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THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.



Ombudsman

Frank Flavin

OCT 10 1977

September 30, 1977

Mr. B. B. Allen  
Commissioner  
Department of Administration  
Pouch C  
Juneau, Alaska 99811

① 1st Jan - transfers  
of  
② enrollment 2 months  
of 1st  
(equitable)

State of Alaska  
360 "K" Street, Room 246  
Anchorage, Alaska 99501  
(907) 226-4011



③ Hartford court

④ I.R.S. question big question

⑤ No reply from  
B.B. Allen

RE: 77-1586 (Pending)  
Preliminary Report

Dear Commissioner Allen:

Please be advised that the above-cited complaint has been investigated by the Office of the Ombudsman. In pursuing information relevant to this complaint, several other problems have come to light prompting us to expand this investigation into a special Ombudsman investigation (pursuant to AS 24.55.120) spanning the last four months.

The original complaint alleged that the changes brought about in the State Employees' Deferred Compensation Program were unsupported by fact or logic, were contrary to legislative intent, and represent a breach of good faith on the part of the State. For clarity, we have separated the issues in the discussion which follows.

Pursuant to AS 24.55.150, the Ombudsman may investigate an administrative act of an agency which the Ombudsman has reason to believe might be:

- (1) contrary to law
- (2) unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory, even though in accordance with the law
- (3) based on a mistake of fact
- (4) based on improper or irrelevant grounds
- (5) unsupported by an adequate statement of reasons
- (6) performed in an inefficient or discourteous manner
- (7) or otherwise erroneous

Because of the complexity of this subject which involves financial investment of public monies, and the fact

Copy to State  
Frank Flavin  
E. B. Allen

that time has been a major factor in this issue, we have not pursued the merits of one deferred compensation investment vehicle versus another. However, we support the contention that the questions raised by the complainant in this matter are significant and do require appropriate review. Our recommendations address this need.

As Mr. Gates indicated in his September 12 letter to my Assistant, Don Fisher, the background of this matter must be examined in order to understand the recent action involving the Deferred Compensation Program. It is our understanding that the deferred compensation fund is viewed by your department as state monies whose management comes under the general authority of AS 35, Public Finance, and is subject therefore to the requirements set forth in that chapter.

Our investigation revealed several major discrepancies in the State's management of the Deferred Compensation Program. These discrepancies centered around the failure of the State to responsibly monitor and supervise the professional actions and attitude of the State consultant, Mr. Robert Irwin of the William Mercer Company. In his capacity as the State's consultant, Mr. Irwin allegedly threatened Hartford associates several times, in front of witness in September, 1976, to use his influence to remove the Hartford Company from the Deferred Compensation Program. The fact that personal problems existed between the Hartford people and the consultant were communicated to then Director of Retirement, Mr. Robert Gates, in a February 16, 1977, luncheon meeting with Mr. Ron Robinson of Hartford at the Jun. au Hilton Hotel. Further concern was expressed about Mr. Irwin's conduct in a letter dated May 27, 1977, to Mr. Irwin from Michael E. Greene, Assistant Vice President and Director of Sales for Hartford. You responded to Mr. Greene's letter on June 2, 1977. Both letters are attached as Exhibit 1 to this report.

In his September 12, 1977, letter to Mr. Fisher, Mr. Gates stated that "the Hartford was advised on May 11, 1977, that we were not satisfied with the proposal which had been presented up until that date..." In conversation with Mr. Fisher, Mr. Gates further advised that on the State's authority bid questionnaires were solicited by the consultant, Robert Irwin, and that the bid period was June 15 through July 15, 1977. He also indicated that Mr. Irwin had opened the bids on

behalf of the State on July 15, in his Seattle office. Mr. Irwin's consultant's report was not dated, but Mr. Gates stated it was received by the State on August 15, 1977.

The record of dates as restated above indicates that the bid process was perceived as a necessary procedure in conducting this transaction of public finance. However, at least two items of record were retracted from the Equitable's original bid on August 3, 1977. These changes were agreed upon approximately nineteen days after the bidding period had closed. Exhibit 2 is a copy of a letter dated August 3, 1977, from Paul J. Dolinoy, Pension Consultant with The Equitable, to Mr. Robert F. Irwin. In his letter Mr. Dolinoy states in part, "You expressed concern about the penalty (3%) that would be levied in the event that a unilateral withdrawal of the fund was made by the State of Alaska prior to the end of the guarantee period. Your concerns were communicated to Equitable's home office in New York with the hope that an arrangement could be worked out where there would be "no penalty" after the market value adjustment was determined. We are pleased to inform you that the "penalty" provision of the market value adjustment will be eliminated..."

A second change was made in the Equitable bid on August 3, 1977, in another letter from Paul J. Dolinoy to Robert Irwin. In part it said, "We have re-evaluated the guaranteed expenses for the above group's Deferred Compensation Program and we are pleased to advise you that we were able to decrease our expense formula to .25% from the previously quoted .30%." A copy of this letter is attached as Exhibit 3.

Impact:

Alaska Statute 37.05.230, embellished by the 1959 Attorney General's Opinion No. 27, set the tone and has direct application in the matter at hand. "The purpose of this chapter was not only to protect the State and the public purse from uneconomic contracts let by use of failure to request competitive bids and because of possible favoritism, but was also to insure that contractors would be insured a certain amount of "fair play" in dealing with the State government and in competing with one another for State contracts." In allowing a consultant for the State to act exclusively unsupervised and in private in a distant city (Seattle) on a sealed public bid, and with the prior knowledge that his professional perspective had been seriously questioned, has cast a cloud over the entire process. In effect, the bids were not opened in public. The State failed to ensure that an employee of the State was present at the opening

on July 15, 1977 to ensure that AS 37.05.230 and 37.05.240 were adhered to. In addition, major changes to the plan were negotiated by the consultant with his choice of program carriers after the bids were opened. This violates the intent of the bidding process and undermines the spirit of "fair play" which is insured by AS 37.

#### Findings

44-10500-100  
I find; that the State failed to follow the bidding requirements as set forth as AS 37.05.250, in that the Retirement and Benefits Division delegated the duties and legal obligations of soliciting and opening bids to Mr. Robert Irwin, an unauthorized individual not in the employment of the State; and that the State authorized Mr. Robert Irwin to open bids in his Seattle office, not in public as prescribed in AS 37.05.230(2); and that through the State's acquiescence, Mr. Irwin negotiated significant changes in the Equitable carrier's original bid after the July 15 closing date in violation of the spirit and intent of AS 37.05.230; and that AS 37.05.240 requiring specific organization of bidding documents was not adhered to.

The statute states: "All bids with the names of the bidders and the amounts of the bids, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the department . . . and these files or records are open to public inspection at all reasonable times."

It was our finding that no such coordination of bids and documents existed in the State files and were therefore not readily available to the public upon request. It was our understanding that most records pertaining to the bids were in Mr. Irwin's custody.

In view of the secretive manner in which this initial changeover of the Deferred Compensation Program was done and due to the peculiarities of this system, it is recommended that:

1. The State immediately stop further action in pursuing the new contract with Equitable and T. Rowe Price until the following step has been accomplished and the collective decision has been reached by those involved:
2. In light of the reported conflicts of the present consultant cited above, Commissioner of Administration establish a committee of five impartial persons, two of whom would meet with approval of the executive branch and three of whom would meet with the approval of APEA, Local 71, and IBU, whose members comprise in excess of 85% of the total plan participants.

September 30, 1977

Because of the constraints of time we have not outlined how the above committee should operate; however, we will detail these procedures at a later time. In addition, because of the limited time involved, we have not put forth our concerns about the lack of participant input into the management decisions of this program.

The above recommendations have taken into account the fact that the 1978 open enrollment period is to begin October 1, 1977. We see no reason why the present carrier cannot continue to enroll new participants and make necessary adjustments for current members regardless of the outcome of this matter. On the other hand, if this is perceived as a problem, the review process could be expedited and would merely result in a shortening of the open enrollment period this year.

Since this represents the formal report with recommendations from this office, may we please be advised of the disposition your agency gives to each recommendation in accordance with 21 AAC 05.080.

We will appreciate your careful consideration of these recommendations.

Sincerely,

*Frank Flavin*  
Frank Flavin *by DF*  
Ombudsman

FF/DF/lh

cc: Don Fisher, Ombudsman Assistant  
Governor Hammond, State of Alaska

1,100 state workers involved:

# Tax shelter faces a challenge

by Howard Weaver

Anchorage  
Debate surrounding planned changes in the deferred compensation plan for state employes has many of the 1,100 participants worrying about the tax-exempt status of almost \$10 million of their money.

The deferred compensation plan (DCP), through which workers reduce their tax burden by electing to postpone receipt of some wages, has been called to question because the IRS was not notified of a planned change in administration. State officials say there are "absolutely confident" that the contemplated change of investment managers is not a substantive modification and so does not require the IRS okay.

But if they're wrong, the plan—designed as a tax shelter—could become a massive tax liability for most participants. Should the plan be disallowed, participants face the prospect of having their money returned in one lump sum—all of it then taxable at high rates.

"There is no problem and has never been a problem. Everyone (in state government) is very confident there is no problem," said Paul Arnoldt, who as director of the Division of Retirement and Benefits heads the program.

Critics are not that sure. Senior officials of Hartford Insurance Co.—which stands to lose the contract to manage the fund—say the proposed transfer of carriers and investment plans likely are substantive amendments. That would require approval which the IRS says it just won't give, they say.

Meanwhile, the procedure used to award the investment contract is under investigation by the state Ombudsman's Office. Results of his preliminary examination say the manner in which that contract was changed "violates the intent of the bidding

It's called 'deferred compensation,' and it's turned into what one state official calls 'a game of politics.'

He also said changes made after the selection process closed were "improvements to an already superior product." Had the consultant not accepted them, he said, the state would have received a program less suitable than it ultimately got.

The uncertainty about IRS approval, however, could make moot the question of who manages the investments. In the worst case, tax agents could simply disqualify the plan, mandating return of deferred wages. That would leave participants holding the bag for taxes perhaps greater than they would have paid had they not deferred income. The returned funds would be counted taxable income; they are exempt only while in the DCP system. Since the money would come all in one tax year, participants likely would find themselves in a higher bracket than if they had not deferred income over a period of years.

The plan has proved extremely attractive to many state workers—especially those in the upper range of the salary schedule. Some state employes have deferred more than \$2,000 monthly, and total investments run to more than \$30,000 for some individuals.

One state employe, at least, has written to Allen raising concerns over the IRS status of the system and asked the state to guarantee he will not suffer by participating in the plan. He said representatives of Rowe Price and Equitable were "unable to answer the questions" he raised.

In a recent letter to Allen, the employe said the uncertainty "leaves me totally con-

U.S. Internal Revenue Service approval for its deferred compensation plan.

"Therefore, before I made my decision on what amount of my income, if any, to defer during . . . 1978, I am formally requesting that you . . . certify to me that I shall incur no federal or state tax liability on any income so deferred as long as I am enrolled in the State deferred compensation plan.

"In effect, I am asking that you agree to hold me harmless should the Internal Revenue Service eventually decide that as of January 1, 1978, the State of Alaska did not have a valid ruling on the plan," the letter said.

At issue is what the IRS calls a "private taxpayer letter," by which the tax service authorizes tax-exemption plans such as the Alaska DCP. The State obtained approval for its plan in 1974—but, as is often the case with the IRS, there's a catch.

After approving the DCP as passed by the legislature and amended, the IRS cautioned ". . . that if the Plan is amended or modified . . . this ruling may no longer apply."

To compound that threat, the IRS recently issued a bulletin saying it does not intend to issue any new approvals or to approve newly amended plans pending a review of the deferred income, tax shelter schemes. If plans to change carriers for the plan and related changes in it are deemed substantive—therefore requiring IRS approval—the State could find itself without a valid DCP.

But while the state is most unlikely to

officials say they are confident the change in management does not require IRS approval and the DCP will remain a solid tax shelter.

Asst. Atty. Gen. Tom Koester, who is preparing a formal opinion at Arnoldt's request, says he sees "no spectre of adverse tax consequences" for DCP participants.

