide the maximum amount of physical activity, whether state school construction requirements should be changed to facilitate needed physical activity in the future, and whether after-school activity programs in addition to programs during school hours would be effective.

We believe that too many children suffer from the consequences of diabetes and obesity. By enhancing physical education in Alaska's schools, we can improve children's health and academic performance.

Representative Lesil McGuire
State Capitol, Room 118
Juneau, AK 99801
(907) 465-2995

Representative Les Gara
State Capitol, Room 418
Juneau, AK 99801
(907) 465-2647

AOA Fact Sheets

Obesity in Youth

Diabetes, hypertension and other obesity-related chronic diseases that are prevalent among adults have now become more common in youngsters. The percentage of children and adolescents who are overweight and obese is now higher than ever before. Poor dietary habits and inactivity are reported to contribute to the increase of obesity in youth.

Today's youth are considered the most inactive generation in history caused in part by reductions in school physical education programs and unavailable or unsafe community recreational facilities.

This fact sheet outlines many factors related to obesity in youth that make it the major health care challenge for the 21st century.

Overweight and Obesity Defined

- Overweight and obesity for children and adolescents are defined respectively in this fact sheet as being at or above the 85th and 95th percentile of Body Mass Index (BMI).
- Some researchers refer to the 95th percentile as overweight and other as obesity. The Centers for Disease Control and Prevention (CDC), which provides national statistical data for weight status of American youth, avoids using the word "obesity," and identifies every child and adolescent above the 85th percentile as "overweight."
- The AOA uses the 95th percentile as criteria for obesity because it:
 - corresponds to a BMI of 30 which is obesity in adults. The 85th percentile corresponds to a BMI of 25, adult overweight.
 - is recommended as a marker for when children and adolescents should have an in-depth medical assessment.
 - identifies children that are very likely to have obesity persist into adulthood.
 - is associated with elevated blood pressure and lipids in older adolescents, and increases their risk of diseases.
 - is a criteria for more aggressive treatment.
 - is a criteria in clinical trials of childhood obesity treatments.

Prevalence and Trends

- Approximately 30.3 percent of children (ages 6 to 11) are overweight and 15.3 percent are obese. For adolescents (ages 12 to 19), 30.4 percent are overweight and 15.5 percent are obese.
- Excess weight in childhood and adolescence has been found to predict overweight in adults. Overweight children, aged 10 to 14, with at least one overweight or obese parent (BMI > 27.3 for women and > 27.8 for men in one study), were reported to have a 79 percent likelihood of overweight persisting into adulthood.

Gender

- Overweight prevalence is higher in boys (32.7 percent) than girls (27.8 percent). In adolescents, overweight prevalence is about the same for females (30.2 percent) and males (30.5 percent).
- The prevalence of obesity quadrupled over 25 years among boys and girls, as shown in Table 1.

Table 1

Increase in Obesity Prevalence (%) Among U.S. Children (Ages 6 to 11)		
	Boys	Girls

1999 to 2000	16	14.5
1988 to 1994	11.6	11
1971 to 1974	4.3	3.6
Source: CDC, National Center for Health Statistics, National Health and Nutrition Examination Survey. Ogden et. al. JAMA. 2002;288:1728-1732.		

- Obesity prevalence more than doubled over 25 years among adolescent males and females, as shown in Table 2.

Table 2

Increase in Obesity Prevalence (%) Among U.S. Adolescents (Ages 12 to 19)		
	Males	Females
1999 to 2000	15.5	15.5
1988 to 1994	11.3	9.7
1971 to 1974	6.1	6.2
Source: CDC, National Center for Health Statistics, National Health and Nutrition Examination Survey. Ogden et. al. JAMA. 2002;288:1728-1732.		

Race

- African American, Hispanic American and Native American children and adolescents have particularly high obesity prevalence.
- Overweight (85th percentile) and obesity (95th percentile) prevalence for children and adolescents is presented by racial group in Table 3.

