

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

2979

HSA

HJR 52

-

HJR 53

2979

|               |                                       |                                                                                        |                                           |                                                                                                                                                                                                                |                                                                                                                                     |     |         |                       |
|---------------|---------------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-----|---------|-----------------------|
| Louisiana     | Governor                              | State Executive Budget Director, Div. of Administration                                | Dec. 15                                   | Not later than 1st day of each regular session                                                                                                                                                                 | Unlimited                                                                                                                           | Yes | July 1  | Annual                |
| Maine         | Governor                              | Bureau of the Budget, Dept. of Finance & Administration                                | Sept. 1 in even years                     | Not later than the Fri. following the first Mon. in Jan. of the 1st regular legislative session. Governor-elect to 1st term, not later than Fri. following 1st Mon. in Feb. of 1st regular legislative session | Unlimited                                                                                                                           | No  | July 1  | Biennial, odd yr. (a) |
| Maryland      | Governor                              | Secretary, Dept. of Budget & Fiscal Planning                                           | Sept. 1                                   | 3rd Wed. of Jan. annually                                                                                                                                                                                      | Limited: legislature may decrease but not increase, except appropriations for legislature and judiciary                             | No  | July 1  | Annual                |
| Massachusetts | Governor                              | Budget Director, Div. of Fiscal Affairs, Executive Office for Administration & Finance | Set by administrative action              | Within 3 weeks after convening of the legislature                                                                                                                                                              | Unlimited                                                                                                                           | Yes | July 1  | Annual                |
| Michigan      | Governor                              | Office of the Budget, Dept. of Management & Budget                                     | Set by administrative action              | 10th day of session                                                                                                                                                                                            | Unlimited                                                                                                                           | Yes | Oct. 1  | Annual                |
| Minnesota     | Governor                              | Budget Div., Dept. of Finance                                                          | Oct. 1 preceding convening of legislature | Within 3 weeks after the 1st Mon. in Jan. in each odd year                                                                                                                                                     | Unlimited                                                                                                                           | Yes | July 1  | Biennial, odd yr. (a) |
| Mississippi   | Commission of Budget & Accounting (f) | Commission of Budget & Accounting                                                      | Aug. 1 preceding convening of legislature | Dec. 15                                                                                                                                                                                                        | Unlimited                                                                                                                           | Yes | July 1  | Annual                |
| Missouri      | Governor                              | Div. of Budget & Planning, Office of Administration                                    | Oct. 1                                    | By the 30th day                                                                                                                                                                                                | Unlimited                                                                                                                           | Yes | July 1  | Annual                |
| Montana       | Governor                              | Director, Office of Budget & Program Planning, Governor's Office                       | Sept. 1 of year before each session       | 1st day of session                                                                                                                                                                                             | Unlimited                                                                                                                           | Yes | July 1  | Biennial, odd yr.     |
| Nebraska      | Governor                              | Budget Div., Dept. of Administrative Services                                          | Not later than Sept. 15                   | Jan. 15                                                                                                                                                                                                        | Limited: three-fifths vote required to increase governor's recommendations; majority vote required to reject or decrease such items | Yes | July 1  | Annual                |
| Nevada        | Governor                              | Budget Director, Budget Div., Dept. of Administration                                  | Sept. 1                                   | 10th day of session or before                                                                                                                                                                                  | Unlimited                                                                                                                           | No  | July 1  | Biennial, odd yr. (a) |
| New Hampshire | Governor                              | Comptroller, Dept. of Administration & Control                                         | Oct. 1 in even years                      | Feb. 15 in odd years                                                                                                                                                                                           | Unlimited                                                                                                                           | No  | July 1  | Biennial, odd yr. (a) |
| New Jersey    | Governor                              | Director, Div. of Budget & Accounting, Dept. of the Treasury                           | Oct. 1                                    | Third Tues. after opening of session                                                                                                                                                                           | Unlimited                                                                                                                           | Yes | July 1  | Annual                |
| New Mexico    | Governor                              | Budget Div. Dept. of Finance & Administration                                          | Sept. 1                                   | On or before 25th day of regular session                                                                                                                                                                       | Unlimited                                                                                                                           | Yes | July 1  | Annual                |
| New York      | Governor                              | Div. of Budget, Executive Dept.                                                        | Early in Sept.                            | Second Tuesday following the first day of the annual session, except on or before Feb. 1 in years following gubernatorial election                                                                             | Limited: may strike out items, reduce items, or add separate items of expenditure                                                   | Yes | April 1 | Annual                |

| <i>State or other jurisdiction</i> | <i>Budget-making authority</i>     | <i>Official or agency preparing budget</i>                                         | <i>Date estimates must be submitted by dept. or agencies</i> | <i>Date submitted to legislature</i>                                                                                                                       | <i>Power of legislature to change budget*</i> | <i>Power of item veto by governor</i> | <i>Fiscal year begins</i> | <i>Frequency of budget</i> |
|------------------------------------|------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|---------------------------------------|---------------------------|----------------------------|
| North Carolina                     | Governor                           | Office of State Budget                                                             | Sept. 1 preceding session                                    | 1st week of session                                                                                                                                        | Unlimited                                     | No                                    | July 1                    | Biennial, odd yr. (a)      |
| North Dakota                       | Governor                           | Office of Management & Budget                                                      | July 15 in even years; may extend 45 days                    | Dec. 1, prior to biennial session                                                                                                                          | Unlimited                                     | Yes                                   | July 1                    | Biennial, odd yr.          |
| Ohio                               | Governor                           | Office of Budget & Management                                                      | Nov. 1; Dec. 1 when new governor is elected                  | Within four weeks of convening in odd years unless change in governor; then March 15                                                                       | Unlimited                                     | Yes                                   | July 1                    | Biennial, odd yr. (a)      |
| Oklahoma                           | Governor                           | Director of State Finance, Div. of Budget                                          | Sept. 1                                                      | Immediately after convening of regular legislative session; an incoming governor, following inaugural                                                      | Unlimited                                     | Yes                                   | July 1                    | Annual                     |
| Oregon                             | Governor                           | Budget & Management Div., Executive Dept.                                          | Sept. 1 in even year preceding legislative year              | Dec. 1 in even year preceding legislative year                                                                                                             | Unlimited                                     | Yes                                   | July 1                    | Biennial, odd yr.          |
| Pennsylvania                       | Governor                           | Secretary of Budget & Administration, Governor's Office of Budget & Administration | Nov. 1 each year                                             | As soon as possible after organization of legislature, but no later than 1st full week in Feb. Governor-elect to 1st term, no later than 1st week in March | Unlimited                                     | Yes                                   | July 1                    | Annual                     |
| Rhode Island                       | Governor                           | Div. of Budget, Dept. of Administration                                            | Oct. 1                                                       | 24th day of session                                                                                                                                        | Unlimited                                     | No                                    | July 1                    | Annual                     |
| South Carolina                     | State Budget & Control Board (g)   | Finance Div., State Budget & Control Board                                         | Sept. 15 or discretion of board                              | 2nd Tues. in Jan.                                                                                                                                          | Unlimited                                     | Yes                                   | July 1                    | Annual                     |
| South Dakota                       | Governor                           | Commissioner, Bureau of Finance & Management, Dept. of Executive Management        | Sept. 1                                                      | 1st Tues. after 1st Mon. in Dec.                                                                                                                           | Unlimited                                     | Yes                                   | July 1                    | Annual                     |
| Tennessee                          | Governor                           | Budget Div., Dept. of Finance & Administration                                     | Oct. 1                                                       | Prior to Feb. 1, except prior to March 1 in first year of governor's term                                                                                  | Unlimited                                     | Yes                                   | July 1                    | Annual                     |
| Texas                              | Governor, Legislative Budget Board | Budget & Planning Office, Office of Governor; Legislative Budget Board             | Date set by budget director and legislative board            | 7th day of session or before                                                                                                                               | Unlimited                                     | Yes                                   | Sept. 1                   | Biennial, odd yr. (a)      |
| Utah                               | Governor                           | State Budget Office                                                                | Sept. 1-30th                                                 | After convening of legislature, 3 days regular session; 1 day budget session                                                                               | Unlimited                                     | Yes                                   | July 1                    | Annual                     |
| Vermont                            | Governor                           | Commissioner, Dept. of Budget & Management; Agency for Administration              | Sept. 1                                                      | 3rd Tues. in Jan.                                                                                                                                          | Unlimited                                     | No                                    | July 1                    | (b)                        |
| Virginia                           | Governor                           | Director, Dept. of Planning & Budget, Office of Administration & Finance           | Feb.-Sept. in odd years                                      | Within 5 days after convening of regular session on 2nd Wed. in Jan. in even years                                                                         | Unlimited                                     | Yes                                   | July 1                    | Biennial, even yr. (a)     |
| Washington                         | Governor                           | Director, Office of Financial Management                                           | Date set by governor                                         | 20th day of Dec. prior to session                                                                                                                          | Unlimited                                     | Yes                                   | July 1                    | Biennial, odd yr. (a)      |

|                    |          |                                                                    |                                                                                              |                                                                                                                |                                                                                                    |     |        |                        |
|--------------------|----------|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-----|--------|------------------------|
| West Virginia      | Governor | Planning Div. & Div. of Budget, Dept. of Finance & Administration  | Aug. 15                                                                                      | 1st day of session except for 1st year of new gov. when it may be submitted 1 month after convening of session | Limited: may not increase items of budget bill except appropriations for legislature and judiciary | Yes | July 1 | Annual                 |
| Wisconsin          | Governor | Div. of State Executive Budget & Planning, Dept. of Administration | Dates as set by secretary, Department of Administration                                      | On or before the last Tues. in Jan. in odd-numbered years                                                      | Unlimited                                                                                          | Yes | July 1 | Biennial, odd yr. (a)  |
| Wyoming            | Governor | Budget Div., Dept. of Administration & Fiscal Control              | Sept. 15 preceding session in Feb.                                                           | Jan. 1                                                                                                         | Unlimited                                                                                          | Yes | July 1 | Biennial, even yr. (a) |
| Dist. of Col.      | Mayor    | Office of Budget & Management Systems                              | Date set by mayor                                                                            | (j)                                                                                                            | Unlimited                                                                                          | Yes | Oct. 1 | Annual                 |
| American Samoa (k) | Governor | Planning & Budget Office                                           | July 1                                                                                       | August                                                                                                         | Unlimited (local funds)                                                                            | Yes | Oct. 1 | Annual                 |
| Guam               | Governor | Bureau of Budget & Management Research                             | Date set by director, Bureau of Budget & Management Research. Usually not later than Feb. 15 | By April 30                                                                                                    | Unlimited                                                                                          | Yes | Oct. 1 | Annual                 |
| Puerto Rico        | Governor | Bureau of the Budget, Office of the Governor                       | Oct. 15                                                                                      | 2nd Mon. in Jan.; opening day of regular session                                                               | Unlimited                                                                                          | Yes | July 1 | Annual                 |
| Virgin Islands     | Governor | Director of the Budget, Office of the Governor                     | Dec. 30                                                                                      | Upon convening                                                                                                 | Unlimited                                                                                          | Yes | Oct. 1 | Annual                 |

\* Limitations listed in this column relate to legislative power to increase or decrease budget items generally. Specific limitations, such as constitutionally earmarked funds or requirement to enact revenue measures to cover new expenditure items, are not included.

(a) Budget is adopted biennially, but appropriations are made for each year of the biennium separately. Maine—budget is reviewed annually. Minnesota and Wisconsin—a few appropriations are made for the biennium. Virginia—amendments to current budget can be made in any year, but there is no formal provision for annual review of the entire biennial appropriation. North Carolina, Washington and Wyoming—biennial appropriations with annual review. Wisconsin—statutes authorize an annual budget review, and the governor may in even years recommend changes.

(b) Governor has budget-making authority for executive branch only. Judiciary and legislative branch budgets are the responsibility of the respective branches, and the governor may only veto the budget bills as a whole, not by item.

(c) Increases or decreases may be made in even-year sessions.

(d) Budget Committee serves in advisory capacity.

(e) Convenes on first Thursday after first Monday in January in odd years.

(f) Composition of commission: governor as ex officio chairman, lieutenant governor, chairman House Ways and Means Committee, chairman House Appropriations Committee, chairman Senate Finance Committee, president pro tem of senate, chairman Senate Appropriations Committee, one member of senate appointed by lieutenant governor, speaker of house, two house members appointed by the speaker.

(g) Composition of board: governor as chairman, treasurer, comptroller general, chairman Senate Finance Committee, chairman House Ways and Means Committee.

(h) Thirty days prior to each department or agency hearing before the governor.

(i) 1981 legislature authorized annual or biennial budget at governor's discretion. Submission of annual budget began with fiscal 1982.

(j) Budget submitted to both council and Congress. Council sets date of submission for its review; the Office of Management and Budget, Executive Office of the President, sets the date for submission to Congress.

(k) Information from 1980-81 *Book of the States*.

electronic or other medium approved for such purpose by the governing board or officer having jurisdiction or control of such public funds.

(5) **PROCEDURES FOR WIRE TRANSFER OF FUNDS.**—Notwithstanding any other provision of law, the governing board or officer of any local government who has the authority to deposit or withdraw funds is authorized to transfer funds from one depository to another or within a depository or to another institution, and may transfer funds wherein the transfer does not represent an expenditure, advance, or reduction of cash assets. Such transfer may be made by electronic, telephonic, or other medium; and each transfer shall be confirmed in writing and signed by the designee of the governing board or officer of the local government.

(6) **INVESTMENT OF PUBLIC FUNDS.**—Notwithstanding any other provision of law, the governing board or officer of any local government who has the authority to invest funds is authorized to transfer funds by electronic or other medium for purposes of investment to any depository authorized by law to receive funds or in the Local Government Surplus Funds Trust Fund. A written record shall be kept of all transfers made pursuant to this section.

History.—s. 1, 2, 3, 4, 5, ch. 78-406; s. 3, ch. 82-104.

**215.96 Coordinating council.**—[Repealed effective October 1, 1989, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.]

## CHAPTER 216

### PLANNING AND BUDGETING

#### 216.031 Budgets for operational expenditures.

**216.031 Budgets for operational expenditures.**—The legislative budget requests submitted by the head of each state agency, showing the amounts requested for operational expenditures during the next biennium, shall contain the following:

(1) For each budget entity, a summary exhibit showing, for each appropriation category, for each fund, 2 prior years' appropriations for general revenue, 1 prior year's actual and 1 current year's estimated expenditures, and the requested expenditures for each year of the next biennium. The total number of positions for the budget entity shall be shown for each fiscal year of data for which positions are authorized, fixed, or requested. However, the agency budget request for the State University System shall be expressed in terms of the amounts for the various programs as prescribed in s. 210.271 and in terms of the specified appropriation categories, including the special units' budgets, prescribed in the prior appropriations act.

(2) For each program component within the budget entity, an exhibit showing, for each appropriation category, the summary explanation of expenditures for each detail issue describing the amounts and positions for each year of the next biennium to continue

current programs, for improved programs, and for new programs, with a summary showing totals by fund for each year of the biennium.