"I don't believe IRS approval is jeopardized by a change in carriers. We're not changing the terms of the plan document approved by the IRS (in 1974)," he said.

Robert R. Baird, vice president of Hartford, sees it differently. In a recent letter, he wrote, ". . . it is difficult to think of any amendment which is meaningful as far as the operation of the plan is concerned which would not also be considered substantive by the IRS."

Later, Philadelphia lawyer Daniel S. Knight prepared an opinion at Baird's request and came to similar conclusions.

Since the state plan authorized by the IRS specifies that DCP payments will "equal the amount which would have been payable under a variable annuity contract" and the proposed new managers don't offer variable annuities, the plan likely would need amendment, Knight said.

". . . At a bare minimum, the State of Alaska would be most imprudent if it did not call these changes to the attention of the (Internal Revenue) Service," he wrote.

The state hasn't done that, and doesn't intend to, according to Arnoldt. "It's been our feeling right along that we're not changing the plan. There's been no change, so why ask for approval? There is absolutely no need or justification," he said.

The only problem, he says, has come from rumors spread by "self-serving interests"—a clear reference to Hartford agents—who may well lose their status as providers of the DCP service. Arnoldt laid responsibility for the disquiet on "people looking more from their interested perspective than the interest of participants."

say the manner in which that contract was changed "violates the intent of the bidding process and undermines the spirit of 'fair play' . . ."

That change, resulting from a selection process concluded in August, would transfer management of the DCP from Hartford to a team of Equitable Insurance and the T. Rowe Price Co. The contract can be a lucrative one, and the competition, although publicly quiet, has been intense.

Ombudsman Frank Flavin recommended in a Sept. 30 letter to Commissioner of Administration B.B. Allen that the state "immediately stop further action in pursuing the new contract" until a special five-member panel is appointed to review the process.

Flavin's investigation dealt not with the question of IRS approval but the manner in which new management contractors were awarded the DCP account. His letter outlined findings of an Ombudsman investigation:

" . . . The State failed to follow the bidding requirements (of state law) in that the Retirement and Benefits Division delegated the duties and legal obligations of soliciting and opening bids to Mr. Robert Irwin, an unauthorized individual not in the employment of the state; and the State authorized Mr. Irwin to open bids in his Seattle office, not in public as prescribed (by law); and through the State's acquiescence Mr. Irwin negotiated significant changes in the Equitable carrier's original bid after the . . . closing date in violation of the spirit and intent of (legal bid procedures); and (laws) requiring specific organization of bidding documents were not adhered to . . ."

Arnoldt said Tuesday the DCP "really defies the bid process," and that Irwin's solicitations were handled in the manner of professional services not subject to competitive bidding by specifications.

"I am totally convinced the people involved with the bid process maintained a professional approach. They acted as honestly and with as good faith as anybody," Arnoldt said. He expressed "utmost faith and confidence" in Irwin, the Seattle-based consultant to the DCP.

In a recent letter to Allen, the employe said the uncertainty "leaves me totally confused as to whether the State has a valid

valid DCP.

But while the state is most unlikely to agree to hold anybody harmless for taxes,

'The state failed to follow the bidding requirements,' an Ombudsman's investigation found. 'The state delegated the duties and legal obligations of opening bids to . . . an unauthorized individual not in the employment of the state; and the state authorized (him) to open the bids in his Seattle office, not in public as prescribed (by law) . . .'

looking more from their interested perspective than the interest of participants.

"I think we've gone through the big hump now," he said. "A lot of people with concerns are now satisfied."

A number of others, however, may not be. There has been talk of filing a lawsuit to stop transfer of the management contract until the IRS question is finally determined. A kind of network has emerged among opponents of the change, and word of developments is passed continually along it.

"The former carrier has generated some interest with unsubstantiated claims. We recognized there would be some pressure brought. That's politics, that's the name of the game," Arnoldt said.

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NOTICE OF ADOPTION  
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EDUCATION  
REGULATIONS

See Legal Notice Page 18

## Lawsuit ready in IRS flap

Juneau

A high-ranking Legislative Affairs official says he plans to sue the state over proposed changes in the state's deferred compensation plan for state employees.

Myrt Charney, director of administrative services for the Legislative Affairs Agency, told the *Advocate* he and a few other employees have instructed their lawyers to file a class action suit on behalf of the 1,100 employees participating in the plan.

Under the deferred compensation plan (DCP) workers reduce their tax burden by delaying receipt of a portion of their wages. Since the plan went into effect in October, 1974, almost \$10 million has been invested in the fund. The money is returned with interest to participants or their beneficiaries upon retirement, termination, disability or death.

The DCP has come into question recently because the IRS was not notified of a planned change in administrators (*Advocate*, Nov. 10-16). State officials say the decision to change from Hartford Insurance Co. to a team of Equitable Insurance and the T. Rowe Price Co. does not require IRS approval.

But top Hartford officials say the proposed transfer is a substantial amendment requiring IRS approval.

Because state officials are convinced the change is not a major modification and therefore does not require IRS okay, state officials say they do not plan to notify the IRS.

But if it is determined that IRS approval is necessary and it is not given, the plan could be disqualified, mandating return of the wages. Participants then would face the prospect of having their money returned in one lump sum — much of it then taxable at high rates.

Charney said he expects the suit to be filed within the next two weeks. He said it will seek an injunction preventing the state from transferring administration of the plan until an IRS ruling has been issued.

If the IRS approves the transfer, the suit will be dropped, Charney said.

The new carrier currently is scheduled to take over Jan. 1.

Commissioner of Administration Bill Allen said he is confident the change does not require IRS approval. He said the allegations that the change is a substantial modification have come primarily from Hartford.

"Hartford is putting pressure on our office to find fault with our decision," Allen said. "We asked Hartford to consider re-negotiating this three times but they didn't come up with the best plan."

According to state officials, the Equitable plan would result in higher guaranteed interest and annuity rates and lower operating expenses. Under the new plan, an employee who invested \$5,000 a year for 10 years would be guaranteed a return of \$74,203 compared to \$63,350 under the Hartford plan, state officials said.

The current deferred compensation plan has proved extremely attractive to many state workers.

—Jean Kizer



The Alaskaland auditorium (shown above) was filled to the brim with bidders and bystanders last weekend for the first gold auction in Alaska.

Action turned from the man (at right) weighing his nugget to the fellow (at left) displaying one of the larger pieces of some 9,000 ounces available for auction. (Photos by Rodger Painter).



## Auction attracts bids; 'have a little larceny'

checkbooks walked away with the fattest pokes.

Prices generally were above smelter prices offered to small miners, but below the current world gold market price of \$161.15 per ounce.

The audience and promoters were equally given at the auctioning process, which appeared to stifle spirited bidding. Most of the miners offered their winning bidders were allowed to purchase as little as one ounce, and the remaining gold from that consignment is offered to anyone else interested — at the same price.

But, some of the larger nuggets, ranging in size up to 62 ounces, attract competitive bidding.

Auctioneer Joe Kasler of Skagway

\$900 an ounce, and many of the vials of smaller nuggets went at \$220 an ounce or more.

The two-day auction had somewhat of a carnival atmosphere and many came to observe without making a bid.

No official estimate of the total sales was available immediately, but it appeared to be well below the 10,000 ounces estimated by some.

International Gold Corp. of Santa Ana, Calif., bid \$115,000 for the 62-ounce nugget, well below the minimum asking price of \$180,000. The nugget was found in the McGrath area by Miner Warren Magnusson in 1959.

The largest nugget sold weighed 18.9 oz. and drew a bid of \$15,000.

Miners and sponsors of the auc-

## DEFERRED COMPENSATION

November 30, 1977

The Deferred Compensation Plan for the employees of the State of Alaska is designed as a convenient and economical method of increasing their financial independence during retirement years. The primary purpose of this plan is to allow individuals to defer receiving a portion of their current salary and have it accumulate on a pre-tax basis until some future date when they will then be in a position to receive an annuity to supplement other types of income. All regular full-time and permanent part-time State employees who have completed six consecutive months of employment may voluntarily elect to place a portion of their salary into this Internal Revenue Service approved tax sheltered plan. The plan allows the participant to defer receiving a portion of their current salary and postpone payment of both State and Federal income taxes on such deferred amounts plus any interest or investment income until the time those monies are paid out under one of the various provisions.

The plan was established in 1974 following enactment of Ch. 40, SLA 1973 which granted the authority for offering a deferred compensation plan to State employees. The plan is administered by the Division of Retirement and Benefits, Department of Administration. From the inception of the program it has been the goal of the Department of Administration to provide an administratively feasible plan which has great flexibility and the best possible guarantees

for the participating employees. The consulting firm of William M. Mercer, Inc. was retained to assist the State in the initial selection of an insurance carrier to handle the plan, and after an extensive review of the proposals submitted it was concluded that the Hartford Variable Annuity Life Insurance Company could best provide what was felt to be the most desirable overall program. The program was implemented in October 1974, and since that time approximately 1,100 eligible employees have enrolled in the plan and are deferring nearly \$400,000 a month. The open enrolled period for this program is held during October and November of each year.

The administration and the investment options of the plan are periodically reviewed to insure that the employees of the State are participating in the best overall deferred compensation program at the lowest possible cost. Over the past several years an increasing number of financial institutions have started to offer products to fund deferred compensation plans. In March 1977, the Department of Administration directed its consultant to conduct a market survey to determine the availability of products suitable for funding the deferred compensation plan. The findings of this survey indicated that there were a number of competitive products to the existing State plan being offered. Based on this information the State solicited proposals from various financial in-

stitutions. After a detailed review of the various proposals submitted it was concluded that the current insurance company no longer offered the best overall program and that a change in the funding vehicle for the deferred compensation plan was warranted. The combined proposals submitted by two other financial institutions were deemed to be the most attractive funding vehicles offered from the individual participant's standpoint. The most significant advantage of the new program is that the accumulation of funds based on contractual interest guarantees is substantially greater than the present plan. For example, based on contract guarantees only, a participant who is deferring \$5,000 annually in a fixed income account over a 10 year period would have an accumulated account value under the new plan of approximately \$13,000 more than the present plan. Another major advantage of the new program is that the annuity rates are substantially greater than those guaranteed by any of the other proposals which were received.

The improvements in the deferred compensation plan will become effective January 1, 1978.

**ALASKA PUBLIC EMPLOYEES ASSOCIATION**

State Headquarters: 130 Seward Street, Suite 508, Juneau, Alaska 99801 • Tel: (907) 586-2334

December 1, 1977

Re: Status Report on the  
Alaska Deferred  
Compensation Plan

John Pugh, President and  
Members of the Executive Committee:

I have been asked by the Executive Director to provide you with an update as to the present status of the dispute over the Alaska Deferred Compensation Plan. As you know, the Deferred Compensation Plan, approved by the Internal Revenue Service, permits state employees to postpone receiving part of their salary and defer payment of both Federal and State income taxes on the amount deferred until time of payout.

Briefly stated the background of this problem is outlined as follows:

1. The State of Alaska adopted a Deferred Compensation Plan on May 31, 1974. Although the State is not required to fund the Plan with an insurance carrier, it has done so and originally selected Hartford Variable Annuity Life Insurance Company ("Hartford") as the funding medium.

2. The only documents submitted to the IRS in connection with the ruling request were the Plan document, a transmittal letter from Mr. Joseph R. Henrie, Commissioner of the Alaska Department of Administration and a letter dated June 4, 1974 submitted by Mr. Robert Gates on behalf of the Department of Administration. Mr. Gates' letter of June 4 was merely a transmittal letter forwarding the Plan document as amended in response to an IRS letter dated May 28, 1974.

3. The State of Alaska decided to change the carrier under the Plan from Hartford to the Equitable Life Assurance Society of America ("Equitable") and T. Rowe Price ("Price"), a no-load mutual fund.

The foregoing has resulted in a dispute that has two primary issues:

1. First, were the bidding procedures followed by the Department of Administration for the change in carriers contrary to legislative intent and/or a breach of good faith on the part of the State?

Status Report/Deferred Compensation

12/1/77

Page 2

2. Secondly, does the change in carriers by the State of Alaska render the favorable IRS Ruling of 1974 inapplicable to the State's Deferred Compensation Plan?