Table 3

Race	Children (Ages 6 to 11) Prevalence (%)		Adolescents (Ages 12 to 19) Prevalence (%)	
	Overweight	Obesity	Overweight	Obesity
Black (Non-Hispanic)	35.9	19.5	40.4	23.6
Mexican American	39.3	23.7	43.8	23.4
White (Non-Hispanic)	26.2	11.8	26.5	12.7
Source: CDC, National Center for Health Statistics, National Health and Nutrition Examination Survey. Ogden et. al. JAMA. 2002;288:1728-1732.				

- Among female youth, the highest overweight and obesity prevalence is found in black (non-Hispanic) girls (ages 6 to 11), 37.6 percent and 22.2 percent respectively, and black (non-Hispanic) adolescent females (ages 12 to 19), 45.5 percent and 26.6 percent respectively.
- Among male youth, the highest overweight and obesity prevalence is found in Mexican American boys (ages 6 to 11), 43 percent and 27.3 percent respectively, and Mexican American adolescent males (ages 12 to 19), 44.2 percent and 27.5 percent respectively.
- Overweight prevalence for Native American children and adolescents (ages 5 to 17) was reported in a 1999 study as 39 percent for males and 38 percent for females in the Aberdeen area Indian Health Service.

- Asian American adolescents (ages 13 to 18) were reported to have an overweight prevalence of 20.6 percent in the 1996 National Longitudinal Study of Adolescent Health.
- Asian-American and Hispanic-American adolescents born in the U.S. to immigrant parents are more than twice as likely to be overweight as foreign born adolescents who move to the U.S.

Health Effects

Many adverse health effects associated with overweight are observed in children and adolescents. Overweight during childhood and particularly adolescence is related to increased morbidity and mortality in later life.

Asthma

- Prevalence of overweight is reported to be significantly higher in children and adolescents with moderate to severe asthma compared to a peer group.

Diabetes (Type 2)

- Type 2 diabetes in children and adolescents has increased dramatically in a short period. The parallel increase of obesity in children and adolescents is reported to be the most significant factor for the rise in diabetes.
- Type 2 diabetes accounted for 2 to 4 percent of all childhood diabetes before 1992, but skyrocketed to 16 percent by 1994.
- Obese children and adolescents are reported to be 12.6 times more likely than non-obese to have high fasting blood insulin levels, a risk factor for type 2 diabetes.
- Type 2 diabetes is predominant among African American and Hispanic youngsters, with a particularly high rate among those of Mexican descent.

Hypertension

- Persistently elevated blood pressure levels have been found to occur about 9 times more frequently among obese children and adolescents (ages 5 to 18) than in non-obese.
- Obese children and adolescents are reported to be 2.4 times more likely to have high diastolic blood pressure and 4.5 times more likely to have high systolic blood pressure than their non-obese peers.

Orthopedic Complications

- Among growing youth, bone and cartilage in the process of development are not strong enough to bear excess weight. As a result, a variety of orthopedic complications occur in children and adolescents with obesity. In young children, excess weight can lead to bowing and overgrowth of leg bones.
- Increased weight on the growth plate of the hip can cause pain and limit range of motion. Between 30 to 50 percent of children with this condition are overweight.

Psychosocial Effects & Stigma

- Overweight children are often taller than the non-overweight.
- White girls, who develop a negative body image, are at a greater risk for the subsequent development of eating disorders.
- Adolescent females who are overweight have reported experiences with stigmatization such as direct and intentional weight-related teasing, jokes and derogatory name calling, as well as less intentional, potentially hurtful comments by peers, family members, employers and strangers.
- Overweight children and adolescents report negative assumptions made about them by others, including being inactive or lazy, being strong and tougher than others, not having feelings, and being unclean.

Sleep Apnea

- Sleep apnea, the absence of breathing during sleep, occurs in about 7 percent of children with obesity. Deficits in logical thinking are common in children with obesity and sleep apnea.

Note: Information for this fact sheet comes from various sources, some of which use different terminology for the 85th and 95th percentile of BMI. For consistency, the AOA refers to any use of the 85th percentile of BMI as overweight and the 95th percentile as obesity in children and adolescents. In general, childhood is defined as 6 to 11 years of age, and adolescence as 12 to 19 years of age.

adn.com

Anchorage Daily News

Print Page

Close Window

Save a heart; become a lady in red**COMPASS: Points of view from the community**

By NANCY MURKOWSKI By STEVE CLEARY

(Published: February 1, 2005)

In recognition of February, American Heart Month, I'm calling on all women to take charge of their health and fight heart disease before it's too late.