(3) For each trust fund within the budget entity, a schedule showing the trust funds available, providing the source of receipts, detail of nonoperating disbursements, operating disbursements, fixed capital outlay, and unencumbered cash balances, for 2 prior years' actual, the current year's estimated, and the request for each year of the biennium.

(4) For each budget entity, a schedule showing detail of positions, providing for each class of positions within discrete organizational activities, by the collective bargaining unit and program component for each year of the next biennium, the number of full-time equivalent positions, the estimated rate of salary, the number of months to be employed, the amounts requested for new positions, and the number of new positions requested.

(5) Detailed information for each year of the biennium necessary for the Legislature and the Governor to evaluate:

(a) The effectiveness of current programs, including justification for those programs.

(b) The justification for increasing costs to continue the operations of current programs.

(c) The justification for proposed improvements in existing programs.

(d) The justification for proposed new programs.

(6) Additional information providing a detailed description of the agency's request and the corresponding calculations needed to support the request.

(7) A schedule and other such detailed information as may be necessary to identify the federal grants-in-aid portion of the agency's legislative budget request, as may be prescribed by the Executive Office of the Governor, in consultation with the appropriations committees of the Legislature.

(8) Workload and other performance indicators, as prescribed by the Executive Office of the Governor pursuant to s. 216.023.

(9) The sum of money actually expended for contractual services, as defined in s. 287.012, by the agency for the previous year.

(10) A schedule listing each committee, however created; council; coordinating council; commission; and board of trustees that is adjunct to the executive agency. The schedule shall show the name, number of meetings held in the past fiscal year, number of members, and expenses of each committee, council, coordinating council, commission, or board of trustees. The schedule shall further state the purpose of each committee, council, coordinating council, commission, or board of trustees and the statutory basis for each one's creation.

The legislative appropriations committees and the Executive Office of the Governor may require the agency to address major issues for inclusion in the agency's requests. The issues shall be submitted to the agency no later than August 30 of each even-numbered year and shall be displayed in the agency's requests as provided in the budget instructions.

History.—s. 31, ch. 69-106; s. 7, ch. 71-354; s. 1, ch. 77-152; s. 30, ch. 81-45; s. 3, ch. 82-16; s. 11, ch. 82-106.

Note.—As amended by s. 3, ch. 81-45, paragraph (e) is added to subsection (5) effective July 1, 1981, to read:

(e) The projected cost of the requested program budget cycle.

## CHAPTER 216

### FINANCIAL MATTERS AND POLITICAL SUBDIVISIONS

#### PART II REVENUE SHARING

#### PART III LOCAL FINANCE MANAGEMENT AND

#### PART IV INVESTMENT AND GOVERNMENT SURPLUS

#### PART VI PARTICIPATION IN SALES TAX PROCEEDS

#### PART II

#### REVENUE SHARING

#### 218.23 Revenue sharing with local government.

#### 218.23 Revenue sharing with local government.—

(1) To be eligible to participate beyond the minimum entitlement, a unit of local government.

(a) Reported its finances for the completed fiscal year to the Department of Finance, pursuant to s. 218.23.

(b) Made provisions for annual financial accounts in accordance with law.

(c) Levied, as shown on its annual report pursuant to s. 218.32, an ad valorem tax levied for debt service millages authorized by the voters.

(d) Received revenue equivalent to a millage rate of one dollar based on the 1973 taxable value of the property appraised by the property appraiser pursuant to s. 218.23.

(e) In order to produce revenue which would otherwise be produced by the ad valorem tax, to have received a millage rate of one dollar per county pursuant to s. 125.01(6)(a).

(f) Paid a millage rate for the ad valorem tax, or received revenue from these four sources. If a new millage rate is incorporated, the provisions of this part shall apply to the taxable values for the year in which the millage rate is certified by the property appraiser.

(g) Requires only a minimum amount of revenue to be raised from the ad valorem tax, the utility tax, and the utility tax. It shall not be less than the minimum millage rate.

(h) Certified that persons in the unit are qualified for employment as defined in the Police Standards and Training Act, and that its salary structure and salary plan

## CHAPTER NO. 666

AN ACT TO CLARIFY THE INFORMATION REQUIRED TO BE SUBMITTED TO THE BUDGET DIRECTOR AND THE LEGISLATIVE FISCAL ANALYST FOR THE PREPARATION OF AGENCY BUDGET ESTIMATES; PROVIDING A DATE BY WHICH THE BUDGET OFFICE WILL PREPARE AN AGENCY REQUEST; AND SPECIFICALLY INCLUDING THE UNIVERSITY SYSTEM UNDER THE BUDGET REQUIREMENTS; AMENDING SECTIONS 17-7-111 AND 17-7-112, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-7-111, MCA. is amended to read: —

**"17-7-111. Agency program budgets — form distribution and contents.** (1) In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper forms necessary for the preparation of budget estimates. These forms shall be prescribed by the budget director to procure the information required by subsection (2).

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained therein by fund and, where applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented shall include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency;

(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and agency's recommendations for the ensuing biennium, by disbursement category;

(e) any other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director must also prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401."

Section 2. Section 17-7-112, MCA, is amended to read:

"17-7-112. **Submission deadline.** (1) It shall be the duty of each department, agency, and office, including the Montana university system, to submit the information required under 17-7-111 to the budget director on or before September 1 in the even year preceding the convening of the legislature.

(2) Between August 15 and September 30 in the year preceding the convening of the legislature, the director must submit each state agency's budget request required under 17-7-111(2) to the legislative fiscal analyst. The transfer of budget information shall be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information during the month of September and which allows each office to maintain a reasonable staff workflow.

(3) If any department, institution, university unit, or agency shall fail to present such information within the time herein specified, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare and submit to the legislative fiscal analyst and the governor by October 30 a budget request on behalf of such department, institution, university unit, or agency, based upon his studies of the operations, plans, and needs thereof.

(4) The proposed pay plan schedule required by 17-7-111(3) must be submitted to the legislative fiscal analyst no later than November 15 in the year preceding the convening of the legislature."

Approved April 28, 1983.

AN ACT TO COUPLE  
NESS CORPORATI  
PURPOSES OF TH  
SECTIONS 15-31-201  
15-31-205 THROUGH  
DIATE EFFECTIVE

Be it enacted by the Le

Section 1. Section 1

"15-31-201. Defin  
"small business corpora  
tana and which has ma  
1 of the Internal Rever  
thereof with the depart  
of the taxable year for t

(2) For purposes of  
ration" means, with res  
tion which has made a  
taxable year and has fi  
on or before the 15th  
which the election is to

Section 2. Section 1:

"15-31-202. Electi  
small business corpora  
imposed by this chapter

(2) If a small busine  
(1), then:

(a) with respect to t  
election is in effect, suc  
by this chapter and, wit  
taxable years, the provis

(b) with respect to t  
tion in which or with w  
such election is in effec  
shareholder, and with re  
able years, the provision:

(3) An election unde  
rules prescribed by the c

(4) This election is n  
of such electing corporat  
income as defined in 15-

(5) Every electing co  
\$10 required by 15-31-20

**54-42-07. Transfer of records and other materials.** The North Dakota merit system council as created by agreement of the social service board of North Dakota, the North Dakota unemployment compensation division, the North Dakota state employment service, and North Dakota state department of health shall transfer all records and other material to the possession of the North Dakota merit system council as created by this chapter.

Source: S.L. 1957, ch. 332, § 7; R.C. 1943, 1957 Supp., § 54-4207.

**Cross-References.**

Records of council transferred to central personnel division, see § 54-44.3-27.

**54-42-08. Transfer of employees under merit system.** All employed personnel having status under the merit system as created by agreement of the social service board of North Dakota, the North Dakota unemployment compensation division, the North Dakota state employment service, the North Dakota merit system council, and the North Dakota state department of health, shall have like status and pay under the North Dakota merit system council as created by this chapter.

Source: S.L. 1957, ch. 332, § 8; R.C. 1943, 1957 Supp., § 54-4208.

## CHAPTER 54-43

### THEODORE ROOSEVELT CENTENNIAL COMMISSION

[Omitted as a statute not of a general and permanent nature]

**Note.**

Not repealed but omitted as a chapter not

of a general and permanent nature. For the provisions of this chapter, see S.L. 1957, ch. 333, §§ 1, 2.

## CHAPTER 54-44

### OFFICE OF MANAGEMENT AND BUDGET

**Section**

- 54-44-01. Responsibility of the office of management and budget.
- 54-44-02. State office of management and budget.
- 54-44-03. Director of the office of management and budget.
- 54-44-04. Powers and duties of the director of the office of management and budget.
- 54-44-04.1. The director of the office of management and budget shall have authority to withhold or deduct certain amounts from employment compensation.
- 54-44-04.2. Unemployment compensation assessments to departments and institutions.
- 54-44-04.3. Appropriation of unemployment compensation assessments.
- 54-44-04.4. Payment of unemployment compensation claims.
- 54-44-04.5. Federal surplus property — Office of management and budget responsible for distribution — Powers and duties of director.
- 54-44-04.6. State surplus property — Department heads to inform director — Disposition of property — Proceeds — Exchange of property.
- 54-44-04.7. Responsibility to administer unassigned statutory functions of state government.
- 54-44-05. Warrants — Numbered — Show funds on which drawn — Not drawn unless authorized.
- 54-44-06. Duties as to school fund.
- 54-44-07. Office to set up account against person who fails to render account.
- 54-44-08. Director to institute suits in name of state.

- 54-44-09. Supplies for institutions under contract.
- 54-44-10. Legislative inspection of books of account.
- 54-44-11. Office's operating funds creation.
- 54-44-12. Deposit and disbursement of funds — Appropriation.
- 54-44-13. Failure of political subdivisions to comply with provisions of office of management and budget authority.

**54-44-01. Responsibility of the office of management and budget is the control and supervision of the branch of the government, and is directed by the office of the state auditor. The office of the state auditor has the power to conduct a true independent post audit of all the accounts of the state. The responsibility of collecting additional taxes shall be in the office of the state tax commissioner.**

This chapter shall be liberally construed to conform to the intent of this section.

Source: S.L. 1959, ch. 372, § 1; 1981, ch. 534, § 5.

**Note.**

Section 1, chapter 534, S.L. 1981, provides: "Wherever the terms department of accounts and purchases, director of the department of accounts and purchases, director of the state department of accounts and purchases, director of accounts and purchases, and department when referring to the department of accounts and purchases, appear in this code, the term office of management and budget, director of the office of management and budget, director of the state office of management and budget, or office, as the case may be, shall be substituted therefor. The director of the

**54-44-02. State office of management and budget.** The office of management and budget vests the various state departments, agencies and offices with the powers and responsibilities necessary to supervise and control the various state departments, agencies and offices.

Source: S.L. 1959, ch. 372, § 1.

**54-44-03. Director of the office of management and budget.** The director of the office of management and budget shall be a director of the office of management and budget appointed by and serve at the will of the governor. The director shall be set by the governor within the limits of the salaries for salaries by the legislative assembly. The duties of their office shall be reimbursed by the state officials. The director shall be employed in accordance with law or rules established by the office of management and budget.

- 54-44-09. Supplies for institutions under control of the office of management and budget.
- 54-44-10. Legislative inspection of books of office of management and budget.
- 54-44-11. Office's operating funds creation.
- 54-44-12. Deposit and disbursement of funds of occupational and professional boards — Appropriation.
- 54-44-13. Failure of political subdivisions to repay natural disaster overpayments — Office of management and budget authorized to withhold funds.

**54-44-01. Responsibility of the office of management and budget.** The office of management and budget is to be a central authority, vested with the control and supervision of the fiscal administration of the executive branch of the government, and is directly responsible to the governor. The office of the state auditor has the primary responsibility of conducting a true independent post audit of all the executive departments and agencies. The responsibility of collecting additional taxes is consolidated and vested in the office of the state tax commissioner.

This chapter shall be liberally construed in a manner which will implement this section.

**Source:** S.L. 1959, ch. 372, § 1; 1981, ch. 534, § 5.

**Note.**

Section 1, chapter 534, S.L. 1981, provides: "Wherever the terms department of accounts and purchases, director of the department of accounts and purchases, director of the state department of accounts and purchases, director of accounts and purchases, and department when referring to the department of accounts and purchases, appear in this code, the term office of management and budget, director of the office of management and budget, director of the state office of management and budget, or office, as the case may be, shall be substituted therefor. The director of the

office of management and budget is to be substituted for, and take any action previously to be taken by, and shall perform any duties previously to be performed by the director of the department of accounts and purchases".

**Cross-References.**

Federal aid coordinator office created in office of management and budget, see § 54-27.1-01.

**Collateral References.**

States ⇔ 85, 121, 122, 136.  
 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 75-77.  
 81 A C. J. S. States, §§ 145, 146, 223 to 229, 242.

**54-44-02. State office of management and budget.** There shall be an office of management and budget vested with the duties, powers, and responsibilities necessary to supervise and administer the fiscal transactions of the various state departments, agencies, boards, and commissions.

**Source:** S.L. 1959, ch. 372, § 1.

**54-44-03. Director of the office of management and budget.** There shall be a director of the office of management and budget who shall be appointed by and serve at the will of the governor. The salary of the director shall be set by the governor within the limits of the amount appropriated for salaries by the legislative assembly, and the director and other employees of the office shall be reimbursed for expenses incurred in carrying out the duties of their office at the same rate and in the same manner as other state officials. The director shall be empowered to adopt rules, not inconsistent with law or rules established by the governor, for the administration of the office of management and budget, the conduct of its employees, the

distribution and performance of its business, and the custody, use, and preservation of the records, documents, and property pertaining thereto. He shall be empowered to set up such divisions or other internal organization within the office that he shall deem necessary in order to efficiently carry out the duties, powers, and responsibilities of the office.

The director of the office of management and budget shall execute an official bond in the sum of one hundred thousand dollars.

Source: S.L. 1959, ch. 372, § 1; 1981, ch. 535, § 16.

**54-44-04. Powers and duties of the director of the office of management and budget.** The director of the office of management and budget, or such subordinate officer as he shall designate:

1 to 4. Repealed by S.L. 1965, ch. 358, § 20.

5. Shall examine the budget affecting the legislative and judicial branches of the state government, but only for the purpose of determining the sufficiency of funds to meet the contemplated expenditures of these branches of state government or their officers or agencies.

6 and 7. Repealed by S.L. 1965, ch. 358, § 20.

8. Shall keep the general accounts, reflecting for each fund the resources and balance, together with current revenues and expenditures, and shall provide for an accrual accounting system.

9. Shall, acting as director of the office of the budget, process all claims for submittal to the office of management and budget, which may conduct the preaudit of all claims from the executive branch of the government before payment and the director shall conduct the current audit of all revenues, which shall include the supervision of the collection of all moneys due the state.

10. Repealed by S.L. 1979, ch. 541, § 2.

11. Except as otherwise provided by law, shall prepare warrants for payment of all claims from the executive branch of government, when approved by the office of the budget, and for payment of all claims from the judicial and legislative branches.