Turning to the first issue, this problem was originally raised in a complaint filed with the Office of the Ombudsman. The Ombudsman found, in part, as follows:

"I find; that the State failed to follow the bidding requirements as set forth as AS 37.05.250, in that the Retirement and Benefits Division delegated the duties and legal obligations of soliciting and opening bids to Mr. Robert Irwin, an unauthorized individual not in the employment of the State; and that the State authorized Mr. Robert Irwin to open bids in his Seattle office, not in public as prescribed in AS 37.05.230(2); and that through the State's acquiescence, Mr. Irwin negotiated significant changes in the Equitable carrier's original bid after the July 15 closing date in violation of the spirit and intent of AS 37.05.230; and that AS 37.05.240 requiring specific organization of bidding documents was not adhered to."

The State's reply has consistently been that changing of carriers for handling of the Deferred Compensation Plan is outside of and not regulated by the Statutes and Administrative Regulation and that Irwin's solicitations to Equitable and Pricewere handled in the way professional services are handled and were not subject to competitive bidding by specifications.

After conversations with Bob Gates, Deputy Commissioner of Administration, and the Ombudsman's office, it appears that the resolution of this first issue is in limbo; no one is doing anything. Hartford Insurance has not retained attorneys to enjoin the State from proceeding further and the Department of Administration has not even replied in writing to the Ombudsman complaint dated September 30, 1976. (In fact, in a conversation with Paul Arnoldt, Director of Benefits and Retirement on November 28, 1977, he told me the Ombudsman was now fully satisfied.)

A.P.E.A. does have interest in seeing that State Statutes and Regulations are followed; however, we are not a watchdog for all violations by the three branches of government. Our primary concern is "does what the State is doing adversely affect the employees we represent." For this reason the second question is of more immediate concern to our membership.

Moving to the second issue, if the change in carriers were to disqualify the Plan from the coverage of the 1974 IRS Ruling, it would leave participating State employees with the obligation to pay taxes probably greater than they

Status Report/Deferred Compensation  
12/1/77  
Page 3

would have paid had they not deferred income. The returned deferred funds would all come to the employee in one tax year leaving most state employees in a higher tax bracket. This is for the reason that the IRS in 1974 warned the State of Alaska..."that if the Plan is amended or modified...this ruling may no longer apply."

Hartford and their attorneys claim that the change in carriers is an amendment of the Plan which would affect the deferred tax status of the Plan. However, I have talked to Paul Arnoldt, Director of Benefits and Retirement; to Bob Gates, Deputy Commissioner of Administration; and Assistant Attorney General Tom Koester (in a verbal preliminary opinion) and they all believe that IRS approval is not jeopardized by a change in carriers. I also talked to a tax attorney in town who also leans toward the position that the change of carriers standing alone does not jeopardize the IRS Ruling.

For approximately 10 days I have been awaiting an Attorney General's opinion on this change of carriers issue and it will apparently not be forthcoming. The last information I have is that the Attorney General will now seek an opinion from the IRS on whether the change of carriers affects the deferred status of the Plan. This request of the IRS follows on the heels of a similar request to the IRS by Jay Hogan of Legislative Finance. In conversations with Mr. Hogan he stated to me that he was told by the IRS that he could expect a reply by December 15th. I have serious doubts that such a reply will be given by the IRS prior to January 1, 1978.

Attached for your review is a number of opinions on the deferred compensation issue. Of particular interest is an article in the Alaska Advocate dated November 24-30th stating that Myrt Charney, Director of Administrative Service for Legislative Affairs and other state employees intend to file a class action suit for injunctive relief on behalf of all state employees seeking to prevent the State from transferring administration of the Plan until an IRS Ruling has been issued.

In the next day or two Bart Rozell and myself will seek a meeting with Commissioner Allen. Thereafter, Bart Rozell and I will weigh all information available and present you with our recommended course of action. It may well be that the best course of action is for A.P.E.A. to join in such a suit for injunctive relief if the State will not voluntarily hold up the change of carriers until after the reply from the IRS.

Very truly yours,



Patrick E. Murphy

General Counsel

Alaska Public Employees Association

PEM/bg

Attachments



# ALASKA PUBLIC EMPLOYEES ASSOCIATION

State Headquarters: 130 Seward Street, Suite 508, Juneau, Alaska 99801 • Tel: (907) 586-2334

DECEMBER 19, 1977  
RELEASE: IMMEDIATELY  
CONTACT: MICHAEL WILLIAMS  
(907) 586-2334

## APEA FILES SUIT AGAINST THE STATE OF ALASKA

JUNEAU, ALASKA -- THE EXECUTIVE DIRECTOR OF THE ALASKA PUBLIC EMPLOYEES ASSOCIATION, RUSSELL D. MOLT, ANNOUNCED TODAY THAT A SUIT FOR INJUNCTIVE RELIEF HAS BEEN FILED IN JUNEAU SUPERIOR COURT BY APEA AND CERTAIN OTHER PARTIES, INCLUDING STAFF MEMBERS OF THE LEGISLATIVE AFFAIRS AGENCY, AGAINST THE STATE OF ALASKA IN REFERENCE TO THE CHANGE OF CARRIERS FOR THE STATE'S DEFERRED COMPENSATION PROGRAM.

"APEA HAS A VITAL INTEREST IN QUESTIONS AND CONTROVERSIES ARISING FROM THE CHANGE OF CARRIERS IN THAT APPROXIMATELY 800 OF THE 1100 PARTICIPATING MEMBERS ARE ALSO MEMBERS OF APEA. CONSIDERING THE NUMBER OF APEA STATE EMPLOYEES DEFERRING PORTIONS OF THEIR INCOME, UNDER THIS PROGRAM, IT SEEMS ONLY REASONABLE TO DO WHATEVER IS NECESSARY TO SET OUT THE FACTS CONCERNING THE DEFERRED COMPENSATION PROGRAM AS IT NOW EXISTS," STATED MOLT.

OUTLINING SOME OF THE MAJOR CONCERNS WHICH RESULTED IN THIS SUIT, MR. MOLT SAID,

- MORE -

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APEA SUES STATE

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"FIRST, TO THE BEST OF APEA'S KNOWLEDGE, NO DETAILED STATEMENT COMPARING THE DIFFERENCES BETWEEN THE OLD (HARTFORD) AND THE NEW (EQUITABLE) INVESTMENT PROGRAM EXISTS. WITHOUT SUCH A COMPARISON, IT IS DIFFICULT IF NOT IMPOSSIBLE TO SAY WHAT THE PARTICIPATING EMPLOYEES HAVE GAINED...VERSUS WHAT THEY HAVE LOST. "

"SECONDLY, THERE IS SERIOUS QUESTION CONCERNING THE BIDDING PROCESS THE STATE FOLLOWED, AS BROUGHT OUT BY THE STATE'S OMBUDSMAN, FRANK FLAVIN."

"THIRDLY, THE REAL VALUE OF THE STATE'S DEFERRED COMPENSATION PROGRAM HINGES ON A WRITTEN RULING FROM THE U.S. INTERNAL REVENUE SERVICE DATED JULY 25, 1974, WHICH GIVES THE PROGRAM A TAX DEFERRED STATUS. HOWEVER, THE I.R.S. HAS SUSPENDED THE ISSUANCE OF TAX RULINGS ON DEFERRED COMPENSATION PLANS UNTIL FURTHER NOTICE, SO THERE IS NO WAY ONE COULD SAY THAT THE NEW PROGRAM WOULD BE TAX DEFERRED."

"FOURTHLY, THE BUDGET UNDER WHICH THE NEW PROGRAM WOULD BE ADMINISTERED HAD NEITHER BEEN PRESENTED TO THE LEGISLATURE, NOR OBVIOUSLY RECEIVED THEIR APPROVAL. THE NEW PROGRAM ENVISIONS STATE PERSONNEL AND FACILITIES PERFORMING MANY OF THE FUNCTIONS PREVIOUSLY PROVIDED BY THE CARRIER AND THUS REQUIRING A COMMITMENT OF STATE FUNDS."

- MORE -

APEA SUES STATE

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"LASTLY, THE "PUBLIC FORUM" INVOLVED IN THIS DECISION-MAKING PROCESS CONSISTED APPARENTLY OF OFFICIALS OF THE DEPARTMENT OF ADMINISTRATION, THE STATE'S INSURANCE CONSULTANT, AND A HANDFUL OF PERSONS SELECTED BY THE GOVERNOR'S OFFICE TO REVIEW THE DECISION TO CHANGE CARRIERS/PROGRAMS. HOWEVER, IT APPEARS THAT THE LATTER WERE NOT AWARE THEY WERE "APPROVING" THE PROGRAM CHANGE OR THAT THE DECISION TO CHANGE THE PROGRAM HAD ALREADY BEEN MADE. NO PERSONS REPRESENTING EMPLOYEE ASSOCIATIONS, WITH THE EXCEPTION OF THE CONFIDENTIAL BARGAINING UNIT, NO LEGISLATORS, NO LEGISLATORS STAFF AND NO MEMBER OF THE GENERAL PUBLIC APPEAR TO HAVE BEEN INVOLVED IN ANY WAY DURING THE DECISION MAKING PROCESS."

THE ALASKA PUBLIC EMPLOYEES ASSOCIATION AND THE STATE OF ALASKA HAVE BEEN IN NEGOTIATIONS OVER THE DEFERRED COMPENSATION PROGRAM FOR THE PAST THREE (3) MONTHS, TRYING TO RESOLVE THE DIFFERENCES WITHOUT HAVING TO RESORT TO LITIGATION. HOWEVER, THERE IS NO OTHER RECOURSE LEFT OPEN TO APEA TO PROTECT THE VITAL INTEREST OF THE 1100 PUBLIC EMPLOYEES.



# ALASKA PUBLIC EMPLOYEES ASSOCIATION

State Headquarters: 130 Seward Street, Suite 508, Juneau, Alaska 99801 • Tel: (907) 586-2334

DECEMBER 20, 1977  
RELEASE: IMMEDIATELY  
CONTACT: MICHAEL WILLIAMS

\*\*\* BULLETIN \*\*\*

JUNEAU, ALASKA -- SINCE THE FILING OF THE SUIT BY THE ALASKA PUBLIC EMPLOYEES ASSOCIATION, IN JUNEAU SUPERIOR COURT THIS MORNING AT 11:00 AM, BOTH THE STATE OF ALASKA AND APEA'S ATTORNEYS HAVE RE-ENTERED INTO NEGOTIATIONS OVER THE DEFERRED COMPENSATION PROGRAM.

"IT IS APEA'S HOPE, AND BELIEF, THAT THE PROBLEMS OVER THE DEFERRED COMPENSATION PROGRAM CAN BE JOINTLY RESOLVED WITHOUT HAVING TO PURSUE FURTHER LITIGATION," STATED RUSSELL D. MOLT, EXECUTIVE DIRECTOR OF THE ALASKA PUBLIC EMPLOYEES ASSOCIATION.

- 30 -

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# ALASKA PUBLIC EMPLOYEES ASSOCIATION

State Headquarters: 130 Seward Street, Suite 508, Juneau, Alaska 99801 • Tel: (907) 586-2334

PRESS RELEASE

DECEMBER 28, 1977  
RELEASE: IMMEDIATELY  
CONTACT: MICHAEL WILLIAMS

## AGREEMENT MADE

JUNEAU, ALASKA -- THE EXECUTIVE DIRECTOR OF THE ALASKA PUBLIC EMPLOYEES ASSOCIATION, RUSSELL D. MOLT, ANNOUNCED TODAY THAT AN AGREEMENT HAS BEEN REACHED BETWEEN THE STATE OF ALASKA AND APEA OVER THE CHANGE OF CARRIERS FOR THE STATE'S DEFERRED COMPENSATION PROGRAM.

"AFTER FILING A SUIT DECEMBER 20, 1977, AGAINST THE STATE OF ALASKA, IN JUNEAU SUPERIOR COURT, FOR INJUNCTIVE RELIEF IN THE MATTER OF CHANGE OF CARRIERS IN THE DEFERRED COMPENSATION PROGRAM, ATTORNEYS FOR APEA AND THE STATE OF ALASKA RE-ENTERED INTO NEGOTIATIONS. AS A RESULT OF THOSE NEGOTIATIONS, THE STATE HAS POSTPONED CHANGING CARRIERS FOR THE DEFERRED COMPENSATION PROGRAM FOR AT LEAST ONE YEAR. BOTH PARTIES AGREED THAT THE QUESTION OF THE POSSIBLE LOSS OF THE TAX DEFERRED STATUS OF THE PROGRAM WAS SO VITAL A QUESTION, THAT NO CHANGE COULD TAKE PLACE AT THIS TIME," MOLT STATED.