According to the American Heart Association, cardiovascular disease, including heart disease and stroke, is the most dangerous threat to a woman's health. No other killer takes more lives, disables more people and ruins more careers in our state. This year alone several hundred of Alaska's mothers, daughters, sisters and wives will die from cardiovascular disease. Hundreds more will live with the debilitating effects of heart disease and stroke. And yet the American Heart Association found that less than one-fifth of women consider cardiovascular disease their greatest health risk.

It's time for us women to start taking care of ourselves and to "go red" by making our own health a priority. What does it mean to "go red for women?"

It means you should wear red Friday, which is National Wear Red Day. You may be aware that heart disease is the No. 1 killer of women, but too many women are still surprised by this fact. Put on a red dress, hat or sweater and tell other women the startling truth about heart disease. Men too can show support for the women in their lives by wearing a red tie or a red shirt.

More importantly, "going red" means looking at your own risk for cardiovascular disease, such as high blood pressure, high cholesterol, lack of exercise and being overweight. Talk to your doctor about your risk factors and take personal control over them. Make a commitment to heart health the same way you're adamant about fighting off cancer. If you get a mammogram regularly, give the same importance to knowing your cholesterol and blood pressure numbers. Start knowing your numbers while you're young and your risk is low. Mothers, set healthy examples for your families and feel good about the fact that a healthier lifestyle puts everyone in your family on track to living healthier, longer lives.

Finally, we must encourage our legislators to stay committed to improving the health of all Alaskans. Tobacco and obesity are the two most preventable causes of cardiovascular disease for both men and women. The Alaska Legislature wisely supported the governor and increased our state cigarette tax during last year's special session. It must now follow through to ensure that a percentage of the new tax revenue goes to tobacco prevention, education and cessation programs to help Alaskans who want to quit and to prevent children from picking up the deadly habit.

Although we've made important strides in working to reduce tobacco use in Alaska, we unfortunately have a long way to go to reduce Alaska's growing obesity problem. Did you know that Alaska has one of the highest obesity rates west of the Rockies and that more than half of Alaska children are overweight or obese? Learning to lead an active lifestyle is best taught at an early age. I hope you will join with me in supporting the American Heart Association's goal that all schoolchildren, grades K-12, should participate in daily, quality physical education -- a goal that is far from a reality in most of our schools. Daily, quality physical education helps combat childhood obesity and sets positive patterns for life. And it's never too late to start keeping in shape. By next year, I hope you will see "less" of me.

We can all do a lot to help reduce the burden of cardiovascular disease in Alaska. So this February, make it a point to "go red" and stay healthy for life!

First lady Nancy Murkowski is honorary chairwoman of the 2005 Go Red for Women Luncheon on Wednesday in Anchorage. For more information on women's heart health, visit americanheart.org or call 1-888-MY-HEART.

[Print Page](#)

[Close Window](#)

Copyright © 2005 The Anchorage Daily News (www.adn.com)



Tuesday, February 08, 2005

The online edition of the Frontiersman does not contain the entire content of our print version.

News

Local News
Obituaries
Opinion
World News

Sports

Features

Valley Life
Health
Entertainment
Stocks / Financial News

Classifieds

Special Editions

Info Desk

About Us
Place a Classified Ad
Subscribe

Archives

Home

Search The Web

Find

[Web Directory](#)
[Yellow Pages](#)
[White Pages](#)
[Meet Someone](#)
[My Page](#)
[City Guide](#)
[Lottery Results](#)
[Weather](#)
[Movie Listings](#)
[Maps/Directions](#)

Representatives seek to enhance physical education in schools

JOEL DAVIDSON/Frontiersman reporter

JUNEAU - Reps. Lesil McGuire, R-Anchorage, and Les Gara, D-Anchorage, introduced legislation last week to create a legislative task force that would address how to best increase physical activity in Alaska's schools.

House Bill 128 brings together school officials, legislators and physicians to address the growing problem of obesity and diabetes among children.