12. Shall be vested with the duties, powers, and responsibilities involved in the development and installation of financial records and procedures for all state departments and agencies.

12.1. Shall coordinate the development of accounting and financial related systems.

12.2. Shall create an accounting manual and provide sufficient training of current and potential users concerning the functions and use of a statewide accounting and reporting system.

13. Shall conduct such interval audits of accounts in the several departments of the state as he shall deem necessary.

14. Shall issue current reports to administrative officials concerning the status of revenue, expenditures, and appropriation accounts, and shall make periodic financial reports to the governor, administrative officials, the legislative assembly, and the public.

14.1. Shall prepare on an annual basis comprehensive financial statements of the state of North Dakota.

15. Shall submit a biennial report to the governor and the legislative assembly of all the activities of all the departments established within the office, include a statement of revenues and public expenditures.

16. Shall accompany the governor and the legislative assembly with the amount of each item of revenue chargeable to the state and the amount unapplied to the state.

17. Shall, when requested by the legislative assembly, report to the administrative officials the condition of each county at such times as the governor may determine.

18. Shall submit to the governor and the legislative assembly a report on the current condition of each county at such times as the governor may determine.

19. Shall keep an account of the revenues of each county shall be paid to the state, and with the amount of such revenues and shall be credited to the account of such taxes.

20. Shall keep an account of the revenues of each county shall be paid to the state, and with the amount of such revenues and shall be credited to the account of such taxes.

21. Shall be vested with the duties, powers, and responsibilities involved in the operation of a statewide accounting and reporting system.

22. Shall maintain and operate a statewide accounting and reporting system, and shall be able to supply the same to any department commonly used commonly used commonly used commonly used construed as authorizing.

22.1. Shall distribute financial statements to the governor and the legislative assembly.

23. Shall establish and maintain a statewide accounting and reporting system, and shall be able to supply the same to any department commonly used commonly used commonly used commonly used.

24. Shall perform such other duties as may be required by law.

Source: S.L. 1959, ch. 372, § 1; 1965, ch. 358, § 20; 1966, ch. 403, § 51; 1975, ch. 466, § 1; 1979, ch. 560, § 1; 1981, ch. 1, §§ 9, 10; 1981, ch. 535, § 16.

#### Cross-References.

Communications advisory commission, see § 54-23.1-1.  
Departmental payrolls, see § 54-14-04.2.  
Requirements of subdivisions, see § 54-14-04.2.

Director of office of management and budget, see § 54-44.1-02.

15. Shall submit a biennial report as prescribed by section 54-06-04 to the governor and the office of management and budget covering the activities of all the divisions of the office. In addition to any requirements established pursuant to section 54-06-04, the report shall include a statement of the funds of the state, the revenues of the state, and public expenditures during the two preceding fiscal years.
16. Shall accompany his biennial report with tabular statements showing the amount of each appropriation for the two preceding fiscal years, the amount expended, and the balance, if any, and also the amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom.
17. Shall, when requested, give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or to the administration of his office.
18. Shall submit to the governor at the close of each business day, or at such times as the governor may request, a report showing the current condition of each fund and appropriation.
19. Shall keep an account with each organized county of the state in which each county shall be charged with the amount of delinquent taxes due to the state, and with all sums levied in such county for state purposes, and shall be credited with all sums paid into the state treasury on account of such taxes.
20. Shall keep an account between the state and state treasurer, and charge the state treasurer therein with the balance in the treasury when he came into office, and with all moneys received by the state treasurer, and credit him with all warrants drawn on and paid by him.
21. Shall be vested with the duties, powers, and responsibilities involved in the operation of a centralized purchasing service.
22. Shall maintain and operate such supply rooms as may be found desirable to supply the several departments with office supplies and other commonly used commodities; however, this subsection shall not be construed as authorizing the establishment of a warehousing system.
  - 22.1. Shall distribute federal and state surplus property pursuant to sections 54-44-04.5 and 54-44-04.6.
23. Shall establish and operate a central duplicating service and central mechanical or electronic data processing facilities.
24. Shall perform such other duties as are or may be prescribed by law.

**Source:** S.L. 1959, ch. 372, § 1; 1963, ch. 346, § 67; 1965, ch. 358, § 20; 1969, ch. 452, § 1; 1973, ch. 403, § 51; 1975, ch. 466, § 54; 1979, ch. 541, §§ 1, 2; 1979, ch. 560, § 1; 1979, ch. 568, § 10; 1981, ch. 1, §§ 9, 10; 1981, ch. 537, § 1.

**Cross-References.**

Communications advisory committee membership of director, see § 54-23.1-03.

Departmental payrolls exempt from requirements of subdivision 11, see § 54-14-04.2.

Director of office of management and budget ex officio director of the budget, see § 54-44.1-02.

State purchasing practices, see ch. 54-44.4.

**Institutions under Board of Administration.**

This chapter did not relieve the board of administration (predecessor to director of institutions) of all responsibility for overseeing accounts and purchase of institutions under its control; rather, the department of accounts and purchases (predecessor to office of management and budget) is to work through the board of administration with respect to such institutions. State ex rel. Joos v. Guy (1963) 125 N.W.2d 468.

**54-44-04.1. The director of the office of management and budget shall have authority to withhold or deduct certain amounts from employees' compensation.** The director of the office of management and budget, in addition to other deductions or withholdings authorized or permitted by law, shall be authorized to withhold or deduct from the employees' monetary compensation such amounts as may be determined by the employer and employees to participate in tax-favored or tax-sheltered annuity programs which are authorized by the federal Internal Revenue Code.

Source: S.L. 1969, ch. 453, § 1.

**54-44-04.2. Unemployment compensation assessments to departments and institutions.** Beginning July 1, 1979, all departments and institutions of the state of North Dakota shall pay to the office of management and budget one percent of the first six thousand dollars of each employee's earnings. Such assessments shall be paid to the office of management and budget in accordance with guidelines established by the office of the budget, from the general fund and special funds appropriated for salaries and wages to the individual departments and institutions. The moneys received from such assessments shall be deposited by the office of management and budget into a fund for the purpose of paying unemployment compensation claims. The director of the office of management and budget may decrease or suspend the assessments provided for in this section upon determination that the funds deposited pursuant to this section are sufficient to offset anticipated obligations.

Source: S.L. 1979, ch. 582, § 2; N.D.C.C., § 54-44-04.3.

**54-44-04.3. Appropriation of unemployment compensation assessments.** All assessments received by the office of management and budget and deposited into the fund for unemployment compensation claims are hereby appropriated.

Source: S.L. 1979, ch. 58, § 3; N.D.C.C., § 54-44-04.4; S.L. 1981, ch. 536, § 1.

**54-44-04.4. Payment of unemployment compensation claims.** The office of management and budget from the appropriations made in section 54-44-04.3 shall quarterly reimburse the job service North Dakota for the amount of actual claims paid by the job service North Dakota to eligible recipients previously employed by state departments and institutions. It shall be the responsibility of each department and institution to verify and certify the validity of each unemployment claim prior to the reimbursement of funds to the job service North Dakota.

Source: S.L. 1979, ch. 58, § 4; N.D.C.C., § 54-44-04.5.

**54-44-04.5. Federal surplus property — Office of management and budget responsible for distribution — Powers and duties of director.**

1. The office of manager equitable distribution erty transferred to th and Administrative S 40 U.S.C. 484 (j)), here
2. The director of the off nate officer as the dire
  - a. May receive, inves tions for federal su
  - b. May acquire any fi under the federal A
  - c. May distribute any Act to:
    - (1) Any public ag the residents o purposes; or
    - (2) Nonprofit educ or organization 501 of the fede cation or publi:
  - d. May store the feder
  - e. Shall develop, subn distribution of fede eral Act and rules the director may c by the department (
  - f. May cooperate and erty agencies and t property and excha
  - g. May provide inform plus property to ent
  - h. May assess and col ents to cover direct tion. The service cha in a surplus propert Act. The state treas if the director req the fund.
  - i. Adopt rules and tal surplus property pu

Source: S.L. 1981, ch. 537, § 2.

**54-44-04.6. State surplus director -- Disposition of erty.**

1. The person in charge o: state shall inform the d whenever that departn property, whether origi

management and budget certain amounts from office of management and findings authorized or permitted from the employment be determined by the and or tax-sheltered annu- internal Revenue Code.

assessments to depart- departments and institu- the office of management dollars of each employee's office of management and the office of the budget, ed for salaries and wages ed moneys received from management and budget nt compensation claims. get may decrease or sus- upon determination that sufficient to offset antici-

t compensation assess- management and budget compensation claims are

mpensation claims. The riations made in section e North Dakota for the North Dakota to eligible ents and institutions. It institution to verify and or to the reimbursement

cc of management and id duties of director.

1. The office of management and budget is responsible for the fair and equitable distribution, through donation, of all federal surplus property transferred to the state in accordance with the Federal Property and Administrative Services Act of 1949, as amended [63 Stat. 378; 40 U.S.C. 484 (j)], hereinafter referred to as the federal Act.
2. The director of the office of management and budget, or such subordinate officer as the director shall designate:
  - a. May receive, investigate, and make recommendations on applications for federal surplus property available under the federal Act.
  - b. May acquire any federal surplus property transferred to the state under the federal Act.
  - c. May distribute any federal surplus property pursuant to the federal Act to:
    - (1) Any public agency for use in carrying out or promoting for the residents of a given political subdivision one or more public purposes; or
    - (2) Nonprofit educational institutions, public health institutions, or organizations which are exempt from taxation under section 501 of the federal Internal Revenue Code, for purposes of education or public health or research for those purposes.
  - d. May store the federal surplus property.
  - e. Shall develop, submit, and implement a state plan of operation for distribution of federal surplus property and comply with the federal Act and rules and regulations adopted thereunder. Provided, the director may continue the state plan of operation developed by the department of public instruction.
  - f. May cooperate and enter into agreements with other surplus property agencies and federal agencies to screen and acquire surplus property and exchange property, facilities, personnel, and services.
  - g. May provide information and assistance for acquiring federal surplus property to entities listed in subdivision c.
  - h. May assess and collect service charges from participating recipients to cover direct and reasonable cost of services under this section. The service charges shall be deposited with the state treasurer in a surplus property special fund and used pursuant to the federal Act. The state treasurer shall credit all interest earned to the fund if the director requests the state treasurer to invest portions of the fund.
  - i. Adopt rules and take other action necessary to distribute federal surplus property pursuant to the federal Act.

Source: S.L. 1981, ch. 537, § 2.

**54-44-04.6. State surplus property — Department heads to inform director — Disposition of property — Proceeds — Exchange of property.**

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget whenever that department, agency, or institution possesses surplus property, whether originally obtained with state or federal funds, and

the person in charge believes that the state surplus property may be used by any other department, agency, institution, or political subdivision of the state.

2. The director of the office of management and budget shall dispose of the state surplus property in the following manner:
  - a. By transferring it to other state departments, institutions, or agencies without cost other than transportation expenses which shall be paid by the receiving agency. Provided, when the state surplus property was originally purchased pursuant to an appropriation other than from the general fund of the state, the agency receiving that state surplus property shall pay an amount equal to the fair market value of the property. Moneys received pursuant to this subdivision shall be deposited in the fund from which the original purchases were made.
  - b. If not disposed of under subdivision a, then by sale on sealed bids or at public auction to the highest and best bid for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
  - c. If not disposed of under subdivision a or b, title to the property shall be transferred to political subdivisions without cost, except transportation expenses.
3. All proceeds of property sold under this section, less sales costs, shall be deposited in the general fund except as provided in subdivision a of subsection 2.
4. No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall approve the exchange only if the director has determined that the item has been valued at fair value.

Source: S.L. 1981, ch. 537, § 3.

**54-44-04.7. Responsibility to administer unassigned statutory functions of state government.** The office of management and budget shall administer all statutory functions assigned to the executive branch of state government but not statutorily placed with any specific state entity.

Source: S.L. 1981, ch. 534, § 6.

**54-44-05. Warrants — Numbered — Show funds on which drawn — Not drawn unless authorized.** Warrants drawn by the office of management and budget and signed by the state auditor on the state treasurer shall be numbered consecutively in the order in which they are drawn. Every warrant shall be drawn upon the fund out of which it is payable. A warrant shall not be drawn by the office of management and budget and signed by the state auditor unless authorized by law, and unless there are funds in the treasury applicable to the payment thereof to meet the same. In case of an emergency, and in anticipation of taxes already levied and

in the process of collecting warrants to be rized vouchers even warrants. Warrants of any funds in his the Constitution of N

Source: S.L. 1959, ch. 345, § 2.

**54-44-06. Duties** get shall keep a sep and income thereof, tax or otherwise for with reference to the 15.

Source: S.L. 1959, ch. 3

**54-44-07. Office t** account. Whenever a personal property wh has been entrusted any moneys, bonds, in trust by the state settlement with the scribed by law, or wh account and make suc by the office of mana money belonging to state an account wit percent per annum f shall be prima facie the office of managen an account, that fact property which is due

Source: S.L. 1959, ch. 3

**54-44-08. Directo** of the office of mana of the state against:

1. Officials for all llection, and pay
2. Persons who by or property and
3. All persons inde

Source: S.L. 1959, ch. 3

**54-44-09. Supplie** agement and budge

te surplus property may be  
stitution, or political subdivi-

and budget shall dispose of  
manner:

ments, institutions, or agen-  
ation expenses which shall  
led, when the state surplus  
rsuant to an appropriation  
: state, the agency receiving  
n amount equal to the fair  
: received pursuant to this  
nd from which the original

then by sale on sealed bids  
best bid for property valuee  
s, with no money deposit  
, public auction, or negotia-  
it less than three thousand

or b, title to the property  
visions without cost, except

ction, less sales costs, shall  
s provided in subdivision a

r exchange items as part of  
iled statement of the value  
or approval have been sub-  
nagement and budget. The  
the director has determined

nassigned statutory func-  
agement and budget shall  
e executive branch of state  
pecific state entity.

v funds on which drawn  
wn by the office of manage-  
tor on the state treasurer  
in which they are drawn.  
out of which it is payable.  
anagement and budget and  
; law, and unless there are  
thereof to meet the same.  
f taxes already levied and

in the process of collection, the office of management and budget may pre-  
pare warrants to be signed by the state auditor in payment of duly autho-  
rized vouchers even though funds at such time do not exist to honor the  
warrants. Warrants so issued shall be payable by the state treasurer out  
of any funds in his hands other than sinking funds, or funds dedicated by  
the Constitution of North Dakota for other purposes.

Source: S.L. 1959, ch. 372, § 1; 1965, ch.  
345, § 2.

**54-44-06. Duties as to school fund.** The office of management and bud-  
get shall keep a separate account of the school fund and of the interest  
and income thereof, together with such moneys as may be raised by special  
tax or otherwise for school purposes. The office shall perform such duties  
with reference to the apportionment of such fund as are described in title  
15.

Source: S.L. 1959, ch. 372, § 1.