MOST OF THE CONCERNS WHICH HAD LEAD APEA TO FILE THE SUIT, ON BEHALF OF THE STATE EMPLOYEES, HAVE BEEN RESOLVED. AND AT PRESENT, APEA'S ATTORNEYS ARE LOOKING INTO THE POSSIBLE DISMISSAL OF THE LAW SUIT AGAINST THE STATE OF ALASKA.

- 30 -

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

August 18, 1977

Mr. Robert Irwin, CLU  
Assistant Vice President  
Wm. M. Mercer, Inc.  
Norton Building  
Seattle, Wash. 98104

Dear Bob:

I would like to express our appreciation for your consultants report on the State of Alaska's Deferred Compensation Plan. Your report has been reviewed with Commissioner Allen and Deputy Commissioner Gates, and we concur with your recommendations regarding the change in carriers for the State's plan.

By way of this letter you are authorized to notify The Hartford effective January 1978 they will no longer be the State's carrier for the Deferred Compensation Plan. You should also advise the Equitable Life Insurance Company and T. Rowe Price that they have been selected as carriers for the fixed and equity portions of the plan respectively.

If you have any questions regarding this direction, please do not hesitate to contact me.

Sincerely,



Paul B. Arnoldt  
Deputy Director

PBA/jb  
cc: Commissioner Allen  
Deputy Commissioner Gates

EXHIBIT E

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 MYRTON R. CHARNEY, and )  
4 ALASKA PUBLIC EMPLOYEES )  
5 ASSOCIATION, an Alaska non- )  
6 profit corporation, )

7 Plaintiffs, )

8 vs. )

9 STATE OF ALASKA, DEPARTMENT )  
10 OF ADMINISTRATION; and )  
11 HARTFORD VARIABLE ANNUITY )  
12 LIFE INSURANCE COMPANY, )  
13 a Connecticut corporation, )

14 Defendants. )

15 C. A. NO. 77-

16 MOTION FOR TEMPORARY RESTRAINING ORDER  
17 AND PRELIMINARY INJUNCTION

18 The plaintiffs, pursuant to Alaska Civil Rule 65,  
19 move the Court for entry of a temporary restraining order  
20 and preliminary injunction against the above-named defendants,  
21 as follows:

22 1. That defendant, State of Alaska, Department of  
23 Administration, altogether cease and desist from undertaking  
24 any further action implementing a change in carriers of the  
25 Public Employees' Deferred Compensation Plan from the Hartford  
26 Variable Annuity Life Insurance Company to the Equitable  
27 Insurance Company and T. Rowe Price New Era Fund, Inc., a no  
28 load mutual fund, pendente lite.

29 2. That the defendant, Hartford Variable Annuity  
30 Life Insurance Company, altogether cease and desist from  
31 transferring the funds of the Alaska Public Employees'  
32 Deferred Compensation Program from themselves to Equitable  
33 Insurance Company and T. Rowe Price New Era Fund, Inc., a no  
34 load mutual fund, pendente lite.

35 / / / / /

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907-588-3330

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JAMES F. PETERSEN  
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3. That the aforementioned directive be binding upon the agents, successors, assigns, servants, employees, consultants, and those in active concert with defendants.

As grounds for this motion, the plaintiff respectfully refers the Court to the Complaint on file herein and plaintiffs' affidavits in support hereof, and the Affidavit of Genie Chance.

DATED this 20 day of December, 1977, at Juneau, Alaska.

MYRTON R. CHARNEY,  
Plaintiff,

Gail Roy Fraties  
Fraties & Petersen  
Anchorage, Alaska  
Attorney for Myrton R. Charney

By James F. Petersen  
James F. Petersen  
Juneau, Alaska

ALASKA PUBLIC EMPLOYEES ASSOCIATION,  
an Alaska non-profit corporation

Faulkner, Banfield, Doogan & Holmes,  
Attorneys for Alaska Public Employees  
Association,

By William B. Rozell  
William B. Rozell  
For the Firm

JAMES F. PETERSEN  
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

MYRTON R. CHARNEY, and )  
ALASKA PUBLIC EMPLOYEES )  
ASSOCIATION, an Alaska non- )  
profit corporation, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
STATE OF ALASKA, DEPARTMENT )  
OF ADMINISTRATION; and )  
HARTFORD VARIABLE ANNUITY )  
LIFE INSURANCE COMPANY, )  
a Connecticut corporation, )  
 )  
Defendants. )

C. A. NO. 77-

COMPLAINT

1. Plaintiff, Myrton R. Charney, is an adult resident of the City and Borough of Juneau, Alaska, and is employed by the State of Alaska, Legislative Affairs Agency, as Director of the Division of Administrative Services and a participant in the Public Employees' Deferred Compensation Program, and is bringing this action on behalf of himself and all similarly situated persons who are employees of the State of Alaska and participants in the Public Employees' Deferred Compensation Program.

2. Plaintiff, Alaska Public Employees' Association, is a non-profit corporation, incorporated under the laws of the State of Alaska. There are presently approximately 1,100 participants in the State of Alaska Public Employees' Deferred Compensation Program as authorized by Chapter 45 of Title 39 of the Alaska Statutes (see Exhibit G to this Complaint), and approximately 900 of these are members of plaintiff, Alaska Public Employees' Association.

///  
///

1           3. The defendant, State of Alaska, Department of  
2 Administration, is the designated administrator of the  
3 Public Employees' Deferred Compensation Program.

4           4. The Hartford Variable Annuity Life Insurance  
5 Company, a Connecticut corporation, is the designated carrier  
6 of the Public Employees' Deferred Compensation Program as  
7 the same now exists.

8           5. In 1974 the Department of Administration con-  
9 tracted with Hartford Variable Annuity Life Insurance Company  
10 to be the exclusive carrier for the State of Alaska Public  
11 Employees' Deferred Compensation Program, and the plan  
12 adopted pursuant thereto is attached as Exhibit A to this  
13 Complaint.

14           6. The Public Employees' Deferred Compensation  
15 Plan was submitted to the U.S. Internal Revenue Service and  
16 received approval through a private letter ruling of July 25,  
17 1974 (see Exhibit B to this Complaint), and this private  
18 letter ruling approving the plan also provided that if the  
19 plan were modified or amended the ruling may no longer be  
20 applicable.

21           7. On September 7, 1977, the U.S. Internal Revenue  
22 Service issued Directive IR(1881) (attached as Exhibit C to  
23 this Complaint) which has suspended all rulings dealing with  
24 the income tax treatment of deferred compensation plans,  
25 such as the State of Alaska Deferred Compensation Plan  
26 previously approved.

27           8. The Department of Administration is presently  
28 in the process of changing the carrier from Hartford Variable  
29 Annuity Life Insurance Company to Equitable Insurance Company  
30 and the T. Rowe Price New Era Fund, Inc., a no load mutual  
31 fund, and also has undertaken steps which will modify and  
32 / / / / /

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1 amend the plan approved by the Internal Revenue Service in  
2 July of 1974.

3 9. This proposed modification and amendments may  
4 cause the plaintiffs, Myrton R. Charney, and the members of  
5 the Alaska Public Employees' Association who are partici-  
6 pants in the State of Alaska Deferred Compensation Program,  
7 irreparable harm and injury by jeopardizing the funds which  
8 they are counting on for retirement income and may cause  
9 them and others serious income tax problems for the reasons  
10 outlined and set forth in the affidavit of plaintiff, Myrton R.  
11 Charney, and the affidavit of the Executive Director of the  
12 plaintiff, Alaska Public Employees' Association.

13 10. The existing plan (see Exhibit A) which has  
14 received the private letter ruling from the Internal Revenue  
15 Service (Exhibit B), specifically states in Section 602  
16 that:

17 ". . . Deferred Compensation payments and  
18 the death benefits (if paid in other than  
19 a lump-sum) will be in an amount equal  
20 to the amount which would have been pay-  
21 able under a variable annuity contract,  
22 had such a contract been purchased from  
the carrier at the time of the initial  
participation in the plan and with the  
annual premium equal to the annual amount  
of compensation that had been deferred".

23 Under the proposed new plan (see Exhibit D attached hereto)  
24 variable annuity contracts are not included in the products  
25 offered by either of the companies and death benefits are  
26 likewise not included.

27 11. The proposed new plan (Exhibit D) may violate  
28 state law by investing in mutual funds, and under the pro-  
29 visions of Chapter 45 of Title 39 of the Alaska Statutes  
30 mutual funds are not an authorized investment vehicle for  
31 deferred compensation programs in the State of Alaska; and  
32 further, the plan document (Exhibit A), which was approved

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1 by Internal Revenue Service in July of 1974, particularly  
2 states in Section 14: "This agreement shall be construed  
3 under the law of the State of Alaska." The language of the  
4 statutes themselves (AS 39.45.010 through .050) specifically  
5 does not include an investment vehicle of mutual funds and  
6 as such the use or the threatened use of that investment  
7 vehicle by the Department of Administration may be in  
8 violation of said statutes and the legislative intent of  
9 those statutes (see the Affidavit of Genie Chance attached  
10 hereto as Exhibit H).

11 12. The defendant, the Department of Administration,  
12 by letter dated August 18, 1977, (see Exhibit E attached  
13 hereto) authorized their consultant, Robert Irwin, to notify  
14 Hartford Variable Annuity Life Insurance Company to transfer  
15 all deferred compensation funds to Equitable Life Insurance  
16 Company and T. Rowe Price New Era Fund, Inc., on or about  
17 January 1, 1978. The consultant, Robert Irwin, did this by  
18 letter dated August 19, 1977, (see Exhibit F) and unless the  
19 defendants are enjoined the funds of the Public Employees'  
20 Deferred Compensation Program deposited with the Hartford  
21 Variable Annuity Life Insurance Company will be transferred  
22 which, as stated above, may seriously jeopardize and may  
23 subject said funds to immediate taxation by the individual  
24 participants, as outlined above.

25 WHEREFORE, plaintiffs demand relief as follows:

26 1. That the defendant, Hartford Variable Annuity  
27 Life Insurance Company be enjoined from transferring the  
28 funds which it now holds as the carrier of the Public Employees'  
29 Deferred Compensation Program under the Deferred Compensa-  
30 tion Plan as approved by the Internal Revenue Service in  
31 July of 1974, until the Internal Revenue Service or a court  
32 / / / / /

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907 586 2112

1 o. competent jurisdiction approve any change in the Deferred  
2 Compensation Plan and a transfer of funds thereto.

3 2. That the defendant, the State of Alaska,  
4 Department of Administration, be enjoined from carrying out  
5 its proposed new plan with the Equitable Life Insurance  
6 Company and T. Rowe Price New Era Fund, Inc., and from  
7 further accepting the offer of Equitable Life Insurance  
8 Company and T. Rowe Price New Era Fund, Inc., as being the  
9 substituted or new carrier of Public Employees' Deferred  
10 Compensation funds.

11 3. That the Court grant such other and further  
12 relief as may be necessary and requisite in the premises.

13 4. That plaintiffs be awarded their costs and  
14 attorneys' fees in prosecuting this action.