According to the American Obesity Association, more than 30 percent of U.S. children and adolescents are overweight or obese - a fact that is both reversible and preventable.

The medical profession has argued that healthy students simply perform much better academically and socially.

"Overweight children become overweight adults, plagued by a terrible litany of diseases," said Dr. Peter Mjos, an Anchorage doctor.

The task force would determine the best approach for establishing maximum physical activity for Alaska students. Alaska does not currently impose any statewide standards for physical activity in schools.

The task force will be charged with coming up with recommendations for effectively and economically maximizing physical activity within the existing infrastructure of Alaska's schools. The task force will also come up with recommendations for new laws or regulations to allow schools to provide needed physical activity in the long term.

"Too many children suffer because of diabetes and obesity, and we'd like to change that," Rep. McGuire said.

Gara shared the same concern, stating in a press release, "We can help children learn and feel better by improving physical education in this state."



[Horoscope](#)
[Greeting Cards](#)

Attorney general resigns

DAWN De BUSK/Frontiersman reporter

Board reviews student rights and responsibilities

JOEL DAVIDSON/Frontiersman reporter

Artist weaves folk songs into curriculum

JOEL DAVIDSON/Frontiersman reporter

Battles rage on

JOEL DAVIDSON/Frontiersman reporter

Phony greenbacks surfacing in Palmer

KATE GOLDEN/Frontiersman reporter

**Government, education and public service
scholarships available**

JOEL DAVIDSON/Frontiersman reporter

**Representatives seek to enhance physical education
in schools**

JOEL DAVIDSON/Frontiersman reporter

Copyright © 2005 Frontiersman.com.



Tuesday, February 08, 2005

The online edition of the Frontiersman does not contain the entire content of our print version.

News

Local News
Obituaries
Opinion
World News

Sports**Features**

Valley Life
Health
Entertainment
Stocks / Financial News

Classifieds**Special Editions****Info Desk**

About Us
Place a Classified Ad
Subscribe

Archives**Home****Search The Web**

Find

[Web Directory](#)
[Yellow Pages](#)
[White Pages](#)
[Meet Someone](#)
[My Page](#)
[City Guide](#)
[Lottery Results](#)
[Weather](#)
[Movie Listings](#)
[Maps/Directions](#)

Representatives seek to enhance physical education in schools

JOEL DAVIDSON/Frontiersman reporter

JUNEAU - Reps. Lesil McGuire, R-Anchorage, and Les Gara, D-Anchorage, introduced legislation last week to create a legislative task force that would address how to best increase physical activity in Alaska's schools.

House Bill 128 brings together school officials, legislators and physicians to address the growing problem of obesity and diabetes among children.

According to the American Obesity Association, more than 30 percent of U.S. children and adolescents are overweight or obese - a fact that is both reversible and preventable.

The medical profession has argued that healthy students simply perform much better academically and socially.

"Overweight children become overweight adults, plagued by a terrible litany of diseases," said Dr. Peter Mjos, an Anchorage doctor.

The task force would determine the best approach for establishing maximum physical activity for Alaska students. Alaska does not currently impose any statewide standards for physical activity in schools.

The task force will be charged with coming up with recommendations for effectively and economically maximizing physical activity within the existing infrastructure of Alaska's schools. The task force will also come up with recommendations for new laws or regulations to allow schools to provide needed physical activity in the long term.

"Too many children suffer because of diabetes and obesity, and we'd like to change that," Rep. McGuire said.

Gara shared the same concern, stating in a press release, "We can help children learn and feel better by improving physical education in this state."



[Horoscope](#)
[Greeting Cards](#)

Attorney general resigns

DAWN De BUSK/Frontiersman reporter

Board reviews student rights and responsibilities

JOEL DAVIDSON/Frontiersman reporter

Artist weaves folk songs into curriculum

JOEL DAVIDSON/Frontiersman reporter

Battles rage on

JOEL DAVIDSON/Frontiersman reporter

Phony greenbacks surfacing in Palmer

KATE GOLDEN/Frontiersman reporter

**Government, education and public service
scholarships available**

JOEL DAVIDSON/Frontiersman reporter

**Representatives seek to enhance physical education
in schools**

JOEL DAVIDSON/Frontiersman reporter

Copyright © 2005 Frontiersman.com.