**54-44-07. Office to set up account against person who fails to render  
account.** Whenever any person has received moneys or has moneys or other  
personal property which belongs to the state by escheat or otherwise, or  
has been entrusted with the collection, management, or disbursement of  
any moneys, bonds, or interest accruing therefrom, belonging to or held  
in trust by the state, and fails to render an account thereof to and make  
settlement with the office of management and budget within the time pre-  
scribed by law, or when no particular time is specified, fails to render such  
account and make such settlement, or fails, within twenty days after request  
by the office of management and budget to pay into the state treasury any  
money belonging to the state, the office of management and budget must  
state an account with such person, charging interest at the rate of twelve  
percent per annum from the time of the failure. A copy of such account  
shall be prima facie evidence in any suit of the things therein stated. If  
the office of management and budget, for want of information, cannot state  
an account, that fact may be alleged and the amount of money or other  
property which is due or which belongs to the state may be stated generally.

Source: S.L. 1959, ch. 372, § 1.

**54-44-08. Director to institute suits in name of state.** The director  
of the office of management and budget shall institute suit in the name  
of the state against:

1. Officials for all official delinquencies in relation to the assessment, col-  
lection, and payment of the revenue.
2. Persons who by any means have become possessed of public moneys  
or property and who fail or neglect to pay for or deliver the same.
3. All persons indebted to the state.

Source: S.L. 1959, ch. 372, § 1.

**54-44-09. Supplies for institutions under control of the office of man-  
agement and budget.** The office of management and budget shall make

all purchases of goods and materials on behalf of the various state institutions, departments, and agencies in accordance with the standards and specifications of the United States bureau of standards.

Source: S.L. 1959, ch. 372 § 1.

**54-44-10. Legislative inspection of books of office of management and budget.** Whenever required the office of management and budget shall submit its books, accounts, and vouchers to the inspection of the legislative assembly, or any committee thereof authorized to request such documents.

Source: S.L. 1959, ch. 372, § 1.

**54-44-11. Office's operating funds creation.**

1. The office of management and budget shall establish a state purchasing operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies for the state departments and agencies. Any surplus in this fund in excess of one hundred thousand dollars on June thirtieth of each year shall be transferred to the state general fund.
2. The office of management and budget shall establish a state printing operating fund to be used for the procurement and maintenance of an inventory of printing equipment and supplies for the state departments and agencies.
3. The office of management and budget shall establish a state central data processing operating fund to be used for the procurement and maintenance of data processing equipment and supplies and for providing data processing services to state departments and agencies.
4. Each office, agency, or institution provided with purchasing, printing, or data processing services, unless exempted by law, shall pay to the office of management and budget a proportionate share of the cost of such service as determined by the director of the office of management and budget, based on actual costs and actual usage. The amounts paid to the office of management and budget by the various offices, agencies, and institutions shall be deposited in the appropriate operating fund and shall be expended in accordance with legislative appropriations.

Source: S.L. 1959, ch. 214, § 2; 1967, ch. 392, § 1; 1959, ch. 454, § 7; 1975, ch. 486, § 1; 1979, ch. 561, § 1; 1981, ch. 534, § 7; 1981, ch. 538, § 1.

**Note.**

Section 54-44-11 was amended twice by the 1981 Legislative Assembly. Section 7 of chapter 534, S.L. 1981, changed the name of the

department / accounts and purchases to the office of management and budget in subsection 1. Section 1 of chapter 538, S.L. 1981, deleted language concerning transfer of surplus funds in subsections 2 and 3. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made by both acts.

**54-44-12. Deposit and disbursement of funds of occupational and professional boards — Appropriation.** All occupational and professional boards, associations, and commissions created by law shall deposit all fees and other moneys received in any bank selected by the majority vote of the governing body of the board, association, or commission. Checks may

be drawn against the bank account of the authorized expenditure. The signature or signatures of the governing body. All checks are hereby appropriate board, association, or commission.

Source: S.L. 1971, ch. 510.

**54-44-13. Failure of overpayments — Office of management and budget.** Whenever a provision under the Disaster Relief Act of 1974 and all acts amendatory thereof shall become effective following July first, the

1. Upon certification that a political subdivision, withhold all moneys due the subdivision either the federal or state government.
2. Cease to withhold moneys until the representative certifies that the political subdivision is in compliance with the provisions of the Disaster Relief Act of 1974.

Source: S.L. 1971, ch. 511.

**Note.**

The Disaster Relief Act of 1974.

**Section**

- |             |                                                                           |
|-------------|---------------------------------------------------------------------------|
| 54-44.1-01. | Definition.                                                               |
| 54-44.1-02. | Office of the budget.                                                     |
| 54-44.1-03. | Powers and duties.                                                        |
| 54-44.1-04. | Budget estimates.                                                         |
| 54-44.1-05. | Federal aid budget.                                                       |
| 54-44.1-06. | Preparation of the budget.                                                |
| 54-44.1-07. | Presentation of the budget.                                               |
| 54-44.1-08. | Budget report — Control over rate of expenditures.                        |
| 54-44.1-09. | All expenditures must be approved by the office of management and budget. |
| 54-44.1-10. | Payments made by the office of management and budget.                     |
| 54-44.1-11. | Office of management and budget may continue to operate.                  |
| 54-44.1-12. | Control over rate of expenditures.                                        |
| 54-44.1-13. | Budget requests for funds.                                                |
| 54-44.1-14. | Biennial report to the legislature.                                       |

**54-44.1-01. Definition.** This section defines the term "office of management and budget" as the board, commission, agency, or distinct appropriation.

Source: S.L. 1965, ch. 356, § 1.

**Collateral References.**

States ⇐ 121.

the various state institu-  
the standards and spec-

office of management  
ement and budget shall  
ection of the legislative  
quest such documents.

establish a state purchas-  
ement and maintenance  
r the state departments  
ss of one hundred thou-  
shall be transferred to

establish a state printing  
ent and maintenance of  
ies for the state depart-

establish a state central  
or the procurement and  
id supplies and for pro-  
ments and agencies.

th purchasing, printing,  
by law, shall pay to the  
onate share of the cost  
of the office of manage-  
tual usage. The amounts  
t by the various offices,  
the appropriate operat-  
with legislative appro-

accounts and purchases to the  
ement and budget in subsec-  
1 of chapter 538, S.L. 1981,  
ge concerning transfer of sur-  
ubsections 2 and 3. Pursuant to  
1, the section is printed above  
and give effect to the changes  
cts.

ls of occupational and  
ational and professional  
aw shall deposit all fees  
by the majority vote of  
ommission. Checks may

be drawn against the bank account, opened pursuant to this section, for the authorized expenditures of the board, association, or commission on the signature or signatures of the person or persons authorized to so act by the governing body. All moneys in accounts opened pursuant to this section are hereby appropriated for the use of the occupational or professional board, association, or commission opening the account.

Source: S.L. 1971, ch. 510, § 14.

**54-44-13. Failure of political subdivisions to repay natural disaster overpayments — Office of management and budget authorized to withhold funds.** Whenever an overpayment made to any state political subdivision under the Disaster Relief Act of 1970 [Pub. L. 91-606; 84 Stat. 1744], and all acts amendatory and supplemental thereto, is not repaid by the following July first, the state office of management and budget shall:

1. Upon certification from the governor's natural disaster representative that a political subdivision is delinquent in repaying such overpayment, withhold all funds, grants-in-aid, tax shares, and other similar moneys due the subdivision from the state until the subdivision repays either the federal or state government.
2. Cease to withhold funds when the governor's natural disaster representative certifies that the subdivision has repaid the overpayment.

Source: S.L. 1971, ch. 511, § 1.

88 Stat. 143, 42 U.S.C. § 6121 et seq.) substan-  
tially repealed the Disaster Relief Act of 1970  
referred to in this section.

Note.

The Disaster Relief Act of 1974 (P.L. 93-288,

## CHAPTER 54-44.1

### OFFICE OF THE BUDGET

#### Section

- 54-44.1-01. Definition.  
54-44.1-02. Office of the budget — Director — Employees — Powers.  
54-44.1-03. Powers and duties of the director of the budget.  
54-44.1-04. Budget estimates of budget units filed with the office of the budget — Deadline.  
54-44.1-05. Federal aid budget requests — Filed with the office of the budget.  
54-44.1-06. Preparation of the budget data — Contents.  
54-44.1-07. Presentation of budget data — How presented to the legislative assembly.  
54-44.1-08. Budget report — Contents — When submitted to legislative assembly.  
54-44.1-09. All expenditures must be appropriated.  
54-44.1-10. Payments made pursuant to law only.  
54-44.1-11. Office of management and budget to cancel unexpended appropriations — When they may continue.  
54-44.1-12. Control over rate of expenditures.  
54-44.1-13. Budget requests for legislative and judicial branches.  
54-44.1-14. Biennial report to legislative assembly.

**54-44.1-01. Definition.** As used in this chapter, unless the context otherwise requires, the term "budget unit" means a department, institution, board, commission, agency, or other unit of government for which separate or distinct appropriations are made.

Source: S.L. 1965, ch. 358, § 1.

72 Am. Jur. 2d, States, Territories, and  
Dependencies, § 75.

Collateral References.

81A C. J. S. States, § 203.

States ⇌ 121.

**54-44.1-02. Office of the budget — Director — Employees — Powers.** The office of the budget is hereby established in the office of management and budget, for the purpose of promoting economy and efficiency in the fiscal management of the state government. The director of the office of management and budget shall be ex officio director of the budget.

The director of the budget shall appoint a budget analyst who shall hold a baccalaureate degree from a recognized institution of higher learning and such appointment shall be based upon the qualifications of eligible persons, without reference to partisan politics. Special consideration shall be given to persons who hold a degree in law, political science, business administration, or a combination thereof and who are experienced in governmental processes. The budget analyst shall serve at the pleasure of the director of the budget. The budget director shall employ such other professional, technical, and clerical personnel as he may deem necessary to carry out the duties prescribed in this chapter and shall fix the salary of all employees within the office of the budget and within the limits of the legislative appropriations. All personnel within the office of the budget shall be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

Source: S.L. 1965, ch. 358, § 2.

assume functions of auditing board, see § 54-14-01.1.

**Cross-References.**

Claims against state, budget office to

**54-44.1-03. Powers and duties of the director of the budget.** The director of the budget, or such subordinate officer as he shall designate shall:

1. Be vested with the duties, powers, and responsibilities involved in securing budget estimates and work programs from the several departments and agencies of the state government.
2. Be vested with the duties, powers, and responsibilities involved in the preparation of revenue and fixed expense estimates.
3. Develop financial policies and plans as the basis for budget recommendations to the legislative assembly, and prepare detailed documents in accordance with such financial policies and plans for presentation to the legislative assembly.
4. Coordinate the fiscal affairs and procedures of the state to assure the carrying out of the financial plans and policies approved by the legislative assembly.
5. Exercise continual control over the execution of the budget affecting the departments, institutions, and agencies of the executive branch of the state government involving approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and control of the rate of expenditures through a system of semiannual, quarterly, or monthly allotments.
6. Investigate, examine, and make exhaustive studies:
  - a. Of the structure and operation of the entire executive branch of government and of every office, institution, and agency thereof.
  - b. Of all the functions, duties, and services of all executive branch offices, departments, institutions, industries, boards, bureaus, and commissions.

c. Of all the books, or agency of the whether their sound, necessary.

7. Develop a long-term by the legislative ass
8. Have the authority agencies, and emplo the preparation and
9. Provide such assista be available to assis information or mate ble at all times to t designees.
10. Perform all other ne chapter and of chapt

Source: S.L. 1965, ch. 358, § 10, § 10.

**54-44.1-04. Budget estimate — Deadline.** The budget estimate shall be submitted to the office of his budget unit for the manner prescribed by the as is required by the office head of the budget unit will bear the approval of the board or commission is creation may extend the fil is some circumstance whic sion. If a budget unit has ments by the required da director of the budget, the unit's estimate of financial exceed ninety percent of su The director of the budget shall examine the estimate reasonable opportunity f requested, shall grant to th shall be open to the public.

Source: S.L. 1965, ch. 358, § 539, § 1.

**Cross-References.**

Budget of North Dakota firemen tion, see § 18-03-05.

Budget of state highway depart § 24-02-09.

**54-44.1-05. Federal aid the budget.** Every agency

— **Employees — Powers.**  
 The office of management  
 economy and efficiency in the  
 the director of the office of  
 or of the budget.

budget analyst who shall hold  
 tion of higher learning and  
 ications of eligible persons,  
 onsideration shall be given  
 ience, business administra-  
 perience in governmental  
 ie pleasure of the director  
 y such other professional,  
 em necessary to carry out  
 the salary of all employees  
 its of the legislative appro-  
 budget shall be allowed their  
 e rate as for other employ-

ctions of auditing board, see

ector of the budget. The  
 as he shall designate shall:  
 sponsibilities involved in  
 ograms from the several  
 nment.

sibilities involved in the  
 timates.

asis for budget recommen-  
 prepare detailed documents  
 and plans for presentation

s of the state to assure the  
 ies approved by the legisla-

ion of the budget affecting  
 s of the executive branch  
 al of all commitments for  
 e budget, frequent compar-  
 tes, and control of the rate  
 nual, quarterly, or monthly

studies:  
 entire executive branch of  
 n, and agency thereof.  
 es of all executive branch  
 tries, boards, bureaus, and

- c. Of all the books, records, and methods of accounting of each office or agency of the executive branch to ascertain and determine whether their policies, practices, and systems of accounting are sound, necessary, practical, and efficient.
7. Develop a long-term capital improvements budget for consideration by the legislative assembly.
8. Have the authority to procure from the various officers, departments, agencies, and employees such information as may be necessary for the preparation and execution of the budget.
9. Provide such assistance as the legislative assembly may request and be available to assist its appropriations committees with any needed information or material and make its records and information available at all times to the legislative assembly and its committees and designees.
10. Perform all other necessary duties to carry out the provisions of this chapter and of chapter 54-14.

Source: S.L. 1965, ch. 358, § 3; 1973, ch. 110, § 10.

**54-44.1-04. Budget estimates of budget units filed with the office of the budget — Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of his budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted shall bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget in his discretion may extend the filing date for any budget unit if he finds there is some circumstance which makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare such budget unit's estimate of financial requirements except such estimate shall not exceed ninety percent of such budget unit's previous biennial appropriation. The director of the budget or such subordinate officer as he shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which shall be open to the public.

Source: S.L. 1965, ch. 358, § 4; 1981, ch. 539, § 1.

**Cross-References.**

Budget of North Dakota firemen's association, see § 18-03-05.

Budget of state highway department, see § 24-02-09.

**Decisions under Prior Law.**

Heads of state hail insurance fund, state bonding fund, state fire and tornado fund, and workmen's compensation fund had duty of filing statements of funds needed as prescribed by former section 54-15-05. *Langer v. State* (1939) 69 ND 129, 284 NW 238.