15 DATED at Juneau, Alaska, this 20th day of December,  
16 1977.

17  
18 MYRTON R. CHARNEY,  
19 Plaintiff,

20 Gail Roy Fraties  
21 Fraties & Petersen  
22 Anchorage, Alaska  
23 Attorney for Myrton R. Charney

24 By James F. Petersen  
25 James F. Petersen,  
26 Juneau, Alaska

27 ALASKA PUBLIC EMPLOYEES ASSOCIATION,  
28 an Alaska non-profit corporation

29 Faulkner, Banfield, Doogan & Holmes,  
30 Attorneys for Alaska Public Employees  
31 Association,

32 By William B. Rozell  
William B. Rozell  
For the Firm

IN THE SUPERIOR COURT OF THE STATE OF ALASKA  
 FIRST JUDICIAL DISTRICT AT JUNEAU

MYRTON R. CHARNEY, and )  
 ALASKA PUBLIC EMPLOYEES )  
 ASSOCIATION, an Alaska non- )  
 profit corporation, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 STATE OF ALASKA, DEPARTMENT )  
 OF ADMINISTRATION; and )  
 HARTFORD VARIABLE ANNUITY )  
 LIFE INSURANCE COMPANY, )  
 a Connecticut corporation, )  
 )  
 Defendants. )

C. A. No. 77-1169

ENTRY OF APPEARANCE

COMES NOW Robertson, Monagle, Eastaugh & Bradley,  
 Box 1211, Juneau, Alaska, 99802, by and through W. G. Ruddy,  
 entering its appearance on behalf of defendant, Hartford  
 Variable Annuity Life Insurance Company, in the above-  
 captioned court and cause.

DATED this 20 day of December, 1977, at Juneau,  
 Alaska.

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

By W. G. Ruddy  
 W. G. Ruddy  
 Of Attorneys for Defendant,  
 Hartford Variable Annuity Life  
 Insurance Company

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY  
 A PROFESSIONAL CORPORATION  
 400 N. B. A. BLDG. PHONE 588-3340  
 P.O. BOX 1211, JUNEAU, ALASKA 99802

Service and receipt of copy  
 acknowledged this 20th  
 of Dec 1977.  
James G. Petersen / sam  
 Attorney for

Service and receipt of copy,  
 acknowledged this 20th  
 of December, 1977  
H. J. R. W.  
 Attorney for



1 which has suspended all rulings dealing with the income tax  
2 treatment of plans such as the State of Alaska Deferred Compen-  
3 sation Plan previously approved.

4 8. The Department of Administration is presently in the  
5 process of changing the carrier from Hartford Variable Annuity  
6 Life Insurance Company to Equitable Insurance Company and the  
7 T. Rowe Price New Era Fund, Inc., a no load mutual fund.

8 9. This proposed change will cause the members of the  
9 Alaska Public Employees Association who are participants in the  
10 State of Alaska Deferred Compensation Program irreparable harm  
11 and injury by jeopardizing the funds they are counting on for  
12 retirement income, and may further cause them and others serious  
13 income tax problems.

14 10. APEA first became aware that the Department of Ad-  
15 ministration proposed to make changes in the Deferred Compen-  
16 sation Plan in September of this year; up until that time the De-  
17 partment of Administration had acted on its own without consulta-  
18 tion and without informing participants of the plan, their bar-  
19 gaining representatives, the legislature or other interested par-  
20 ties about the proposed changes. Since that time APEA has worked  
21 together with representatives of other bargaining units, the  
22 Office of the Ombudsman, and representatives of the legislature  
23 in attempting to ascertain why the proposed changes were being  
24 made, the manner in which the decision was reached to make the  
25 proposed changes, the merits of the proposed changes and whether  
26 the tax exempt status of the plan would be jeopardized by the  
27 proposed changes.

28 11. On October 4, 1977, at the request of APEA, a meet-  
29 ing was held in the Governor's conference room among representa-  
30 tives of the Department of Administration, the Office of the  
31 Attorney General, the State's financial advisor, Mr. Robert  
32 Irwin of William M. Mercer, Inc., representatives of Hartford,

1 members of the legislature, representatives from Legislative  
2 Affairs, the Assistant Ombudsman, representatives from several  
3 employee bargaining units and other interested persons to discuss  
4 the changes proposed by the Department of Administration in the  
5 Deferred Compensation Plan. It became apparent to everyone pre-  
6 sent at that meeting, including representatives of the Admini-  
7 stration, that many serious questions remained unanswered about  
8 the proposed changes. Of particular concern was the fact that a  
9 detailed comparison of the merits of the proposed new plan with  
10 the existing Hartford plan was not available, that no formal bid-  
11 ding procedure had been followed in soliciting proposals for  
12 changes in the plan, that no company except T. Rowe Price was  
13 ever requested to submit a proposal on the so-called equity side  
14 to complement the proposal of Equitable which was limited to par-  
15 ticipation on the fixed or guaranteed side, and that the State's  
16 financial advisor, Mr. Irwin, had never considered or received  
17 any legal advice about the possible effects of any change in the  
18 plan on the tax exempt status of the State's Deferred Compensa-  
19 tion Plan.

20 12. Since that time APEA has received a continuing flow  
21 of concerned inquiries, complaints and demands for action from  
22 participants in the plan seeking to protect their investments in  
23 the plan. The Executive Committee of APEA, which is the decision  
24 making body of APEA and whose members are all State employees,  
25 has directed me to file this action.

26 13. In the more than two months since the date of that  
27 meeting APEA has met and corresponded with representatives of the  
28 State Administration on numerous occasions in an effort to coop-  
29 erate with the State in gathering the information necessary in  
30 order to determine whether a change in the proposed Deferred Com-  
31 pensation Plan should be made. During that period of time con-  
32 flicting legal opinions have been obtained about the effect of

1 the proposed change in the Deferred Compensation Plan upon the  
2 tax status of the plan from law firms representing William M.  
3 Mercer, Inc., the State's financial advisor, and Hartford Variable  
4 Annuity, the carrier presently managing the State's Deferred Com-  
5 pensation Plan. Both the Legislative Affairs Agency and the  
6 Office of the Attorney General have sought advice and information  
7 directly from the Internal Revenue Service concerning the effect  
8 of the proposed changes on the tax status of the Deferred Compen-  
9 sation Plan. The Internal Revenue Service has expressly declined  
10 to issue any opinion that the proposed change will not jeopardize  
11 the present tax exempt status of the State's Deferred Compensa-  
12 tion Plan.

13 14. On or about December 12 and 13, 1977, the Deputy  
14 Commissioner of Administration, Robert Gates, and Assistant  
15 Attorney General Thomas Koester met with representatives of the  
16 Internal Revenue Service in Washington, D.C., in an effort to  
17 obtain a statement or commitment from the IRS that the proposed  
18 changes would not jeopardize the tax status of the plan. The IRS  
19 expressly refused to make or give any such statement or commit-  
20 ment.

21 15. Following that meeting the State represented to APEA  
22 that it would not implement the proposed changes because it was  
23 not willing to jeopardize the tax status of the plan. However,  
24 the State has failed and refused to follow through on its stated  
25 intentions even though only seven working days remain in 1977 and  
26 before the scheduled date for changing the plan.

27 16. The approximately 1,100 State employees participating  
28 in the Deferred Compensation Plan will suffer irreparable harm if  
29 a change is made in the plan which jeopardizes its tax exempt  
30 status. There is no evidence that employee participants in the  
31 Deferred Compensation Plan will achieve any substantial advantage  
32 from the proposed changes in the plan and there is a serious

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1 question whether the proposed changes result in any increased  
2 benefits at all to the participants therein. On the other hand,  
3 there is a real and substantial risk that by making a change at  
4 this time in the carrier for the plan, and the necessary related  
5 changes in the plan itself, that the tax exempt status of the  
6 plan will be lost and that the employees who have invested sums in  
7 the plan will suffer serious adverse tax consequences. There is  
8 substantial doubt whether these employees could ever recover  
9 their losses in a claim for damages against the State. Accord-  
10 ingly, since there is no risk and no significant loss in benefits  
11 by not making a change in carriers at this time, and since a  
12 change in carriers and the related changes in the Deferred Com-  
13 pensation Plan could jeopardize the tax status of the entire  
14 State's Deferred Compensation Plan, no change in carriers should  
15 be made at this time.

16 Further affiant sayeth not.

17 *Russell D. Molt*

18 \_\_\_\_\_  
Russell D. Molt

19  
20  
21 SUBSCRIBED AND SWORN to before me this 20 day of  
22 December, 1977.

23  
24 *Shilo R. Enger*

25 Notary Public for Alaska

My commission expires: 9-13-81



1           7. When I received the language for the bill I was  
2 disturbed by what I thought could be interpreted as "per-  
3 missive" language rather than restrictive language concern-  
4 ing the investment vehicles. The language read as follows:

5           "The administrator of the state or political  
6 subdivision deferred compensation program is  
7 authorized, subject to contracts with indivi-  
8 dual employees, to invest the funds held under  
9 a deferred compensation program in fixed and  
10 variable life insurance and annuity contracts."

11 I wanted to change the language from "is authorized" to  
12 "shall invest" to ensure that only the investment vehicles  
13 in the statute could be used. However, I was advised by  
14 the Aetna man in Seattle that the Internal Revenue Service  
15 insisted on "is authorized" because, in their interpretation,  
16 that is the language which gives authority.

17           8. I don't remember which attorney in Legislative  
18 Affairs Agency I was working with on this bill, but I do  
19 remember that we came up with the idea of using both  
20 phrases. The attorney said he didn't remember seeing a  
21 statute with two authorization sections before, but he saw  
22 no reason why we could not do it. So the restrictive language  
23 was titled "Authority" and the Internal Revenue Service  
24 language was entitled "Investment Authority".

25           9. As I explained the bill to the other legislators,  
26 many of them expressed reservations about investing employees'  
27 funds in mutual funds. I explained that mutual funds and  
28 other investments were excluded on purpose and investment  
29 could be made only in fixed and variable life insurance and  
30 annuity contracts and that was the reason for the restrictive  
31 language of the general authorization section.

32           10. While the bill was in the legislative process, I  
received several calls from persons representing mutual  
funds and savings and loan associations. They explained

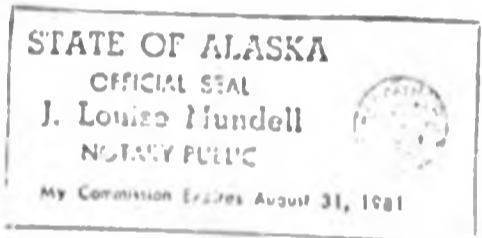
1 their desire to have me amend their entities into the bill  
2 as authorized investment vehicles.

3 11. But the bill was enacted into law with only one  
4 amendment. That was an amendment made in the Senate which  
5 changed the phrase "employee's income" to "employee's  
6 salary or wages".

7 Further affiant sayeth not.

8  
9 Genie Chance  
10 GENIE CHANCE

11 SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of  
12 December 1977.



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11/11/77  
Notary Public in and for Alaska  
My commission expires: 11/11/77

JAMES F. PETERSEN  
ATTORNEY AND COUNSELLOR AT LAW  
319 SEWARD STREET  
JUNEAU, ALASKA 99801  
907-588-3530



1 issued IR-1881 (attached as Exhibit C to the Complaint) which  
2 has suspended all rulings dealing with the income tax treatment  
3 of plans such as the State of Alaska Employees Deferred Compen-  
4 sation Plan previously approved.

5 8. The Department of Administration is presently in the  
6 process of changing the carrier from Hartford Variable Annuity  
7 Life Insurance Company to Equitable Insurance Company and  
8 T. Rowe Price, a no load mutual fund, and also modifies and  
9 amends the approved plan.

10 9. This proposed change will cause me and others similiar-  
11 ly situated irreparable harm and injury, by jeopardizing the  
12 funds I am counting on for retirement income and may further  
13 cause me and others serious income tax problems, for the follow-  
14 ing reasons:

15 a. The Plan document (Exhibit A) which received the  
16 private letter of ruling from Internal Revenue Service (Exhibit  
17 B), specifies in Section 6.02 that "Deferred Compensation  
18 Payments and the Death Benefits (if paid in other than a lump-  
19 sum) will be in an amount equal to the amount which would have  
20 been payable under a variable annuity contract had such a  
21 contract been purchased from the carrier at the time of the  
22 initial participation in the Plan and with the annual premium  
23 equal to the annual amount of compensation that had been deferred.  
24 Under the proposed plan (Exhibit D), it is my understanding that  
25 variable annuity contracts are not included in the products  
26 offered by either of the companies and death benefits are not  
27 included.

28 b. The proposed new plan would violate state law by  
29 investing in mutual funds, and the plan document (Exhibit A)  
30 approved by Internal Revenue Service states in Section 14:  
31 "This Agreement shall be construed under the law of the State of  
32 Alaska."