NEWS

- » Empire Front Page
- » Local News
- » Opinion
- » Letters To The Editor
- » Neighbors
- » State & Regional News
- » Obituaries
- » Weather
- » Business News
- » Archives
- » State AP Wire
- » National AP Wire
- » Email Newsletter
- » Special Sections
- » Calendar

SPORTS

- » Local Sports
- » Empire Outdoors

FUN

- » Juneau This Week
- » Books
- » Slideshows
- » Message Board
- » TV Week
- » Movie Listings
- » Juneau History
- » Poll Results

USEFUL

- » Classifieds
- » Net Marketplace
- » Subscribe
- » Jobs At The Empire
- » Open Carrier Routes
- » Local Maps
- » Contact Us

NEWS

- » Empire Front Page
- » Local News
- » Opinion
- » Letters To The Editor
- » Neighbors
- » State & Regional News
- » Obituaries
- » Weather
- » Business News
- » Archives
- » Associated Press
- » Email Newsletter
- » Special Sections
- » Calendar

SPORTS

- » Local Sports
- » Empire Outdoors

SPECIAL SECTIONS

- » AK Folk Festival
- » Gold Medal
- » Juneau Guide
- » Juneau Brides
- » Juneau This Week
- » Special Sections Archive

Top News | U. S. | World | Business | Sports | Health | Technology | Entertainment | Politics
January 17th - 8:36 pm ET

Students spend little time getting exercise in P.E. classes, even as childhood obesity grows

COLIN FLY
Associated Press Writer

NASHVILLE, Tenn. — As American children grow fatter and more out of shape, physical education classes are being found wanting. Experts say there's little accountability for P.E. teachers in most schools. They say the classes are often poorly run, and students don't spend much time in them anyway.

Lisa Lewis, a health professor, heard her two sons talk about how bad their high school P.E. class was, so she went to see for herself.

"It's been terrible," she said. The teacher was a basketball coach, and "that's basically all they did — play basketball between 10 and 50 kids." Many students, especially those who weren't athletic, just stood on the sidelines of the disorganized game.

Nearly one-fifth of all high school P.E. teachers don't have a major and certification in physical education, according to the most recent numbers from the National Center for Education Statistics.

Often the instructor is a coach more interested in winning games than in producing healthy students, experts say.

"That stigma that a coach cares more about the team than his physical education class does exist," said George Graham, professor of kinesiology at Penn State University.

"When a teacher or coach is doing that, it's really up to the principal to get in there and say, 'We want to win ball games, but the kids in P.E. deserve a good education too.'"

The lack of respect for P.E. also appears in the number of students required to take it.

The Centers for Disease Control and Prevention reports that in 2003, only 28 percent of high school students nationwide attended a daily P.E. class, but 38 percent watched television for three hours or more each school night.

While 71 percent of the nation's freshmen were in P.E. at least one day a week — hardly enough to be effective, experts say — those numbers drop to 40 percent by the students' senior year.

But participation varies widely by state. In Tennessee, for instance, only 18 percent of seniors were enrolled in a P.E. class, while New York has better than 90 percent participation.

The National Association for Sport and Physical Education says Illinois is the only state that requires daily physical education K-12, while Alabama requires it for K-8.

In California, Kentucky, Maine, Missouri, New York, South Carolina and Vermont, accountability standards are being developed for health and physical education programs.



Skye Trammel of Victor, N.Y., does curls with barbells in the weight room at Victor High School in Victor, N.Y. on Wednesday, Jan. 12, 2005. Physical education experts say there's little accountability for P.E. teachers in most schools. Victor Central School District Superintendent Timothy J. McElheran said his teachers are held to specific goals and judged like any math or science teacher would be. (AP Photo/Don Heupel)

FUN

- » Juneau This Week
- » Books
- » Slideshows
- » Message Board
- » TV Week
- » Movie Listings
- » Juneau History
- » Poll Results

USEFUL

- » Classifieds
- » Net Marketplace
- » Subscribe
- » Jobs At The Empire
- » Open Carrier Routes
- » Local Maps
- » Contact Us

"Unless we hold physical education teachers accountable for the fitness of the student ... there's no way to evaluate who is good or who is bad because we're more concerned with math and reading," Lewis said. "There needs to be some sort of minimal national fitness standard — that would be a very easy thing to establish."