**54-44.1-05. Federal aid budget requests — Filed with the office of the budget.** Every agency of the state government when making requests

for budgets to be submitted to the federal government for funds, equipment, material, or services shall have such request or budget filed in the office of the budget before submitting it to the proper federal authority. When such federal authority has approved the request or budget, in whole or in part, the agency of the state government shall resubmit it to the office of the budget for recording before any allotment or encumbrance of the federal funds can be made.

Source: S.L. 1965, ch. 358, § 5.

from treasurer of agricultural college, see § 15-12-06.1.

**Cross-References.**

Budget director to receive quarterly reports

**54-44.1-06. Preparation of the budget data — Contents.** The director of the budget, through the office of the budget, shall prepare budget data which shall contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by such detailed schedules of assets and liabilities as the director of the budget deems desirable, which shall include, but not be limited to, the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include, but not be limited to, a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statements of revenue and estimated revenue shall be classified by sources and by budget unit collecting them. Existing sources of revenue shall be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue shall be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the

prescribed classification and proposed expenditures and explanation of the funds and plans and on any recommended, with such data as to work done, considered necessary or during construction projects there shall be shown and the amount thereof expended in each ensuing year. Capital outlay needs for the period covered by the budget shall be shown. A detailed statement shall be prepared showing the amount of money required for the next fiscal year to the payment of the debt of the state and the amount of money required for the next fiscal year to the payment of the debt of the state. A summary statement shall be available at the time of the budget showing the estimated revenue of the next biennium and the amount of money required for the next biennium if the total amount of money required exceeds the total amount of money available as to how the deficiency shall be met by additional revenue.

7. Drafts of a proposed general revenue act embodying the governor's recommendation for appropriations and other acts to effect the proposed final budget for each budget year of the general appropriation act.
8. Such other information as is required by law.

Source: S.L. 1965, ch. 358, § 6; 562, § 1.

**54-44.1-07. Presentation to the legislative assembly.** The director of the budget shall present the budget data to the budget and revenue department of the council. The budget data shall be acceptable to it by December 1st of the legislative assembly, or

ment for funds, equipment, or budget filed in the office per federal authority. When st or budget, in whole or in l resubmit it to the office of r encumbrance of the federal

urer of agricultural college, see 1.

a — Contents. The director t, shall prepare budget data

dition of the state, accompa- and liabilities as the director ll include, but not be limited

and assets showing in detail at the beginning of each of iennium and the first fiscal ual revenue for those years, ious and present biennium, cal years; and estimated fund balances and l each of the fiscal years of

t be limited to, a comparative e assets and liabilities of the ase may be, at the close of n.

ious biennium, the first year ated revenue of the current l a statement of unappropri- n the state treasury at the tements of revenue and esti- es and by budget unit collect- hall be analyzed as to their ion, and any proposed new

the previous biennium and d by budget units and classi- dget.

enditures and requests for nd classification of expendi- previous biennium, the first budget of the current bier a for appropriations for each distributed accordin; to the

prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there shall be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with such descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there shall be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.

5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of a proposed general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium, and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit shall be specified in a separate section of the general appropriations act.
8. Such other information as the director of the budget deems desirable or as is required by law.

Source: S.L. 1965, ch. 358, § 6; 1979, ch. 562, § 1.

54-44.1-07. Presentation of budget data — How presented to the legislative assembly. The director of the budget or his designated subordinate shall present the budget data information in section 54-44.1-06, including the budget and revenue proposals recommended by the governor, and make available sufficient copies thereof to the budget section of the legislative council. The budget data shall be completed and made available to the budget section of the legislative council, or its designee, in such form as may be acceptable to it by December first of each year next preceding the session of the legislative assembly, or at such later date as may be set by the budget

section chairman. The chairman of the budget section shall set the time and place at which such budget data is to be presented.

Source: S.L. 1965, ch. 358, § 7; 1969, ch. 448, § 26; 1981, ch. 540, § 1.

**Decisions under Prior Law.**

The budget of appropriations prepared by

the auditor was an official record, of which the courts would take judicial notice. State ex rel. Wallace v. Jorgenson (1916) 34 ND 527, 159 NW 35.

**54-44.1-08. Budget report — Contents —** When submitted to legislative assembly. The official budget report shall be transmitted by the governor to all holdover legislators and legislators-elect not later than three days after the commencement of the session of the legislative assembly. Such report is not a third-class item under section 46-02-05. The budget director shall provide for the duplication or other satisfactory reproduction or printing of the official budget report, so as to ensure delivery of same as provided in this section. Such reports shall contain the budget and revenue proposals recommended by the governor and the information required in subsections 1, 2, 3, 5, and 6 of section 54-44.1-06 and all other data and information as the governor shall decide. The budget director shall make available any and all information regarding budget data to the governor, the legislative assembly and its designees, legislators, and to the governor-elect as may be requested. The governor may present any additional budget information in any manner to the legislative assembly as he may desire.

Source: S.L. 1965, ch. 358, § 8; 1967, ch. 393, § 1; 1973, ch. 430, § 1.

**54-44.1-09. All expenditures must be appropriated.** All expenditures of the state and of its budget units of moneys drawn from the state treasury shall be made under authority of biennial appropriations acts, which shall be based upon a budget as provided by law, and no money shall be drawn from the treasury, except by appropriation made by law as required by section 12 of article X of the Constitution of North Dakota.

Source: S.L. 1965, ch. 358, § 9.

**54-44.1-10. Payments made pursuant to law only.** No payment shall be made and no obligation shall be incurred against any appropriation unless such payment or obligation has been authorized as provided by law. Every official authorizing payments in violation of this chapter shall be subject to the penalties and provisions of chapter 12.1-23.

Source: S.L. 1965, ch. 358, § 10; 1977, ch. 496, § 1.

**54-44.1-11. Office of management and budget to cancel unexpended appropriations —** When they may continue. The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations, which shall have remained undrawn after the expiration of the biennial period during which they became available under the law. The chairman of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations

or balances in force for not the biennial period during which the director of the budget

1. New construction project
2. Major repair or improvement
3. Purchases of new equipment per unit if it was ordered in a biennial period in which the funds were available
4. The purchase of land by the state where the total purchase price is not more than \$10,000

Source: S.L. 1965, ch. 358, § 11; 563, § 1.

**54-44.1-12. Control over expenditures.** The director of the budget shall exercise continual control over the departments and agencies of the state government. Execution shall be required for conformity with the budget. The director shall compare actual revenues with the budget and make these analyses and comparisons a system of semiannual, quarterly, and annual reports. If a reduction is made which will reduce the amount of the appropriation, the director shall determine the circumstances to exist:

1. The moneys and estimates of the appropriation is made available from the fund.
2. The payment or the obligation is not recorded in any reliable evidence available.
3. The expenditure or obligation is not recorded in any reliable evidence available.
4. Circumstances or available by the legislative assembly of the purpose of the appropriation.

Source: S.L. 1965, ch. 358, § 12; 394, § 1.

**54-44.1-13. Budget requests.** The budget requests and estimates of the departments and branches of this state shall be submitted to the legislative assembly with informational data of the budget not later than a session of the legislative assembly.

Source: S.L. 1965, ch. 358, § 13.

**54-44.1-14. Biennial report.** The director of the budget or such member of the

t section shall set the time sented.

r was an official record, of which the old take judicial notice. State ex rel. Jorgenson (1916) 34 ND 527, 159

When submitted to legisla- be transmitted by the gover- ect not later than three days e legislative assembly. Such 6-02-05. The budget director actory reproduction or print- delivery of same as provided dget and revenue proposals tion required in subsections other data and information tor shall make available any the governor, the legislative o the governor-elect as may dditional budget information may desire.

ropriated. All expenditures awn from the state treasury rropriations acts, which shall ad no money shall be drawn ade by law as required by th Dakota.

law only. No payment shall l against any appropriation thorized as provided by law. ion of this chapter shall be r 12.1-23.

dget to cancel unexpended . The office of management biennial period, shall cancel appropriations, which shall of the biennial period during e chairman of the appropria- representatives of the legisla- may continue appropriations

or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommenda- tion of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the bien- nium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase where the total purchase price is within the authorized appropriation.

Source: S.L. 1965, ch. 358, § 11; 1979, ch. 563, § 1.

**54-44.1-12. Control over rate of expenditures.** The director of the bud- get shall exercise continual control over the execution of the budget affect- ing the departments and agencies of the executive branch of the state government. Execution shall mean the analysis and approval of all commit- ments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of semiannual, quarterly, or monthly allotments. Before an allot- ment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director must find one or more of the following circumstances to exist:

1. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropri- ations from the fund.
2. The payment or the obligation incurred is not authorized by law.
3. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, documents, or other reli- able evidence available.
4. Circumstances or availability of facts not previously known or fore- seen by the legislative assembly which make possible the accomplish- ment of the purpose of the appropriation at a lesser amount than that appropriated.

Source: S.L. 1965, ch. 358, § 12; 1967, ch. 394, § 1.

**54-44.1-13. Budget requests for legislative and judicial branches.** The budget requests and expenditures for the legislative and judicial branches of this state shall not be subject to the provisions of this chapter and such budget requests shall be submitted directly to the legislative assembly with informational copies of such budgets provided to the director of the budget not later than November fifteenth in each year preceding a session of the legislative assembly.

Source: S.L. 1965, ch. 358, § 13.

**54-44.1-14. Biennial report to legislative assembly.** The director of the budget or such member of that office as he shall designate may prepare

and transmit to the governor and upon approval by him may transmit to the members of the legislative assembly at least sixty days prior to the commencement of an ensuing legislative session a report which shall contain definite and specific proposals and recommendations to accomplish the following purposes:

1. To simplify the governmental structure of the state so as to render it more economical and efficient.
2. To eliminate all obsolete and unnecessary offices, departments, institutions, boards, bureaus, and commissions of the state.
3. To consolidate the functions, services, and activities of state offices and agencies thereof so as to eliminate duplication of service and expense wherever it exists.
4. To correlate the functions and services of the several offices and agencies of the state government.
5. To eliminate obsolete methods, unnecessary functions and services carried on by the state government and to render those functions and services which are determined to be absolutely essential and more economical and efficient.

Source: S.L. 1965, ch. 358, § 14.

## CHAPTER 54-44.2

### OFFICE OF CENTRAL DATA PROCESSING

#### Section

- 54-44.2-00.1. Definitions.  
 54-44.2-01. Office of central data processing — Creation.  
 54-44.2-02. Office of central data processing — Powers and duties.  
 54-44.2-03. Acquisition of data processing equipment.  
 54-44.2-04. Appointment of data processing coordinators.  
 54-44.2-05. Repealed by S.L. 1979, ch. 565, § 1.  
 54-44.2-06. Secrecy provision.

#### 54-44.2-00.1. Definitions. As used in this chapter:

1. "Data processing" or "electronic data processing" means the systematic sequencing of operations performed by data processing equipment or programs, or both, upon data stored or entered in alphabetic, numeric, or alphanumeric format.
2. "Data processing equipment" means an electronic device or associated devices, except calculators and stand-alone noncommunicating word processors, which perform logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all compiling and related input, output, and storage, equipment, programs and procedures, and data processing communications facilities.
3. "Word processing" means the textual formatting, correcting, editing, and rearranging of language elements, designed to convey full messages in English syntax, through manipulation of electronic or magnetic impulses. "Word processors" are devices on which word processing can be carried out.

Source: S.L. 1981, ch. 539, § 2.

54-44.2-01. Office of central data processing and budget. The director shall appoint a director of central data processing shall supervise of all of the executive boards, except the job service general. The office of central data processing center shall be by all executive branch of the institutions under the service North Dakota, and central data processing shall be of the executive and judicial branches of the government. The office of central data processing is unable to fulfill the duties of the executive or judicial branch of the government.

The director of central data processing shall be appointed by the legislature, and shall have the education, experience, and administration, without regard to the pleasure of the director of central data processing, and shall have the technical, and clerical personnel, and shall perform the duties prescribed in the legislative appropriation, and the office of central data processing shall be allowed to process data at the same rate as for other

Source: S.L. 1969, ch. 454, § 3.

54-44.2-02. Office of central data processing. The office of central data processing shall have the following powers and duties:

1. Provide systems design services.
2. Design, plan, justify, and coordinate the activities within and between the office of central data processing and other offices.
3. Have the authority to hire, promote, or replace, including the authority to be necessary to carry out the duties of the office, under the control of the director of central data processing, and to submit a written request for the necessary processing applications to existing offices to increase the cost of

condition and results of operation of the State of Oregon in accordance with current, generally accepted accounting principles and such other financial and statistical information as may be necessary to completely and accurately disclose the financial condition and financial operations of the state and its various agencies. The financial statements shall include, but not be limited to, such information as may be found in a balance sheet, a statement of changes in fund balances, statement comparing budgeted and actual revenues and expenditures, statement of changes in financial position and a statement of operations. The financial statements shall compare the current fiscal year and, if it is the second year of the biennium, the first year thereof, and each fiscal year of the preceding biennium.

(2) As used in subsection (1) of this section, generally accepted accounting principles shall mean those accounting principles sanctioned by recognized authoritative bodies such as the National Council on Governmental Accounting, the American Institute of Certified Public Accountants, the Financial Accounting Standards Board or their successor.

(3) The first financial report required by subsection (1) of this section shall be prepared for the biennium ending June 30, 1979. (1977 c.897 §1)

Note: 291.040 and 291.042 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 291 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

**291.042 Use of data processing programs, information and materials; approval by legislature.** (1) Subject to the approval of the Joint Legislative Committee on Data Processing, the Data Systems Division of the Executive Department:

(a) May obtain copyrights and patents on copyrightable or patentable data processing programs, information or materials developed, published or produced by state agency staff.

(b) May cause to have sold, leased, or otherwise made available such data processing programs, information or materials to any agency or legislative body of any state or the Federal Government under such terms and conditions as may be agreed to by the committee and the agencies.

(2) Moneys collected under this section shall be credited to the General Fund and are available for general governmental purposes. (1979 c.740 §3)

Note: See note under 291.040.

## STATE BUDGET; BUDGET REPORT

**291.202 Budget report of Governor; department to assist Governor in preparation.** Except as otherwise provided in ORS 291.222, the Governor shall prepare in each even-numbered year a budget report for the biennium beginning July 1 of the following year. The Executive Department shall advise and assist the Governor in the preparation of his budget report and shall perform such duties in connection therewith as the Governor requires. (Amended by 1969 c.464 §2)

**291.204 Prescribing forms for submitting budget estimates and requests for appropriations; furnishing budget forms to agencies.** The department, by July 1 of each even-numbered year, shall furnish every state agency with a sufficient number of forms for its use in preparing for submission to the Governor the information required by the Governor in the preparation of his budget report. The Governor shall prescribe the forms to be used by the agencies in submitting their budget estimates and requests for appropriations as required by ORS 291.208.

**291.206 Guidance of agencies in completing budget forms.** (1) The Governor shall prescribe such rules and regulations as he deems necessary for the guidance of agencies in the preparation of the budget estimates and requests. The Governor, with the approval of the Secretary of State, shall prepare and prescribe classifications of expenditures and revenue for the purpose of budget-making and accounting.