JAMES F. PETERSEN  
ATTORNEY AND COUNSELLOR AT LAW  
319 SEWARD STREET  
JUNEAU, ALASKA 99801  
807-588-1121

1 c. The proposed new plan would further violate the  
2 written agreement entered into by me and other state employees  
3 and the State of Alaska. I read the Plan document and the  
4 prospectus presented to me by the registered representative of  
5 Hartford Variable Insurance Company, and entered into an agree-  
6 ment with the State to defer a portion of my income with the  
7 understanding that I would have the pay-out benefits of a  
8 variable annuity contract and death benefits, and with the  
9 additional understanding that the funds I allocated into the  
10 separate account would be invested by the company whose portfolio  
11 of investments I had read in the prospectus and approved. Under  
12 the new plan, those funds would be unilaterally removed by the  
13 State from the portfolio I approved and put into another  
14 portfolio.

15 d. The proposed new plan places all participants in  
16 the Deferred Compensation Program in jeopardy by not seeking and  
17 obtaining approval of the Internal Revenue Service to the  
18 modifications and amendments of the existing plan.

19 e. The proposed new plan violates the terms of the  
20 contracts entered into with current participants by withdrawing  
21 the options of variable annuities and death benefits in the  
22 equity option.

23 f. The proposed new plan is misleading participants  
24 and prospective participants by leading them to believe the new  
25 products offer guaranteed interest and expense factors said  
26 interest is guaranteed for only 10 years and annuity rates are  
27 guaranteed for only 5 years, whereas the existing plan has  
28 lifetime guarantees. Further, the State's 13 administrative  
29 expenses are not guaranteed. All of these appear to constitute  
30 substantial modification requiring IRS approval, which by their  
31 present directives they are refusing to issue (Exhibit C).

32 Further affiant sayeth not.

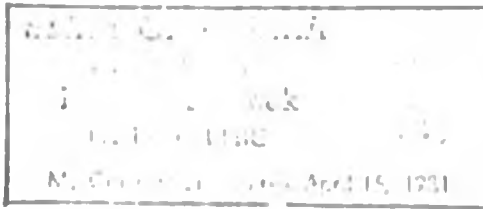
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*Myrton R. Charney*  
MYRTON R. CHARNEY

SUBSCRIBED and SWORN to before me this 16 day of December, 1977.

SEAL

*James F. Petersen*  
Notary Public for Alaska  
My Commission Expires: 4-15-81



JAMES F. PETERSEN  
ATTORNEY AND COUNSELLOR AT LAW  
319 SEWARD STREET  
JUNEAU, ALASKA 99801  
907-588-3550

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

HB

539

# COMMITTEE REPORT

## HOUSE

1/15/80

FURTHER: FINANCE

Date: 2-5-80

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 539

"An Act relating to the credited service of permanent part-time state employees for retirement purposes; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

W. H. Allen

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

\_\_\_\_\_

Ray M. McCallum no rec

Debra no rec

Long no rec

\_\_\_\_\_

\_\_\_\_\_

W. H. Allen

CHAIRMAN

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. HB 539  
 Title An Act Relating to Credited Service of Permanent Part-Time Employees  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL  
 Agency Affected Administration - Division of Retirement and Benefits  
 Program Category Affected Labor Services  
 BRU, Program, or Subprogram(s) Affected 02-96-8-01-01 (PERS)  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	5.5	5.5	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	0.1	0.1	-0-	-0-	-0-	-0-
400 COMMODITIES	0.1	0.1	-0-	-0-	-0-	-0-
500 EQUIPMENT	0.5	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 STATE TRS MATCHING	-0-	-0-	-0-	-0-	-0-	-0-
100 BENEFITS	-0-	25.0	25.0	25.0	25.0	25.0
TOTAL	6.2	30.7	25.0	25.0	25.0	25.0

FUNDING (Thousands of Dollars)

GENERAL FUND		20.4	20.4	20.4	20.4	20.4
FEDERAL FUNDS		1.2	1.2	1.2	1.2	1.2
VETERAN'S FUND		0.1	0.1	0.1	0.1	0.1
FISH & GAME FUND		0.2	0.2	0.2	0.2	0.2
HIGHWAY FUND		0.3	0.3	0.3	0.3	0.3
AIRPORT FUND		0.7	0.7	0.7	0.7	0.7
CAPITAL FUND		2.1	2.1	2.1	2.1	2.1
PERS	6.2	5.7	-0-	-0-	-0-	-0-
TRS						

POSITIONS

FULL TIME	.25	.25	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. Personal Services: One full-time position for six months (Retirement & Benefits Technician - Range 12) beginning April 1, '80.

Monthly salary	\$1,425
Benefits	417
TOTAL	\$1,843

2. Benefits: Assume 150 claims for 9 months service credit each. Total estimated cost to the PERS is \$338,000 which would be amortized over 25 years as a past service liability. The annual cost of \$25,000 would be reflected in an increase in State contributions.

IV. DATE 1/31/80 PREPARED BY Paul B. Arnoldt, Director  
 AGENCY Division of Retirement & Benefits  
 PHONE 465-4460  
 Original: Legislative Finance  
 ccl: Budget and Management  
 Prime Sponsor (First Legislator Named) Representative Parker  
 Office of the Governor (Keith Specking)

February 11, 1980

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 539:

The board endorses the attached fiscal note as its fiscal analysis of HB 539.

Four members of the board recommend that HB 539 Do Not Pass; two members recommend that it do pass; and one member has no recommendation on the bill.

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 539  
Title An Act Relating to Credited Service of Permanent Part-Time Employees  
Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement and Benefits

Program Category Affected Labor Services

BRU, Program, or Subprogram(s) Affected 02-96-8-01-01-01 (PERS)

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	5.5	5.5	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	0.1	0.1	-0-	-0-	-0-	-0-
400 COMMODITIES	0.1	0.1	-0-	-0-	-0-	-0-
500 EQUIPMENT	0.5	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 STATE TRS MATCHING	-0-	-0-	-0-	-0-	-0-	-0-
100 BENEFITS	-0-	25.0	25.0	25.0	25.0	25.0
<b>TOTAL</b>	<b>6.2</b>	<b>30.7</b>	<b>25.0</b>	<b>25.0</b>	<b>25.0</b>	<b>25.0</b>

FUNDING (Thousands of Dollars)

GENERAL FUND		20.4	20.4	20.4	20.4	20.4
FEDERAL FUNDS		1.2	1.2	1.2	1.2	1.2
VETERAN'S FUND		0.1	0.1	0.1	0.1	0.1
FISH & GAME FUND		0.2	0.2	0.2	0.2	0.2
HIGHWAY FUND		0.3	0.3	0.3	0.3	0.3
AIRPORT FUND		0.7	0.7	0.7	0.7	0.7
CAPITAL FUND		2.1	2.1	2.1	2.1	2.1
PERS	6.2	5.7	-0-	-0-	-0-	-0-
TRS						

POSITIONS

FULL TIME	25	25	-0-	-0-	-0-	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. Personal Services: One full-time position for six months (Retirement & Benefits Technician - Range 12) beginning April 1, 1980.

Monthly salary \$1,425  
Benefits 417  
TOTAL \$1,843

2. Benefits: Assume 150 claims for 9 months service credit each. Total estimated cost to the PERS is \$338,000 which would be amortized over 25 years as a past service liability. The annual cost of \$25,000 would be reflected in an increase in State contributions.

IV. DATE 1/31/80

PREPARED BY Paul B. Arnoldt, Director  
AGENCY Division of Retirement & Benefits  
PHONE 465-4460

Original: Legislative Finance  
Budget and Management  
cc: Prime Sponsor (First Legislator Name):  
Office of the Governor (Keith Specking)

Representative Parker

HB

542

(7)

# COMMITTEE REPORT

## HOUSE

1/16/80

FURTHER: FINANCE

Date: 1-23-80

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 542

"An Act making a special appropriation to the Department of Transportation and Public Facilities for the protection of the City of Nenana and Nenana Airport; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 542  same title
- new title
- and recommends DO PASS
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

W. H. CC

Tony Andrews

Bob Walker

B. P.

Tony Andrews

\_\_\_\_\_

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\_\_\_\_\_

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**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

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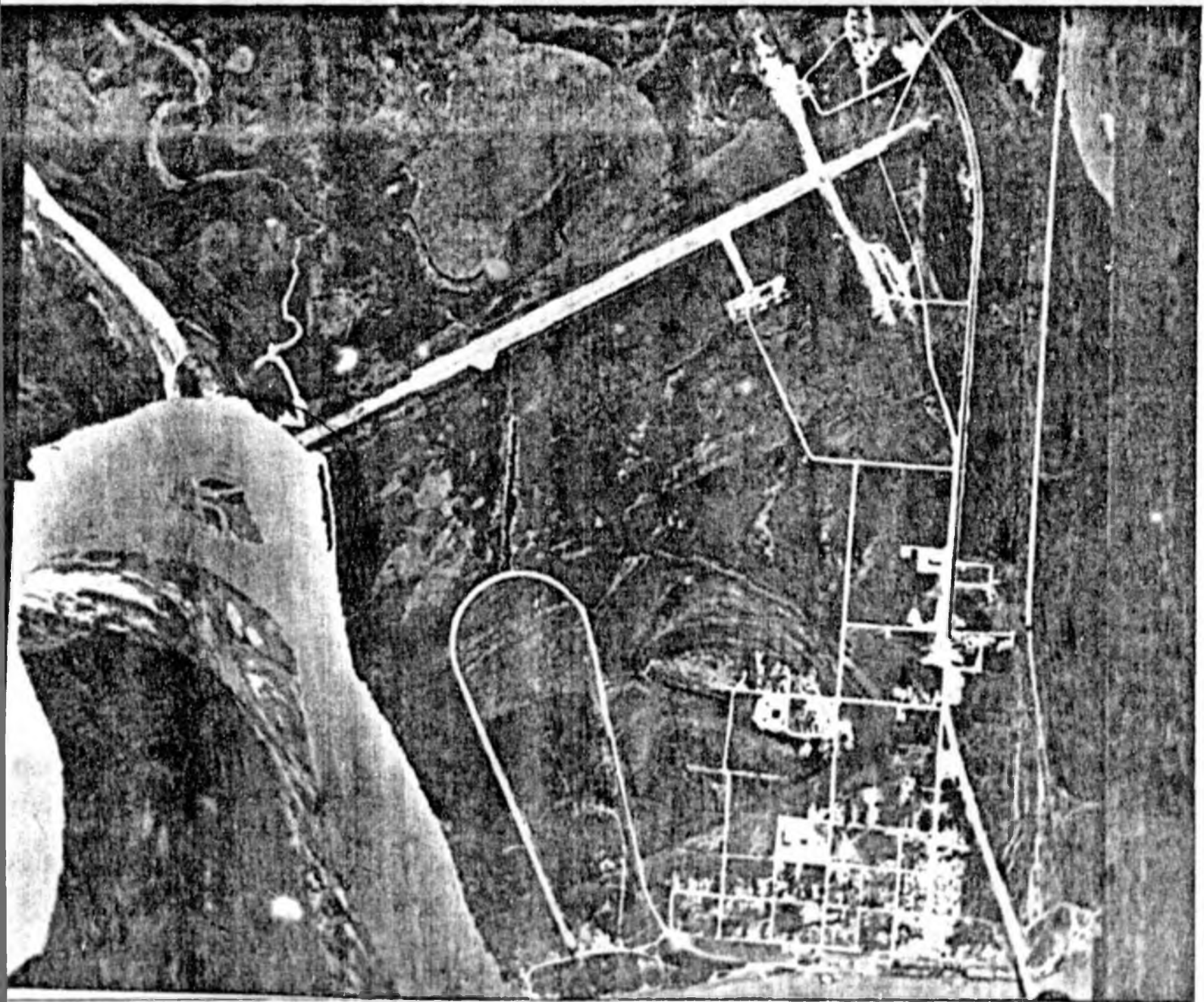
W. H. CC