Some schools have done just that — like the Victor Central School District just outside Rochester in Victor, N.Y.

Superintendent Timothy J. McElheran said his teachers are held to specific goals and judged like any math or science teacher would be.

"It's no longer the coach with the whistle around his neck," he said. "Our physical education teachers are highly trained professionals."

Victor's nationally recognized program includes rock-climbing, kayaking, cross-country skiing, archery and aerobic dance as options for students.

"They take what they're doing very seriously," he said.

But not all do, and a new federal education law doesn't give schools much incentive.

"The thought in some schools is, 'If we eliminate P.E., then they will have more time to do better educationally,' but there's nothing to suggest that's the case," Graham said.

"Kids — just like adults at work — need breaks and they need time on their own."

Lewis has seen the poor state of physical education not only in her sons' school, but also at Middle Tennessee State University where she works. The school recently dropped requirements for health and P.E. from the core curriculum.

MTSU general education director Bill Badley said the P.E. requirement went from four hours to zero when the school decided to add classes to the core curriculum while lowering the total number of classes needed to graduate.

Lewis wasn't able to stop the changes at MTSU, but she was able to make a difference at her sons' school.

"I went to the class and actually helped the physical educator," Lewis said. "The non-athletes, they're the ones who need it most."

NASPE president Dolly Lambdin said the cuts in secondary schools and colleges intensify the problem that begins at a young age.

"Whatever belief we teach (children) in elementary school, middle school and high school, those beliefs will carry over in college," she said. "We can't continue the model (that) we have to fix things later. It doesn't work on your car and it doesn't work on your body. Physical maintenance is the key."

Copyright 2005 The Associated Press. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.

All contents Copyright 1997-2002 Juneau Empire, Morris Digital Works Morris Communications Corporation
Contact Us | About Us | Privacy Policy |

adn.com

Anchorage Daily News

Print Page

Close Window

Third of city's students at risky weight, study finds

ANCHORAGE: Most of them are heavy before the first grade.

By ANN POTEMPA
Anchorage Daily News

(Published: November 16, 2004)

A new study shows that more than one-third of Anchorage School District students are overweight or at risk for weighing too much.

Further, the study shows that almost one in three children entering kindergarten or first grade are overweight or headed that way -- a strong indicator that parents and doctors must address children's weights before they enter school.

"I think this is a major eye-opener for all of us," said Dr. John Middaugh, a medical epidemiologist in Alaska.

"Until we looked at the data, I think most of us didn't have a clue of the scope of the problem at such a young age."

Children who weigh too much are at risk for other health problems. Some are physical problems, like diabetes, high blood pressure and high cholesterol, while other times they're psychological or social in nature.

Family practitioner Peter Mjos said he's watched more and more children develop chronic health conditions during his three decades of work.

"So much of it is simply related to the fact that we've become inactive and obese," said Mjos, who has long advocated more physical activity among Alaska students.

The study was made public at Monday's School Board meeting.

The new research was a joint project between the Anchorage School District, which collected heights and weights for 41,261 students, and the state Division of Public Health, which analyzed the information.

Erin Peterson, manager for the state's Obesity Prevention and Control Program, said school nurses from all schools in the district took height and weight measurements between the 1998-99 and 2002-03 school years. They also recorded other information, including age, sex, grade and race. Middaugh said the study provides a robust set of measurements on thousands of youths and a good look at weight problems among young children.

During the five-year period, the study found 2 percent of students were underweight and 62 percent were at a normal weight, while 18 percent were at risk of weighing too much and another 18 percent were overweight.

The study deemed children overweight or in danger of getting there if their body weight measurements were higher than those of most of the other kids of similar age and gender.

The study found white students were less likely to be overweight or at risk for weighing too much than students of other races, which is consistent with national research. Middaugh, however, issued a caveat: Body types may vary for children of different races, and that variation could wrongly suggest those children are overweight.