(2) In so far as practicable, agency budget estimates and requests and appropriation measures shall be prepared in a manner that reflects state governmental organization and state agency duties, functions and powers under the law in effect on January 1 of the following year. The Executive Department shall maintain agency budget estimates and requests in the form in which they are submitted. (Amended by 1969 c.173 §1)

**291.208 Filing budget forms with department; preparing requests for agencies failing to file.** Each state agency shall file with the department, before September 1 in each even-numbered year, on the form and in the manner required, its budget forms

containing the information required. The department shall prepare budget estimates and requests for appropriations for all agencies that fail to file requests.

**291.210 Preparing tentative budget plan.** The department, in connection with its direct studies of the operations, plans and needs of state agencies and of the existing and prospective sources of income, shall prepare a tentative budget plan for the two fiscal years for which a budget report is required to be prepared.

**291.212 Revising budget plan; transmitting budget forms and tentative budget report to Governor.** Upon receipt of the budget forms, the department shall check the agencies' estimates in the light of the tentative budget plan and shall make such further inquiries and investigations as the Governor requires and revise its tentative budget plan accordingly. The department then shall transmit to the Governor the budget forms filed with it by the state agencies and the revised tentative budget report.

**291.214 Governor to examine budget forms and revise tentative budget report.** The Governor, during the preparation of the budget report and before its submission to the Legislative Assembly, shall examine the budget forms filed by the various agencies. He may make or cause to be made such further investigations by the department, with such hearings before him or any state agency, as he deems advisable, and may make such changes or revisions in policy and program and in specific details of the tentative budget report as he finds warranted.

**291.216 Governor's budget report.** (1) Not later than November 10 of each even-numbered year the Governor shall cause the budget report to be compiled and prepared for printing.

(2) The budget report shall include a budget message prepared by the Governor, including his recommendations with reference to the fiscal policy of the state government for the coming biennium, describing the important features of the budget plan, embracing a general budget summary setting forth the aggregate figures of the budget report so as to show a balanced relation between the total proposed expenditures and the total anticipated income, with the basis and factors on which the estimates are made, the amount to be borrowed, and other means of financing the

estimated expenditures for the ensuing biennium, compared with the corresponding figures for at least the last completed biennium and the current biennium.

(3) The budget plan shall be supported by explanatory schedules or statements, classifying the expenditures reported therein, both past and proposed, by organization units, objects and funds, and the income by organization units, sources and funds, and the proposed amount of new borrowing as well as proposed new tax or revenue sources.

(4) The budget plan shall be submitted for all dedicated funds, as well as the state General Fund, and shall include the estimated amounts of federal and other aids or grants to state agencies or activities provided for any purpose whatever, together with estimated expenditures therefrom.

(5) The budget report shall embrace the detailed estimates of expenditures and revenues. It shall include statements of the bonded indebtedness of the state government, showing the actual amount of the debt service for at least the past biennium, and the estimated amount for the current biennium and the ensuing biennium, the debt authorized and unissued, the condition of the sinking funds and the borrowing capacity. It shall also contain any statements relative to the financial plan which the Governor may deem desirable or which may be required by the legislature.

**291.218 Printing budget report; transmitting to members of legislature; distribution.** Except when the Governor under whose supervision the budget report has been prepared will be succeeded in office in January next following:

(1) The department shall have as many copies of the approved budget report printed as the Governor directs.

(2) Not later than December 1 of each even-numbered year, the Governor shall transmit a copy thereof to each member of the legislature who is to serve during the next session.

(3) Upon request, the Governor shall distribute copies free of charge, under such regulations as he may establish, to public libraries, schools and state officials. He shall make copies available to the general public at a reasonable charge for each copy. (Amended by 1959 c.140 §1; 1967 c.302 §1)

**291.220** Furnishing information and assistance to legislature. The Governor, upon request, shall furnish the Legislative Assembly any further information required concerning the budget report. The department, upon request, shall furnish a representative to assist the Legislative Assembly, its Joint Committee on Ways and Means, appointed under ORS 171.555, and the Legislative Revenue Officer in the consideration of the budget report and any accompanying measures. [Amended by 1969 c.173 §2; 1975 c.789 §8]

**291.222** Furnishing information and assistance to Governor-elect; revision of budget report. If the Governor under whose supervision the budget report has been prepared will be succeeded in office in January next following:

(1) The department shall make available to the Governor-elect so much as he requests of the information upon which the tentative budget report is based, and upon completion of the tentative budget report shall supply him with a copy thereof but shall not cause the tentative budget report to be printed and distributed. The department shall also make available to him all facilities of the department reasonably necessary to permit him to review and familiarize himself with the tentative budget report.

(2) After a review of the tentative budget the Governor-elect may prepare revisions and additions thereto. The department shall assist, upon request, in the preparation of such revisions or additions.

(3) The department shall have as many copies of the revised budget report printed as the Governor-elect requests.

(4) Not later than the convening of the next Legislative Assembly the department shall transmit a copy of a summary of the revised budget report containing the revenue and expenditure recommendations of the Governor-elect and not later than February 1 shall transmit a copy of the revised budget report to each member of the Legislative Assembly.

(5) Upon request, the department shall distribute copies of the revised budget report free of charge, under such regulations as it may establish, to public libraries, schools and state officials. It shall make copies of the revised budget report available to the general public at a reasonable charge for each copy. [Amended by 1967 c.302 §2; 1969 c.464 §3]

**291.223** Furnishing agency budget estimates to Legislative Fiscal Officer and Legislative Revenue Officer; confidentiality of estimates. (1) Not later than November 10 of each even-numbered year the Governor shall cause the agency budget estimates and requests as described in ORS 291.206 to be made available to the Legislative Fiscal Officer and to the Legislative Revenue Officer.

(2) Before December 1 of the year in which they were made available under subsection (1) of this section, the Legislative Fiscal Officer or his staff and the Legislative Revenue Officer or his staff shall not reveal to any other person the contents or nature of the budget reports and other materials, except with the written consent of the Governor. [1969 c.173 §4; 1975 c.789 §9]

**291.224** Capital construction program to be included in budget report; recommendation of Capitol Planning Commission. (1) A capital construction program containing estimated capital construction needs, irrespective of how financed, shall be included with the budget report required by ORS 291.216. The capital construction program shall contain the estimated physical construction requirements for each biennium of a period to be determined by the Governor, which period shall not be less than six years. The department shall assist the Governor in the preparation of the capital construction program.

(2) Except as otherwise provided in subsection (3) of this section and in accordance with regulations prescribed by the department, state agencies shall submit to the department their anticipated capital construction requirements for the period specified by the Governor. The department shall prescribe the basic assumptions relating to population changes, economic trends and other factors which might generally affect capital construction requirements and these basic assumptions shall be used by the state agencies in preparing their anticipated capital construction requirements. Each state agency is responsible for the basic assumptions which affect only its own program. The department shall prepare estimated capital construction requirements for any necessary capital construction not covered by the capital construction requirements submitted by the state agencies under this section.

(3) Each state agency, including the department, required under subsection (2) of

this section to submit or prepare anticipated or estimated capital construction requirements, shall submit a copy of such requirements that relate to construction or improvements within the areas described in ORS 276.028 to the Capitol Planning Commission at a time specified by the Capitol Planning Commission, but not later than August 1 of each even-numbered year. The Capitol Planning Commission shall review capital construction requirements submitted as required by this subsection and, not later than November 1 of each even-numbered year, make recommendations to the department with respect to such capital construction proposals.

(4) In accordance with regulations prescribed by the department, each state agency shall separately submit its estimated office space requirements for the period specified by the Governor; and the department shall consolidate those needs and make an estimate for all state office buildings to be included in the capital construction program.

(5) The Governor shall consolidate the estimates, review all of them and make such revisions as he finds warranted.

(6) The budget report shall include the proposed expenditures for the capital construction program for the ensuing biennium and the proposed expenditures for preliminary planning of the construction projects included in the capital construction program for the biennium following the ensuing biennium. The budget report shall also include dollar estimates of the cost of the capital construction projects included in the capital construction program for the succeeding years of the period determined by the Governor under subsection (1) of this section and the recommendations submitted to the department pursuant to subsection (3) of this section.

(7) As used in this section, "capital construction program" does not include the acquisition, repair, improvement, enlargement, construction or maintenance of highways and highway bridges, or park improvements, by the Department of Transportation. (1959 c.500 §1; 1973 c.129 §5)

**291.226 Budget item to replace lost and unrecovered public funds or property.** When there has been a failure to recover a loss of public funds or property pursuant to ORS 297.120, the state agency sustaining the loss shall include the amount of the loss in its budget estimate and request for the following biennium clearly marked as to purpose, and

the Governor shall include such item in his budget report for the consideration of the Legislative Assembly. (1963 c.617 §3)

## ALLOTMENTS

**291.232 Declaration of policy.** It is declared to be the policy and intent of the Legislative Assembly that the total appropriations made by it, or the total of any budget approved by it, for any state agency, shall be deemed to be the maximum amount necessary to meet the requirements of such agency for the biennium, excepting as may otherwise be provided by law, and that the Governor and the Executive Department are given the powers granted by ORS 291.202 to 291.222 and 291.232 to 291.260 in order that savings may be effected by careful supervision throughout each biennium, with due regard to changing conditions, and by promoting more economic and efficient management of state agencies.

**291.234 Department to make allotments to state officers and agencies of appropriations and funds; allotment period.** (1) The department shall make allotments to state officers and agencies of appropriations and funds pursuant to the allotment system provided for in ORS 291.234 to 291.260.

(2) For the purposes of the allotment system, each fiscal year shall be divided into four quarterly allotment periods, beginning, respectively, on the first days of July, October, January and April. However, in any case where the quarterly allotment period is impracticable, the department may prescribe a different period suited to the circumstances, not exceeding six months nor extending beyond the end of the biennium.

**291.236 Allotment system applicable to all appropriations; controlling expenditures and encumbering of emergency, contingent, revolving and trust funds.** (1) The provisions of ORS 291.234 to 291.260 relating to the allotment system shall apply to all appropriations for state officers and agencies. For this purpose "appropriation" includes standing, continuing and annual appropriations, and dedicated funds. In those cases where periodical allotments are impracticable, the department may dispense therewith and prescribe such regulations as will insure proper application and encumbering of funds.

(2) Subject to ORS 291.238, emergency or contingent funds, revolving funds and trust funds shall be subject to such regulations as

the department may prescribe for controlling the expenditures and encumbering of such funds.

**291.238 Expenditures without allotment prohibited; expenditures from dedicated, revolving and trust funds.** (1) Except as expressly authorized in this section or ORS 291.236, no person shall incur, or order or vote to incur, any obligation against the state in excess of, or make or order or vote to make any expenditure not authorized by, an allotment. Any such obligation so incurred shall not be binding against the state, but where the obligation violates this section only for having been made in excess of an allotment, the department may authorize payment therefrom from unallotted funds.

(2) Excepting as to administrative expenditures from dedicated, revolving and trust funds and to revolving funds established to provide services rendered by any state agency to other state agencies or to any body politic of the State of Oregon, expenditures from dedicated funds, revolving funds and trust funds may be made by any state agency without appropriation or allotment.

(3) No person shall make or order or vote to make any expenditure from or chargeable to a revolving fund or trust fund in excess of the amount standing to the credit of such fund or for any purpose for which such fund may not lawfully be expended.

**291.240** [Repealed by 1953 c.168 §4]

**291.242 Allotment required before expenditure of appropriation; submitting estimates.** No appropriation to which the allotment system is applicable shall become available to any state agency for expenditure thereby during any allotment period until:

(1) The agency submits to the department an estimate, in such form as the department prescribes, for such allotment period, of the amount required for each activity to be carried on during that period; and

(2) The estimate is approved, increased or decreased by the department and funds allotted therefor.

**291.244 Department action on estimates.** The department shall act promptly upon all estimates required by ORS 291.242. If the estimate is within the terms of the appropriation as to amount and purposes, having due regard for the probable further needs of the agency for the remainder of the

term for which the appropriation was made, and if the department determines that there is a need for the estimated amount for the allotment period, the department shall approve the estimate and allot the estimated amount for expenditures. Otherwise the department shall modify the estimate so as to conform with the terms of the appropriation and the prospective needs of the agency, and shall reduce the amount allotted accordingly.

**291.246 Allotments to be made for purpose or classification of expenditure prescribed in appropriation measure.** Allotments shall be made according to purpose and classification of expenditures prescribed in the appropriation measure as enacted by the Legislative Assembly; provided, however, that the department may make allotments for agencies by purposes or by other classification of expenditures of amounts appropriated or authorized to be expended in appropriation measures enacted by the Legislative Assembly, whether or not such measures establish classification of expenditures. In making allotments, the department shall not authorize the expenditure of moneys for any purpose not authorized by the Act appropriating the money or authorizing it to be expended, and the funds allotted for each purpose or classification of expenditure shall be used for no other purpose or classification of expenditure. [Amended by 1963 c.132 §7]

**291.248 Notice of allotment.** Upon the granting of any allotment, the department shall transmit a notice of the allotment to the agency concerned.

**291.250 Claims and encumbrances limited by amount and purpose of allotment.** The agency shall not create any claim or encumbrance for the future disbursement of appropriated moneys unless the proposed expenditure as estimated, together with expenses theretofore paid from or encumbered against such allotment, is within the total amount and for the purposes specified in the notice of allotment transmitted to such agency.

**291.252 Modifying allotment previously made.** The department may at any time modify or amend any allotment previously made by it, upon application of, or upon notice to, the agency concerned, but no such modification or amendment shall reduce an allotment below the amount required to meet

valid obligations or commitments previously incurred against the allotted funds.

**291.254 Reducing allotment to prevent deficit.** If the department determines at any time that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, the department shall, with the approval of the Governor, and after notice to the agency or agencies concerned, reduce the amount allotted or to be allotted so as to prevent a deficit.

291.256 [Repealed by 1959 c.608 §11]

**291.258 Approval of department required for establishment of new personnel position or classification.** A new personnel position or classification, not provided in the budget of an agency upon which appropriations have been based, shall not be established without prior approval of the department.

**291.260 Approving, modifying or disapproving requests and budgets to be submitted to the Federal Government.** Every state agency, when making requests or preparing budgets to be submitted to the Federal Government for funds, equipment, materials or services, other than for highway purposes, and purposes for which the state was legally committed on August 2, 1951, shall, upon completion of such request or budget, first submit it to the department. The department shall have authority to approve, disapprove, modify or amend any such request or budget before it is submitted to the proper federal authority.

291.262 [1963 c.182 §6; 1965 c.111 §1; repealed by 1969 c.488 §3]

#### ALLOCATION OF GOVERNMENTAL SERVICE EXPENSES

**291.272 Definitions for ORS 291.272 to 291.280.** As used in ORS 291.272 to 291.280, unless the context requires otherwise.

(1) "Administrative expenses" has the meaning defined by ORS 291.305.

(2) "Department" means the Executive Department.