CHAIRMAN

Fall 8-27-69



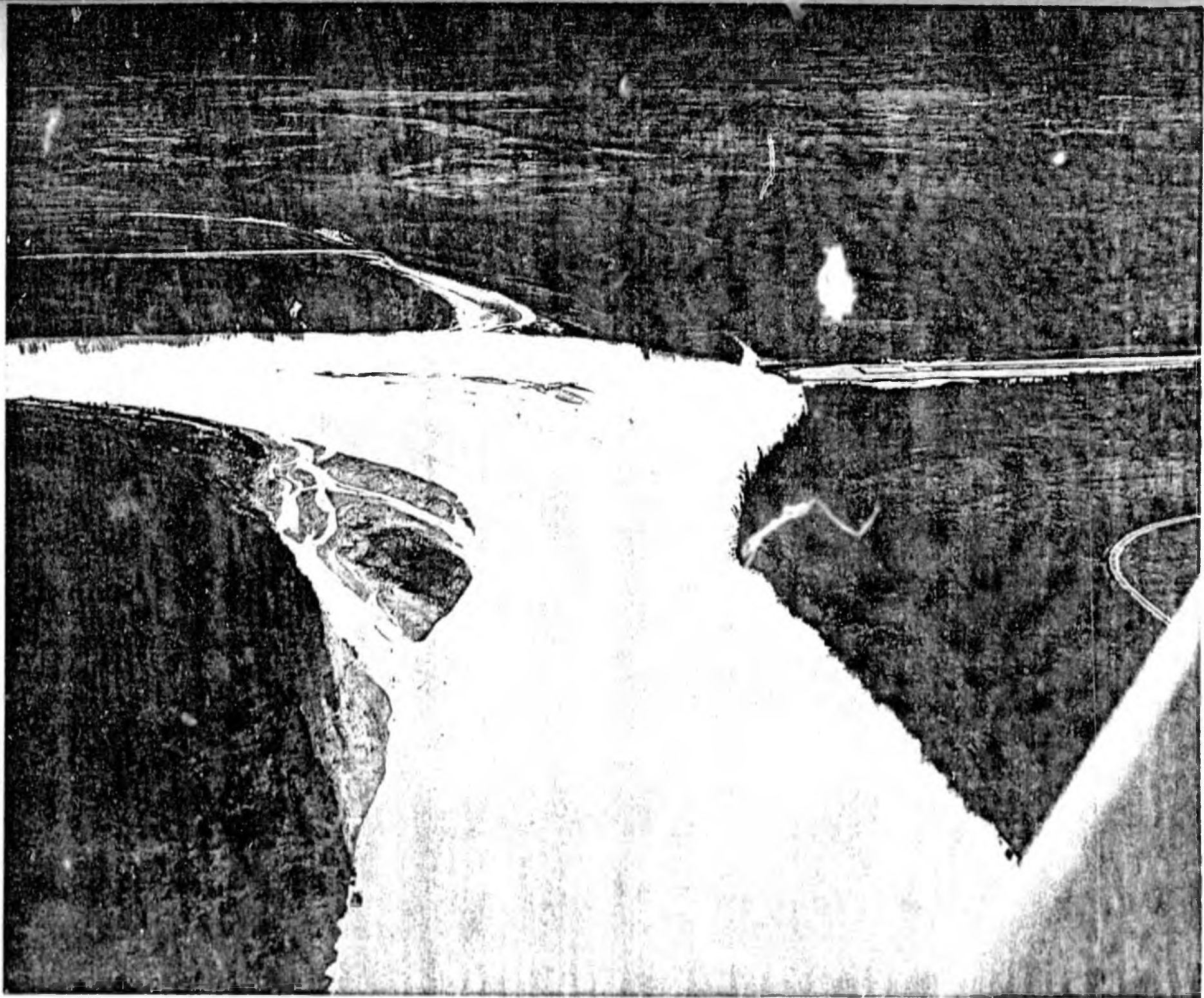
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1979 photo





1977

WARREN G. MAGNUSON, WASH., CHAIRMAN

JOHN C. STENNIS, MISS.  
ROBERT C. BYRD, W. VA.  
WILLIAM PROXMIRE, WIS.  
DANIEL R. INOUE, HAWAII  
ERNEST F. HOLLINGS, S.C.  
BIRCH BAYH, IND.  
THOMAS P. ZAGLETON, MD.  
LAWTON CHILES, FLA.  
J. BENNETT JOHNSTON, LA.  
WALTER D. HUDDLESTON, KY.  
QUENTIN N. BURDICK, N. DAK.  
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DENNIS DE CONCIINI, ARIZ.  
DALE BUMPERS, ARK.

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MARK O. MATFIELD, OREG.  
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CHARLES MCC. MATHEIS, JR., MO.  
RICHARD S. SCHWEIKER, PA.  
HENRY BELLMON, OKLA.  
LOWELL P. WEICKER, JR., CONN.

## United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

JAMES R. CALLOWAY  
CHIEF COUNSEL AND STAFF DIRECTOR

December 20, 1978

Mr. Herb Hinman  
Office of the City Clerk  
City of Nenana  
Nenana, Alaska 99760

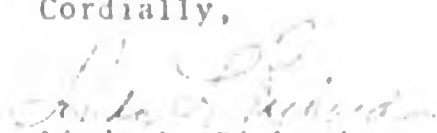
Dear Mr. Hinman:

As a follow-up to our letter of November 21st, enclosed is a copy of a letter from the Corps of Engineers in further reference the erosion problem in Nenana.

If our office may be of additional assistance, please feel free to contact us.

With best wishes,

Cordially,

  
Linda L. Richardson  
Assistant to  
TED STEVENS  
United States Senator

Enclosure

P.S. Kathie Bridenbaugh is still handling Corps matters, but is out of the office for the holidays.

WARREN G. MAGNUSON, WASH., CHAIRMAN

JOHN C. STENNIS, MISS.  
ROBERT C. BYRD, W. VA.  
WILLIAM PROXMIRE, WIS.  
DANIEL K. INOUE, HAWAII  
ERNEST F. HOLLINGS, S.C.  
BIRCH BAYH, IND.  
THOMAS F. EAGLETON, MO.  
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TED STEVENS, ALASKA  
CHARLES MCC. MATHIAS, JR., MD.  
RICHARD S. SCHWEIKER, PA.  
HENRY BELLMON, OKLA.  
LOWELL P. WEICHER, JR., CONN.

## United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

November 21, 1978

Mr. Herb Hinman  
Office of the City Clerk  
City of Nenana  
Nenana, Alaska 99760

Dear Mr. Hinman:

Senator Stevens is currently away from his Washington, D.C. office during this non-legislative period. In his absence, please allow me to thank you for your letter of November 13, 1978.

As you are no doubt aware, the Senator was contacted earlier this year by Mayor John Coghill and he related to the Senator's mobile office staff the erosion problem caused by the Tanana River. The Corps of Engineers was contacted and for your information, I have attached a copy of their March 3, 1978 response.

As I understand your letter, the airport runway has now been extended to 5,000 feet which now places it within 400 feet of the Tanana River. Because of the direct and imminent danger to the runway, this office has again contacted the Corps of Engineers and requested a review of the erosion problem to determine whether any assistance can now be provided.

With best wishes,

Cordially,



Kathle Bridenbaugh  
Staff Assistant to  
TED STEVENS  
United States Senator

Enclosure



DEPARTMENT OF THE ARMY  
ALASKA DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 7002  
ANCHORAGE, ALASKA 99510

REPLY TO  
ATTENTION OF:

NPACO-RF

JAN 15 1979

Honorable John B. Coghill  
City of Nenana  
Box 177  
Nenana, Alaska 99760

Dear Mayor Coghill:

During a recent field trip by Mr. Mervin E. Millins of our Construction Division we learned that the City of Nenana was experiencing difficulty with erosion problems near the city's airstrip.

Your conversation with Mr. Millins indicates that you may attempt some form of erosion control measures in the Nenana River. It is our understanding that you may use old railroad hopper cars filled with riprap material to construct goins or dikes.

The Nenana River is navigable to the city dock and is subject to Department of the Army jurisdiction under Section 10 of the River and Harbor Act of 1899 up to that point. Any work conducted below the ordinary high water line requires Department of the Army authorization. Under Section 404 of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, a permit is also required if there is a discharge of dredged or fill material. Railroad cars are considered fill material when used to construct erosion control structures.

Inclosed for your information are copies of two pamphlets. One is entitled "Help Yourself" which discusses critical erosion problems and alternative methods of shore protection and the other is information for making application for a Department of the Army permit for activities in waterways.



HB

563

(7)

# COMMITTEE REPORT

## HOUSE

1/18/80

FURTHER: FINANCE

Date: 2-7-80

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 563

"An Act providing for the issuance of general obligation bonds in the amount of \$145,473,800 for the purpose of paying the cost of highway, ferry, airport, harbor, port, local service roads, and trails construction; constructing and equipping maintenance facilities; public transportation; and planning various transportation projects; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)  same title
- replace with CS for \_\_\_\_\_  new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal No.e
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

W. H. Oles

John Strick

William

Henry

Ferry

Ray

**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

Ray

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

W. H. Oles

CHAIRMAN

— AMENDMENT — to HB 563

page 2, line 11:

strike: 24,698,000

insert: 26,202,000

(adds +1,504,000 for Mt View Police  
between E 5<sup>th</sup> Ave and Commercial Drive)

Backup attached

February 27, 1980

M E M O R A N D U M

TO: Russ Meekins, Chairman  
House Finance Committee

FROM: Mike Miller, Chairman  
House State Affairs Committee

As the attached letter from Commissioner Bob Ward indicates the local service roads and trails act was created by the seventh legislature and bonds for service roads have been included in every even-year bond election since. As you can see in past years the local service road portion of the transportation bonds package has amounted to as much as 40 per cent of the total. The administration proposal for the current transportation bond program is set at \$10,000,000 This is far too little to budget for one of the most successful and popular transportation programs in the state. Therefore the State Affairs Committee voted to raise the bonding for local service roads from 10 to 14.7 million dollars. Upon reflection I believe that even this is too small and would strongly recommend that additional bonding for this purpose be considered by the Finance Committee.

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES



REPRESENTATIVE RICHARD I. ELIASON  
P.O. BOX 143  
SITKA, ALASKA 99833  
WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811

COMMITTEES  
RESOURCES  
STATE AFFAIRS

February 21, 1980  
Juneau, Alaska

To: State Affairs Committee

From: Rep. Dick Eliason

Subject : Paving of Halibut road in Sitka

The Department of Transportation estimates the cost to pave the road from Davidoff street to the ferry terminal is \$2.4 million dollars. This covers the cost of paving, replacing guardrails and plastic striping. The length of road to be paved is 5.4 miles long, 2 inches thick and 36 feet wide, with an A.D.T. ( average daily travel ) rate of 1,800 people from the ferry terminal and 6,000 from the city limits.