"More work needs to be done on that," he said.

Health authorities call the growing girth of children and adults nationwide an epidemic. Studies show that 59 percent of U.S. adults are overweight or obese; results are similar in Alaska, where 62 percent of adults weigh too much.

An independent health agency, the Institute of Medicine, focuses on the problem in children. In a recent report, the institute says the prevalence of obesity nationwide has more than doubled for children 2 to 5 and 12 to 19 since the 1970s, and has more than tripled for 6- to 11-year-olds.

Annual obesity-related hospital costs for children have more than tripled during the past two decades, the institute reported.

Overweight kids are at more risk of becoming overweight adults, the district study said. Doctors say overweight kids also are more likely to have sleep problems and social problems.

Dr. Bruce Chandler, a pediatrician and Anchorage's city medical officer, said overweight teens sometimes struggle with friends. "They become more isolated and less involved in normal kids' activities," he said.

Kids are fatter today because they're less active and eat too much food, Mjos said at the School Board meeting. Federal health officials, he said, estimate that students spend 32 hours a week in front of televisions, computers, games and other electronic toys.

And while they're sitting there, they're snacking, he said.

"I have some kids who will drink a six-pack of soda after school while they're watching TV," Chandler said.

"And there's also a lot of kids who get absolutely no exercise."

The School District plans to improve how it monitors children's body weights, and Middaugh said he hopes other districts in the state will also take body size measurements to track childhood obesity.

After hearing the health department's presentation Monday, several School Board members discussed vending machines and the difficulty of adding more physical activity to a child's already-packed school day.

Board member John Steiner said it's ironic that the money raised from vending machines goes toward funding activities, many of which are healthy.

"But some of the funds to pay for them are coming from things that aren't necessarily healthy," said Steiner, who wants the board to keep talking about vending machines.

Carol Comeau, School District superintendent, said she intends to organize a work session so the board can continue its discussion of the new data.

OVERWEIGHT: For the study and Mayo Clinic advice for parents, see www.adn.com/links

[Print Page](#)

[Close Window](#)

Copyright © 2004 The Anchorage Daily News (www.adn.com)

Junk food diet + inactivity = overweight kids

Tuesday, November 16, 2004 - by Yvonne Ramsay



Anchorage, Alaska - From kindergarten to senior year in high school, Anchorage students are weighing in heavier than ever.

"A significant percentage of the kids in kindergarten or first grade are either at risk or already overweight," says Dick Hawkins, a physical education instructor at

Creekside Elementary School.

A recent study released by the Anchorage School District and the state Division of Health found that 18 percent of children are overweight, while another 18 percent are at risk of becoming overweight. About 62 percent of students are at a normal weight, compared to just 2 percent considered underweight.

Physical education teachers say, with the amount of time students spend in the gym at school, the statistics are not going to improve.



"In 60 minutes a week, you just can't really effect that much of a change," says Hawkins (right). "You can affect their attitude, I think, and the enjoyment they might get out of an activity. But they have to do a lot of it on their own at home."

Doctors say if children don't learn healthy habits early, there will be consequences later in life.



"Obese children become obese adults," says Dr. Peter Mjos of the Anchorage Neighborhood Health Clinic. "We've heard that this trend, according to the CDC, is actually magnified in rural Alaska."

It's a trend that's not only growing in Alaska, but across the nation.

"Shortly, the number of deaths attributable to obesity and being overweight will overtake smoking as the most common cause of death in this country," Dr. Mjos says. "This is a tragedy. The bottom line -- it's reversible and it's preventable."

From the skinny kids to those who are big boned, school officials say it's important all children learn the importance of maintaining a healthy lifestyle.

"I think also pediatricians, health care providers, the neighborhood health clinics need to work together with us to emphasize, literally from the day a child is born, how important good nutrition is, and exercise," says School Superintendent Carol Comeau.

Read the report by the Anchorage School District and the state Division of Public Health about overweight children.

PREVALENCE OF OVERWEIGHT ANCHORAGE STUDENTS	
Overweight	18%
At Risk	18%
Normal	62%
Underweight	2%

Channel 2 Broadcasting Inc.
<http://www.ktuu.com/>