(3) "Governmental service expenses" means the expenses of state government that

are attributable to the operation, maintenance, administration and support of state government generally, and includes the following:

(a) Expenditures of the State Treasurer supported out of the General Fund incurred in the administration of the duties of his office, but not including the Inheritance and Gift Tax Divisions.

(b) Expenditures of the Department of Justice incurred in the administration of its duties, other than those of the Support Enforcement Division.

(c) Administrative expenses of the Executive Department supported out of the General Fund.

(d) One-half of the expenditures of the Legislative Assembly out of moneys appropriated from the General Fund, and all of the expenditures incurred in the administration of the duties of the Emergency Board.

(e) One-half of the expenditures incurred in the administration of the duties of the Joint Committee on Ways and Means and the Emergency Board.

(f) One-half of the expenditures incurred out of moneys appropriated from the General Fund in the administration of the duties of the Legislative Counsel Committee.

(g) Expenditures of the Secretary of State in the administration of the office of the State Archivist.

(4) "State agency" means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly, the courts and their officers and committees. [1967 c.637 §2; 1973 c.439 §9]

**291.274 Determination of funds and appropriations to be assessed.** The department shall determine and may at any time redetermine which state funds or appropriations shall be assessed a reasonable share of governmental service expenses. In determining or redetermining the funds that shall be so assessed:

(1) A fund consisting of moneys the use of which is restricted by the Oregon Constitution shall be assessed only those governmental service expenses ascertained as being necessarily incurred in connection with the purposes set forth in the Oregon Constitution.

(2) Trust funds shall be assessed only those governmental service expenses ascertained as being necessarily incurred in connection with the purposes for which the trust fund was established. [1967 c.637 §3]

**291.276 Department to allocate governmental service expenses among state agencies.** (1) With respect to each biennium beginning on July 1 of an odd-numbered year, commencing July 1, 1971, the department shall allocate among all state agencies the governmental service expenses, as determined by the department in accordance with ORS 291.272, for the biennium ending two years prior to the beginning of the biennium for which the allocation is made.

(2) The department, in accordance with the procedures and methods prescribed under subsection (3) of this section, shall determine and may at any time redetermine the reasonable share of governmental service expenses to be assessed against any fund or appropriation. Such expenses shall be a charge against any fund so designated and be considered an administrative expense of the agency administering the fund or appropriation.

(3) The department, with the approval of the Governor, shall prepare and prescribe the procedures and methods used in determining and redetermining the reasonable share of governmental service expenses assessed against any fund or appropriation.

(4) The department, with the approval of the Governor, may make rules necessary or proper to carry out the duties imposed upon it by ORS 291.272 to 291.280.

(5) The computation required by subsection (1) of this section shall be made by the department in advance of the biennium with respect to which the allocation is to be made. [1967 c.637 §4; 1969 c.105 §1]

**291.278 Transfer of allocated amounts to General Fund.** (1) Upon completion of the determination by the department under ORS 291.274 and 291.276, the department shall transfer to the General Fund, with appropriate notice to the State Treasurer, out of moneys appropriated to each state agency, the amount of governmental service expenses so certified for the agency.

(2) In the case of a state agency that collects or receives moneys for fees, fines, licenses or taxes not by law made a part of the General Fund available for general governmental purposes, moneys available to such

state agency are not sufficient to permit the transfer under subsection (1) of this section, the department shall notify the state agency of the amount certified with respect to the state agency under ORS 291.274 and 291.276, less any amount transferred out of moneys appropriated to such state agency under subsection (1) of this section. Thereafter, until such balance has been paid into the General Fund, 10 percent of all moneys collected or received by the state agency for fees, fines, licenses or taxes not by law made a part of the General Fund available for general governmental purposes shall be:

(a) Transferred by the department to and made a part of the General Fund available for general governmental purposes if such moneys are paid to the State Treasurer by the state agency; or

(b) Paid to the State Treasurer by the state agency receiving such moneys at the time when they are received by the state agency if such moneys are authorized by law to be kept and disbursed other than by and through the State Treasurer, and be credited by the State Treasurer to and made a part of the General Fund available for general governmental purposes.

(3) The transfer and payment to the General Fund required by this section shall be made notwithstanding any law that appropriates such moneys or any of them to any other purposes, and such portion so paid and transferred is not subject to any special uses thereby provided. [1967 c.637 §5]

**291.280 Receipts by State Treasurer for transferred moneys.** In receipting for moneys paid and transferred under ORS 291.278 (2), the State Treasurer shall make his receipt in duplicate, showing the amount credited to the General Fund available for general governmental purposes as well as the amount credited to any special fund or account. He shall file one of the duplicate receipts with the department. [1967 c.637 §6]

291.302 Repealed by 1953 c.386 §9]

291.304 Repealed by 1953 c.386 §9]

#### ACTS APPROPRIATING MONEY OR LIMITING EXPENDITURES

**291.305 Meaning of "administrative expenses" in law appropriating money or limiting expenditures; limitation not ap-**

appropriation of money otherwise unavailable to agency. (1) As used in the laws enacted by the Legislative Assembly appropriating money or limiting expenditures, the term "administrative expenses" means, unless the context requires otherwise, those expenditures that are included under the classifications of expenditures, except debt service and special payments expenditure categories, which are prepared and prescribed, pursuant to ORS 291.206, for the purpose of budget-making and accounting during the biennium for which such laws appropriating money or limiting expenditures are enacted.

(2) In the laws enacted by the Legislative Assembly, the establishment of maximum limits for expenditures from, or for the payment of administrative expenses from, fees, moneys or other revenues collected or received by any agency is not intended as an appropriation of moneys not otherwise available to such agency. [1963 c.182 §1, 3]

291.306 [Repealed by 1953 c.386 §9]

**291.307 Appropriation from General Fund to constitute a credit only.** An appropriation of any sum of money from the General Fund by any law shall not be considered as segregating or setting aside the amount of such appropriation from the moneys constituting the General Fund, but shall be considered and construed as constituting a credit in favor of the appropriation for the amount stated in the law making the appropriation, subject to allotment as provided in ORS 291.232 to 291.260. (Formerly 291.376)

291.308 [Repealed by 1953 c.386 §9]

291.310 [Repealed by 1953 c.386 §9]

#### **EMERGENCY EXPENDITURES; EMERGENCY BOARD**

**291.322 Definitions for ORS 291.322 to 291.334.** As used in ORS 291.322 to 291.334:

(1) "Emergency" means any catastrophe, disaster or unforeseen or unanticipated condition or circumstance, or abnormal change of conditions or circumstances, affecting the functions of a state agency and the expenditure requirements for the performance of these functions.

(2) "State agency" means any elected or appointed officer, board, commission, department, institution, branch or other agency of the state government. [1953 c.386 §1]

**291.324 Emergency Board created.** There hereby is created a joint committee composed of members of both houses of the Legislative Assembly, to be known as the Emergency Board. [1953 c.386 §2]

**291.326 Powers of board concerning expenditures by state agencies.** (1) The Emergency Board, during the interim between sessions of the Legislative Assembly, may exercise the following powers:

(a) Where an emergency exists, to allocate to any state agency, out of any emergency fund that may be appropriated to the Emergency Board for that purpose, additional funds beyond the amount appropriated to the agency by the Legislative Assembly, or funds to carry on an activity required by law for which an appropriation was not made.

(b) Where an emergency exists, to authorize any state agency to expend, from funds dedicated or continuously appropriated for the uses and purposes of the agency, sums in excess of the amount of the budget of the agency as approved in accordance with law.

(c) In the case of a new activity coming into existence at such a time as to preclude the possibility of submitting a budget to the Legislative Assembly for approval, to approve, or revise and approve, a budget of the money appropriated for such new activity.

(d) Where an emergency exists, to revise or amend the budgets of state agencies to the extent of authorizing transfers between expenditure classifications within the budget of an agency.

(2) No allocation, authorization or approval under paragraph (a), (b) or (c) of subsection (1) of this section shall be effective unless made at a meeting at which 10 members of the board were present.

(3) The laws enacted by the Legislative Assembly making appropriations and limiting expenditures, or either, are not intended to limit the powers of the Emergency Board. [1953 c.386 §3; subsection (3) enacted as 1963 c.182 §2, 1973 c.201 §2]

**291.328 Board may require presentation of evidence to support requests for action; board to report its action to agencies concerned.** Before the Emergency Board makes any allocation, grants any authorization or approves any budget under ORS 291.326, it may require the state agency in question to submit written evidence to justify the allocation, authorization or approval and

may require the head of the agency to appear before it in support thereof. The Emergency Board may also require the Director of the Executive Department to submit a written report as to the need and justification for the allocation, authorization or approval. Upon making an allocation, granting an authorization or approving a budget, the Emergency Board shall file with the department, the Secretary of State and the state agency in question a copy of the order of allocation, grant of authorization or approved budget. (1953 c.386 §4)

**291.330 Members of board; confirmation.** The Emergency Board shall be composed of the President of the Senate, the Speaker of the House of Representatives, the chairmen of the Senate and House Ways and Means Committees, six members of the Senate, at least three of whom shall have had some previous experience on the Ways and Means Committee, to be appointed by the President of the Senate and confirmed by a majority of all the members elected to the Senate, and seven members of the House, at least four of whom shall have had some previous experience on the Ways and Means Committee, to be appointed by the Speaker and confirmed by a majority of all the members elected to the House. (1953 c.386 §5; 1973 c.201 §1; 1979 c.324 §1)

**291.332 Meetings of board; terms of members; filling vacancies on board.** (1) The Emergency Board shall meet immediately upon adjournment of each Legislative Assembly and elect a chairman from their number. The board shall meet thereafter at such times as it may determine.

(2) The term of members of the board shall run from the adjournment of one regular session to the organization of the next regular session.

(3) If a vacancy occurs in the board, either the Speaker, if the legislator previously filling the position was a member of the House, or the President, if the legislator previously filling the position was a member of the Senate, shall fill such vacancy by an appointment for the unexpired term. However, such appointment, before becoming effective, shall be confirmed by the remaining members of the board, sitting as such board. (1953 c.386 §8)

**291.334 Board authorized to secure assistance; payment of board expenses.** (1) The Director of the Executive Department, upon request of the board, shall furnish neces-

sary assistance to the board, or the board may employ such assistance as they may deem necessary.

(2) The expenses of the board, the cost of employed assistance, and other necessary expenses of the board shall be paid out of funds appropriated to the board specially for such purpose or, if no such appropriation is made, out of any emergency fund that may be appropriated to the board. All claims for those expenses and cost shall be approved by the chairman or other person authorized to approve claims, and warrants shall be drawn on the State Treasurer for the payment thereof in the same manner as other expenses are paid. (1953 c.386 §7; 1967 c.454 §96; 1975 c.530 §7)

**291.336 Appropriation bills requiring approval of board before project commenced or contract let; how requirement met.** (1) As used in this section, "appropriation bill" means a legislative Act which appropriates money or authorizes the expenditure of dedicated or continuously appropriated moneys or otherwise makes moneys available for expenditure.

(2) In all cases where an appropriation bill heretofore or hereafter passed provides that a state agency shall not commence any project or allow any contract to be let for any project without having the approval of the Emergency Board, such requirement may be met:

(a) During any period when the Legislative Assembly is in session, by the adoption of a resolution by each house approving the proposed action; or

(b) During any period when the Legislative Assembly is not in session, either by approval of the Emergency Board as provided in the appropriation bill, or by the lapse of 45 days without adverse action of the Emergency Board after notice of the proposed action has been given to each member of the Emergency Board at his last-known address. (1957 c.382 §1)

## ESTIMATES OF STATE REVENUES

**291.342 Annual estimation of state revenues; apportionment among counties of any state property tax levy necessary to make up deficiency; quarterly estimates.** (1) By August 15 of each year, but not earlier than 90 days from the end of the regular session, if any, of the Legislative Assembly held in that calendar year, the Executive

Department, with the assistance of the Department of Revenue, shall:

(a) Ascertain by computation and estimate the total amount of revenue available for state purposes for the current fiscal year; and

(b) Apportion the state tax levy on property, if any, among the several counties in the manner provided in ORS 291.344.

(2) In addition to the requirement in subsection (1) of this section, the Executive Department with the assistance of the Department of Revenue shall for each calendar quarter of the year ascertain by computation and estimate the total amount of revenue available for state purposes for the current fiscal year, as well as the amount of revenue received quarterly, cumulated throughout the biennium, and report its estimate to the Legislative Revenue Officer and to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means.

(3) In carrying out its duties under subsection (2) of this section, the Executive Department shall issue quarterly a statement setting forth the methodology and assumptions used in making the revenue estimate. Nothing in this subsection requires the statement to set forth procedures used or methods used to determine either the methodology or the assumptions. (Formerly 309.510; 1971 S.S. c.5 §3; 1975 c.789 §10; 1980 c.11 §1)

**291.344 Procedure for computation, levy, offset and apportionment of state property tax levy.** (1) The department shall proceed as prescribed in this section.

(2) The department shall prepare a statement, summarizing:

(a) All the items of expense or deficiency, including interest on unpaid warrants left over from the previous year, to which the state will be subject under existing laws for the fiscal year next after that year or period for which the last preceding levy of state revenues was computed and declared; and

(b) When the levy is made on the assessment of an even year, the estimated expense of one biennial session of the Legislative Assembly.

(3) There shall be segregated from the total of the items tabulated in accordance with subsection (2) of this section the amount necessary for the payment of bonded indebtedness and interest thereon, and this amount shall constitute the state tax levy on property.

(4) From the total of the items summarized in accordance with subsection (2) of this section, after the amounts segregated pursuant to subsection (3) of this section have been deducted, there shall be deducted, in the order listed in subsection (5) of this section, all miscellaneous receipts, including any surplus remaining in the State Treasury from all funds, however derived, excepting only the following:

(a) Funds whose use is restricted to particular purposes by the Constitution of Oregon.

(b) Funds whose use is restricted to particular purposes by federal law

(c) All trust funds, as defined in ORS 291.002.

(5) (a) The department shall deduct first those miscellaneous receipts not excluded by paragraphs (a), (b) and (c) of subsection (4) of this section and not includable in the definitions of dedicated or revolving funds in ORS 291.002.

(b) If necessary, in order to provide revenue for all of the items summarized in subsection (2) of this section, the department shall then deduct as much as is necessary or available from any fund remaining in the State Treasury and not excluded by subsection (4) of this section. The department shall list these deductions in its records.

(6) The state tax levy on property segregated and levied pursuant to subsection (3) of this section shall be offset first by the application of miscellaneous receipts to the extent that they are not applied in accordance with subsection (4) of this section. Subject to the limitations of ORS 311.660, the amount of the state tax levy on property not offset by the foregoing application shall be apportioned among and charged to the several counties in that proportion which the total assessed value of all the taxable property in each county bears to the total assessed value of all the taxable property of the state as equalized.

(7) Immediately after the department has completed the computation, levy, offset and apportionment of the state tax levy on property in accordance with this section, a certificate thereof, signed by the director of the department, shall be filed in the office of the department. (Formerly 309.520; 1967 c.454 §97; 1981 c.804 §83)

**291.348 Biennial estimate of General Fund revenues; certification to Secretary of State.** (1) The department, with the assis-

tance of the Secretary of State, as soon as possible after June 30, 1966, and each even-numbered year thereafter, shall ascertain the total of General Fund revenues obtained from all sources during the preceding fiscal year, so far as is practicable.