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5415

PROJECT TITLE:

Mt. View Drive - East 5th Avenue to Commercial Drive

PROJECT COST:

\$1,504,000

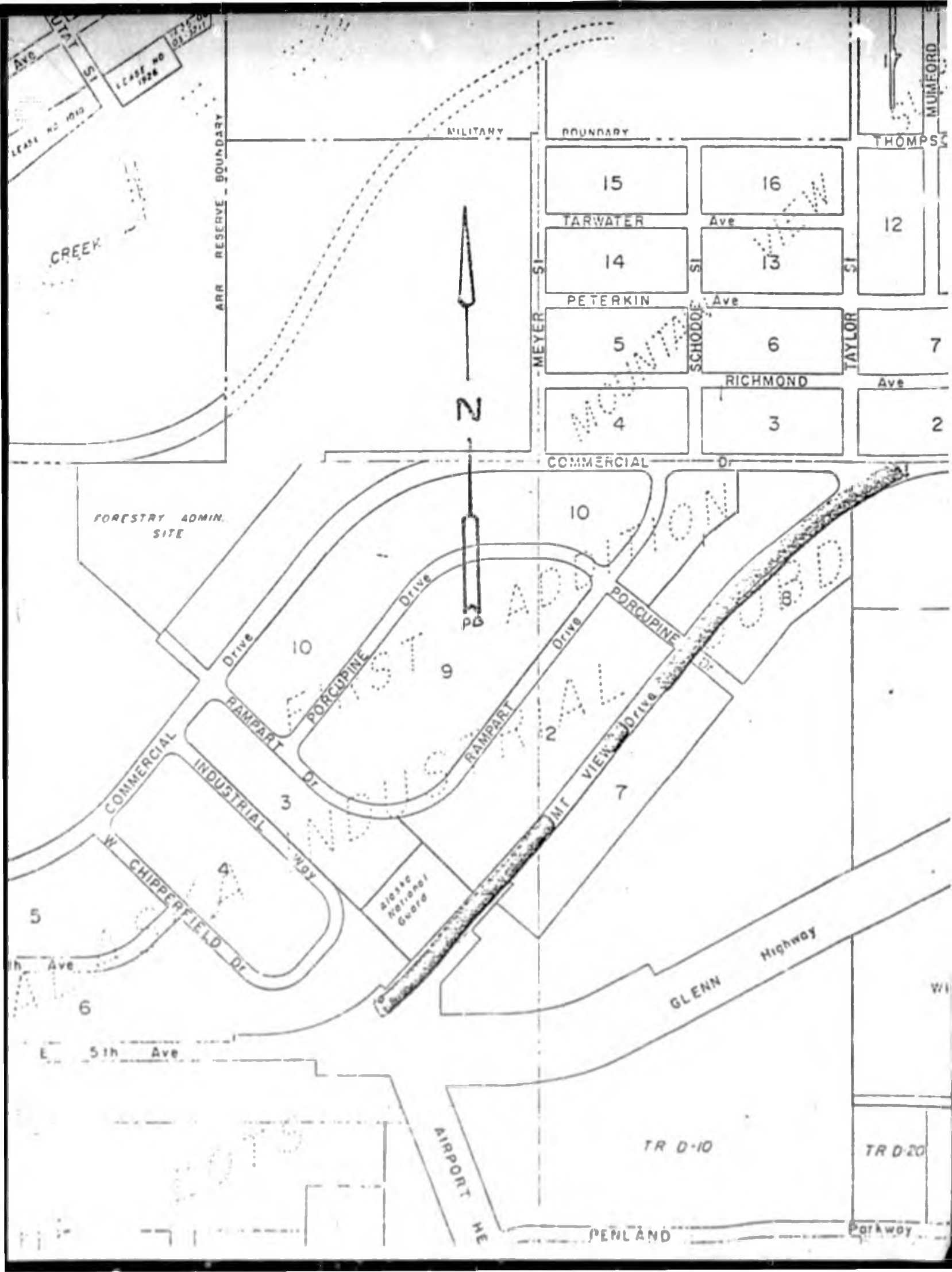
HOUSE REPRESENTATIVES: Sam Cotten, Rick Halford, Randy Phillips, Terry Martin

SENATOR:

Tim Kelly, Brad Bradley

PROJECT DESCRIPTION AND JUSTIFICATION:

This project will reconstruct Mt. View Drive from East 5th Avenue to Commercial Drive and upgrade to two lane collector standards including channelization and other intersection improvements. The improvement will provide adequate capacity for current and projected traffic levels.



2 Sell 150,000,000 of Treasury of 4 1/2%  
 1st Payment 1st Payment part 12 mo. after

Principal Interest Principal Interest Total Debt Serv.

FY	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
82	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205	1,795,205
83	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315	1,579,315
84	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725	1,392,725
85	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643	1,201,643
86	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123	1,097,123
87	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722	989,722
88	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584	889,584
89	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091	799,091
90	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918	716,918
91	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082	639,082
92	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584	569,584
93	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000

This schedule shows bond retirement using above assumptions on \$100,000.00

18626,310

MM

① LSRT to 15MM  
② 1,504MM

add to central

region  
③ 44MM for ENA harbor

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

House  
FINANCE

Back-up for HB563

# TRIBAL COUNCIL

LOWER YUKON RIVER  
EMMONAK, ALASKA 99581

October 31, 1979

Senator John W. Gakett

Pouche, W

Juneau, Alaska 99811

Dear John,

It has been the main problem within the rural areas of the condition in which the roads are, as elected representatives to work for us our needs, and problems in our community. Emonak has a problem both the airport and roads. Our roads is the main problem in the summer because of the activities with vehicles and heavy equipment which produces ponds of water in which we call ponds. Without a solid ground we live around ponds of water in which the vehicles and heavy equipment have mired. I am sure you know what I am talking about after a heavy rain fall. We the Tribulation Council of Emonak fill out a form from NIA for road construction which will increase better access to markets, school, and activities of the community. We have an Island that is growing near the store and the barges will not be able to dock in front any more and that will become of our roads, without a solid ground we will have ponds of water on the tracks of the heavy equipment that is being used to move the merchandise to the store.

Airport: Our airport which was State funded is in a bad shape and the Flight Statistics show that in FY'79 July 1, 1979 to June 30, 1979 there were operated between 1st and 2nd Qtr. 270 flights and 127 flights on the total which costed them 12,000,000.00. Due to the bad and unsafe runway conditions. All the State will still something happens or seriously injury happens to a plane the airport. There is a lot of freight that comes from in this area atleast 30% of that comes out of Anch. or the lower States.

# TRIBAL COUNCIL

LOWER YUKON RIVER  
EMMONAK, ALASKA 99581

As you fly in you will notice the trash around the city and that is our problem also, under Emergency Project P.L. 861 of Indian Act, to the tribal council ask for a road and dump with a fence around it due to the floods that accrue here in the Delta. If we get our roads in I am sure that these problems will be eliminated.

Let me run down what we have available here in Emmonak.

1. Provide you with a map of proposed road.
2. Barges available from the Corporation.
3. IC's to push the barges.
4. Heavy Equipment: loaders, Tractors, and Trucks with the approval of the owners.
5. Equipment at St. Marys under the State to be used to haul gravel down to barges.
6. Pit Permit from H&I to get gravel or rocks from St. Marys.

I am not really impressing you with the urgency of the Problem we face here at Emmonak, but to operate in a safety manner under the State laws, we need the help of the State to upgrade to standard position which the State will provide funds to meet these laws.

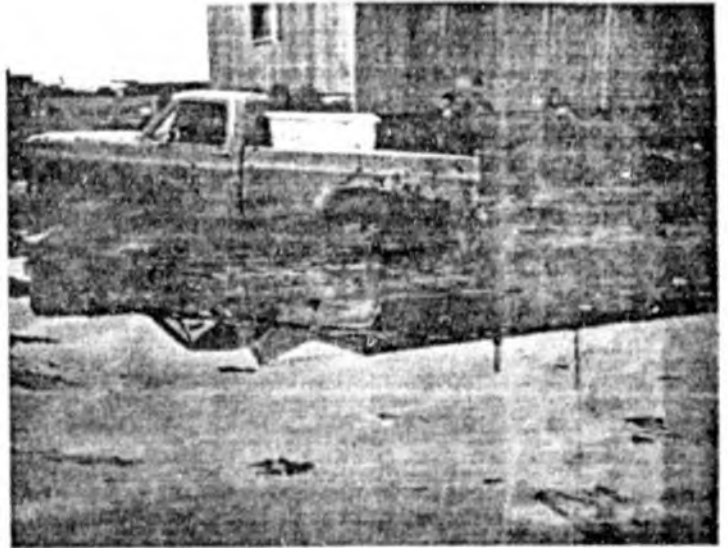
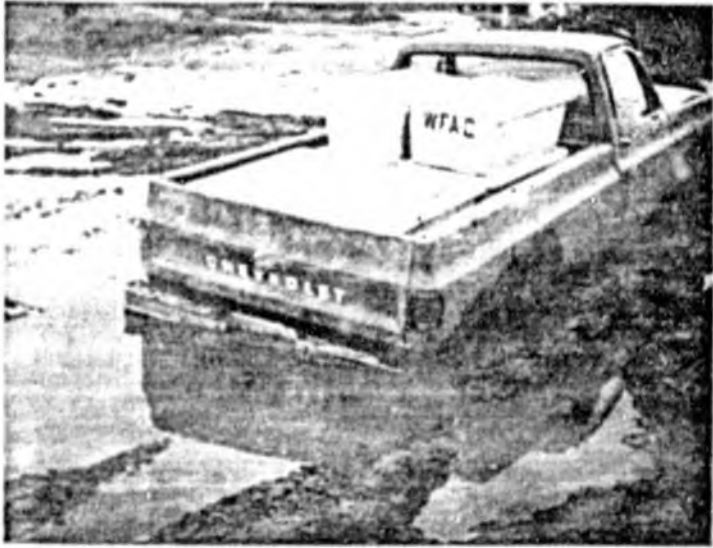
Respectfully,

*Simon P. Moses*

Simon P. Moses

Tribal Director

Mr. Theodore A. Benson  
Hon. Joe Kohn  
Hon. Mike Grevel  
Hon. Ted Stevens  
Hon. George Collins  
Hon. Sharon Thurlbert  
Hon. Billie Jean  
City Council, Emmonak  
Yukon Corporation  
Dept. of Transportation, Road  
1974-1975, 1976



EMERGENCY - REE 410000

NEW SUBDIVISION

ALASKA VILLAGE ELECTRICAL COOPERATIVE  
HEADSTART BUILDING (COMMUNITY HALL)  
ALASKA VILLAGE DEMONSTRATION PROJECT

STATE SCHOOL

PUBLIC SAFETY BUILD

airport

Possible way for road put-in

TANK 7A  
1 1/2 miles

valiant dump  
1471 ft.



Total ft.

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

2 Sell \$50,000,000 at beginning of FY13

7% Interest

1st Principal amt 12 mo. a. Rec.

FY	Principle	Interest	Principle	Interest	Total Debt Ser.
82	5,000,000	1,745,205	5,000,000	1,745,205	1,745,205 x 1.455 =
83	5,000,000	1,754,115	5,000,000	1,754,115	10070,685 x 1.455 =
84	5,000,000	1,579,315	5,000,000	1,579,315	16,200,954 x 1.455 =
85	5,000,000	1,316,164	5,000,000	1,316,164	15,519,847 x 1.455 =
86	5,000,000	1,043,725	5,000,000	1,043,725	14,939,848 x 1.455 =
87	5,000,000	1,221,643	5,000,000	1,221,643	14,212,079 x 1.455 =
88	5,000,000	1,228,357	5,000,000	1,228,357	13,525,265
89	5,000,000	1,047,123	5,000,000	1,047,123	12,913,146
90	5,000,000	1,052,877	5,000,000	1,052,877	12,100,959
91	5,000,000	884,722	5,000,000	884,722	11,400,151
92	5,000,000	887,584	5,000,000	887,584	10,700,159
93	5,000,000	691,082	5,000,000	691,082	5,125,471
94	5,000,000	701,718	5,000,000	701,718	138,626,340
95	5,000,000	523,562	5,000,000	523,562	
96	5,000,000	521,438	5,000,000	521,438	
97	5,000,000	399,041	5,000,000	399,041	
98	5,000,000	350,957	5,000,000	350,957	
99	5,000,000	174,221	5,000,000	174,221	
100	5,000,000	115,479	5,000,000	115,479	
101	5,000,000		5,000,000		

This schedule shows bond retirement using above assumptions on \$100,000,000

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 563  
 Title AN ACT PROVIDING FOR THE ISSUANCE OF G.O. BONDS, \$145,473,800, FOR TRANSPORTATION  
 Requested by HOUSE STATE AFFAIRS Date 1/25/80

II. FISCAL DETAIL

Agency Affected DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
 Program Category Affected TRANSPORTATION  
 BRU, Program, or Subprogram(s) Affected MAINTENANCE AND OPERATIONS  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS CLAIMS, ETC.						
<b>TOTAL</b>		0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
GENERAL OBLIGATION BONDS						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Since the aim of this transportation program is to reconstruct, rehabilitate or replace existing transportation facilities, there should be no noticeable impact directly on the maintenance and operations of the facilities. For example, the costs of patching, blading, and crack sealing will decrease and thereby balance out the increased costs of plowing additional road surfaces being constructed.

The Governor's operating budget provides for the debt service on transportation general obligation bond packages.

IV. DATE January 30, 1980 PREPARED BY Havis Haaryik  
 AGENCY Department of Transportation & Public Facilities  
 Original Legislative Finance PHONE \_\_\_\_\_  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)