(2) The Director of the Executive Department shall certify to the total of General Fund revenues during the preceding fiscal year as determined under subsection (1) of this section.

(3) As used in this section, "General Fund revenues" means all payments of money credited to the State Treasury that are placed or to be placed by the State Treasurer to the credit of the General Fund of the State of Oregon for general governmental purposes. [1965 c.615 §12; 1967 c.454 §98]

**291.349 Revenue estimate; effect of revenue in excess of estimate.** (1) As soon as practicable after adjournment sine die of the regular session of the Legislative Assembly, the Executive Department shall report to the Emergency Board the estimate as of July 1 of the first year of the biennium of General Fund revenues that will be received by the state during that biennium. The Executive Department shall base its estimate on the last forecast given to the Legislative Assembly before adjournment sine die of the regular session on which the printed, adopted budget prepared in the Executive Department is based, adjusted only in so far as necessary to reflect changes in laws adopted at that session. The report shall contain the estimated revenues from corporate income and excise taxes separately from the estimated revenues from other General Fund sources. The Executive Department may revise the estimate if necessary following adjournment sine die of any special or emergency session of the Legislative Assembly but any revision does not affect the basis of the computation described in subsection (3) or (4) of this section.

(2) As soon as practicable after the end of the biennium, the Executive Department shall report to the Emergency Board, or the Legislative Assembly if it is in session, the amount of General Fund revenues collected as of the last June 30 of the preceding biennium. The report shall contain the collections from corporate income and excise taxes separately from collections from other sources.

(3) If the revenues received from the corporate income and excise taxes during the biennium exceed the amounts estimated to be

received from such taxes for the biennium, as estimated after adjournment sine die of the regular session, by two percent or more, the total amount of that excess shall be credited to corporate income and excise taxpayers in a percentage amount of corporate excise and income tax liability as determined under subsection (5) of this section. However, no credit shall be allowed against tax liability imposed by ORS 317.090.

(4) If the revenues received from General Fund revenue sources, exclusive of those described in subsection (3) of this section, during the biennium exceed the amounts estimated to be received from such sources for the biennium, as estimated after adjournment sine die of the regular session, by two percent or more, the total amount of that excess shall be credited in a percentage amount of income tax liability as determined under subsection (5) of this section.

(5) If there is an excess to be credited under either subsection (3) or (4) of this section, or both, on or before October 1, following the end of each biennium, the Executive Department shall determine and certify to the Department of Revenue the percentage amount of credit for purposes of subsection (3) or (4) of this section. The percentage amount determined shall be a percentage amount to the nearest one-tenth of a percent that will distribute the excess to be credited to either the corporate excise and income taxpayers or personal income taxpayers for taxable years beginning in the calendar year during which such excess is determined. The credit shall be computed after the allowance of any credit allowed or allowable under ORS chapter 316, 317 or 318, whichever may be applicable, and before the application of estimated tax payments, withholding or other advance tax payments. [1979 c.241 §30; 1981 c.885 §1]

Note: 291.349 and 291.355 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 291 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation.

**291.350** [1965 c.615 §13; repealed by 1971 c.544 §7]

**291.352** [Renumbered 293.105]

**291.354** [Amended by 1959 c.273 §7; 1961 c.280 §3; 1961 c.308 §2; renumbered 293.110]

### RATE OF GROWTH OF APPROPRIATIONS

**291.355 Rate of growth of appropriations for general governmental purposes.**

(1) Each biennium, growth of state governmental appropriations for general governmental purposes shall be no greater than the rate of growth of personal income in Oregon in the two preceding calendar years. The rate of growth shall be computed based on the U.S. Department of Commerce reports for the two preceding calendar years.

(2) For the 1979-1981 biennium, the base to which the rate of growth applies shall equal state governmental appropriations for general governmental purposes in the 1977-1979 biennium plus expenditures from non-General Fund sources that are to be funded in 1979-1981 out of the General Fund and less any General Fund expenditures in 1977-1979 that are to be funded in 1979-1981 from non-General Fund sources.

(3) In bienniums subsequent to the 1979-1981 biennium, the base shall be adjusted as necessary to reflect transfer of funding sources between General Fund sources and non-General Fund sources in order to maintain a base used for general governmental purposes.

(4) Debt service and tax relief other than that provided under ORS 310.630 to 310.690 shall not be considered appropriations for general governmental purposes. [1979 c.241 §29]

Note: See note under 291.349.

291.356 [Amended by 1963 c.333 §2; renumbered 293.115]

291.358 [Renumbered 293.120]

291.360 [Renumbered 293.125]

291.362 [Renumbered 293.130]

291.364 [Renumbered 293.135]

291.366 [Renumbered 293.140]

291.368 [Renumbered 293.145]

291.370 [Renumbered 293.150]

### FISCAL MATTERS; LEGISLATIVE REVIEW

**291.371 Approval of salary plan changes and unbudgeted new positions by legislative review agency required.** (1) As used in this section, "legislative review agency" means the Joint Committee on Ways

and Means during the period when the Legislative Assembly is in session and the Emergency Board during the interim period between sessions.

(2) Prior to making any changes in a salary plan, establishing any new positions specifically not provided for in the budget of the affected agency or reclassifying any positions specifically provided for in the budget of the affected agency, the Executive Department shall submit the proposed changes to the legislative review agency. The proposed change shall only be approved and take effect if the legislative review agency finds that the affected agency can finance the proposed change within the limits of its biennial budget and that the proposed change conforms to legislatively approved salary policies. The effective date of the change shall be the date prescribed by the Personnel Division. [1973 c.49 §1]

291.372 [Renumbered 293.155]

291.374 [Amended by 1955 c.133 §1; 1955 c.672 §1; 1957 c.460 §1; 1959 c.686 §39; 1961 c.268 §13; 1961 c.485 §27; renumbered 293.160]

**291.375 Legislative review of applications for federal financial assistance; submission, approval required; exemptions.** (1) Prior to the submission of any application for financial assistance or grants from the United States or any agency thereof by or on behalf of any agency of this state, the application must be submitted for legislative review in the following manner:

(a) If the application is to be submitted to the Federal Government when the Legislative Assembly is in session, the application shall be submitted to the Joint Committee on Ways and Means for review.

(b) If the application is to be submitted to the Federal Government when the Legislative Assembly is not in session, the application shall be submitted to the Emergency Board for review.

(2) If the legislative agency authorized under subsection (1) of this section to review applications described therein approves the application, it may be submitted to the appropriate federal agency. If the legislative agency disapproves of the application, it shall not be submitted to any federal agency unless it is or can be modified to meet the objections of the legislative agency.

(3) Notwithstanding subsection (1) of this section, the Joint Committee on Ways and

Means and the Emergency Board may exempt any state agency from the requirements of this section. Project grants for departmental research, organized activities related to instruction, sponsored research or other sponsored programs carried on within the Department of Higher Education, for which no biennial expenditure limitations have been established, are exempt from the requirements of this section.

(4) The review required by this section is in addition to and not in lieu of the requirements of ORS 293.550. [1973 c.44 §1]

291.376 [Renumbered 291.307]

291.378 [Amended by 1961 c.590 §1; renumbered 293.165]

291.380 [Amended by 1961 c.590 §2; renumbered 293.170]

**291.385 Use of certain federal moneys for employment; legislative approval.** Expenditures of moneys available to this state or any agency thereof under the Comprehensive Employment and Training Act (Public Law 93-203, 87 Stat. 839) and (Public Law 95-524, 92 Stat. 1909), the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567), and the Emergency Jobs Program Extension Act of 1976 (Public Law 94-444), as amended, are not limited by fixed sum appropriations or expenditure limitations imposed for the biennium beginning July 1, 1977, if authorized by the Joint Committee on Ways and Means after March 1, 1979. However, positions added under the provisions of the federal enabling legislation are subject to approval of the Emergency Board during the interim between sessions of the Legislative Assembly and by the Joint Committee on Ways and Means during a session of the Legislative Assembly. [1977 c.85 §1; 1979 c.93 §1]

Note: 291.385 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 291 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

### COMMISSION ON OREGON STATE MANAGEMENT AND ORGANIZATION

Note: Sections 1 to 8, 10 and 12 of chapter 795, Oregon Laws 1979, provide:

Sec. 1. It is the purpose of this Act to improve the responsiveness and manage the growth of Oregon state government.

Sec. 2. (1) There is created a Commission on Oregon State Management and Organization consisting of nine members and four ex officio members.

(2) The Governor shall appoint four members of the commission; the President of the Senate and the Speaker of the House of Representatives shall each appoint two members of the commission; the Chief Justice of the Supreme Court shall appoint one member of the commission.

(3) The Governor, President of the Senate, Speaker of the House and Chief Justice of the Supreme Court shall serve as ex officio, nonvoting members of the commission.

(4) No person shall be eligible for appointment to the commission who is an elected or appointed official, or who has not been seven years a resident of the State of Oregon, nor shall any person be eligible for appointment to the commission who has not demonstrated excellent leadership or managerial ability prior to the person's appointment.

(5) Each member shall be appointed to serve for a term of two years and may be reappointed for one additional term.

(6) In case of a vacancy for any cause, the Governor, President of the Senate, Speaker of the House or Chief Justice of the Supreme Court, according to the position vacated, shall make an appointment to become effective immediately for the unexpired term.

Sec. 3. (1) The purpose of the Commission on Oregon State Management and Organization shall be to provide the greatest effectiveness of state government at the lowest possible cost.

(2) The commission shall advise and assist within the limits of its resources the legislative and executive branches of state government, including state agencies, to improve the responsiveness and manage the growth of Oregon state government through proposals for legislation or changes in administrative rules or policy.

(3) The commission shall select one or more comprehensive tasks to undertake each year from priority lists submitted to the commission by the Governor, President of the Senate, Speaker of the House and Chief Justice of the Supreme Court on or before July 1 of each year.

(4) In performing its duties, the commission within the limits of available funds may:

(a) Conduct hearings and conferences to ascertain facts, to comprehend state programs and activities and to obtain qualified opinions;

(b) Appoint subcommittees consisting of members of the commission and public members, if desired, and pay the reasonable and actual expenses thereof as provided in section 4 of this Act;

(c) Obtain from any state agency necessary assistance and data; and

(d) Perform all other necessary functions to carry out the purposes of the commission and this Act.

Sec. 4. A member of the Commission on Oregon State Management and Organization shall receive no

House Research Agency  
Pouch Y  
Juneau, Alaska 99811  
465-3991

KEY WORD: \_\_\_\_\_

Research Request Number: \_\_\_\_\_

RESEARCH EVALUATION

TO: \_\_\_\_\_

FROM: Susan Brody, Director

RE: Evaluation of Research Products

To assist us in improving the quality of our research services, we would appreciate your response to the following questions.

- Was the information unbiased?
  
- Did it provide answers to (or, at least, useful information on) all the questions you posed?
  
- Was the research completed and delivered to you in a timely manner?
  
- Was it clearly written?
  
- May we release this information to the public?
  - I approve the release of this information.
  - I approve the release of this information, but please remove my name.
  - I do not approve the release of this information; maintain confidentiality.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Please be assured that we will take your comments seriously in performing future research for you.

Please return to House Research Agency, Mail Stop 3100.

Thank you.

HJR

53

MEMORANDUM

January 26, 1984

SUBJECT: Reapportionment of the legislature  
(HJR 53)

TO: Representative Mitch Abood  
Chairman, House State Affairs Committee

FROM: Richard A. Bradley  
Legislative Counsel

You have requested a sectional analysis of the above described resolution.

As a preliminary matter, I must advise you that a sectional analysis or summary of a resolution should not be considered an authoritative interpretation of the resolution and the resolution itself is the best statement of its contents. If you would like an interpretation of the resolution as it may apply to a particular set of circumstances, please address a specific request to this office.

To some extent, the amendments proposed in this resolution are unusual to the extent that the changes contained in the resolution may confirm existing understandings of the constitutionally required framework for the reapportionment of the Alaska legislature; the Alaska Supreme Court has been obliged to rewrite these provisions under the mandates received from the U.S. Supreme Court in a series of reapportionment decisions delivered by the Supreme Court. See, among other decisions, Baker v. Carr, 369 U.S. 186 and Reynolds v. Sims, 377 U.S. 533. To that extent, the language does not so much indicate a change in what may be expected after ratification of the proposed amendments but rather an affirmative confirmation of existing legal and constitutional reality. The Alaska Supreme Court has invited the legislature to propose conforming amendments several times in its reapportionment decisions. See Wade v. Nolan, 414 P.2d 689 (Alaska 1966), Egan v. Hammond, 502 P.2d 856 (Alaska 1972), Groh v. Egan, 525 P.2d 853 (Alaska 1974), and Carpenter v. Hammond, 667 P.2d 1204 (Alaska 1983).

Representative Mitch Abood  
Page 2  
January 26, 1984

In a few instances, the sponsor of the resolution has sought to adopt improvements in the constitutional framework.

I will indicate in these comments the nature of the changes proposed.

Section 1 of the resolution proposes an amendment to art. VI, section 1 of the Alaska Constitution.

The section provides that members of the house are elected from the districts established in the most recent reapportionment of the house. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the House of Representatives in 1960; the material added to the end of the first sentence replaces that language.

The second full sentence of the section that is added by this resolution represents a policy choice by the sponsor; as you will recognize, a number of the members of the house are now elected from designated seats in multi-member districts. It is generally agreed that the gubernatorial power to reapportion in Alaska grants the governor the authority to establish single member districts; the governors have rearranged districts probably from the first reapportionment and the governors have reduced the number of candidates elected from a single district from the high of 14 in Anchorage after the 1960 reapportionment to the present formulation.

The proposed amendment mandates single member house districts in all cases.

Section 2 of the resolution amends art. VI, section 2 of the Alaska Constitution.

The section provides that members of the senate are elected from districts that are established under the most recent reapportionment of the senate. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the Senate in 1964; the material added at the end of the first sentence replaces that language.

Just as each house member will be elected under the revised Section 1 to a single member district, each senator will be elected from a senate district that is composed of two house districts. This material represents a policy goal requested

Representative Mitch Abood  
Page 3  
January 26, 1984

by the sponsor of the resolution. To a some extent, I believe that this formulation represents the existing reality; the language mandates that result.

Section 3 of the resolution amends art. VI, section 3 of the Alaska Constitution.

The amendments to the first sentence of the section conform the language of the section to the understanding of the intent of the constitutional convention. The Alaska Supreme Court concluded after Governor Egan reapportioned the senate in 1964 that if the drafters of the Alaska Constitution had understood that the senate also must represent people and not geographic areas that they would have given the governor the authority to reapportion the senate. Wade v. Nolan, 414 P.2d 689 (Alaska 1966).

The change from "based upon civilian population" to "based upon the best available evidence of the resident population" results from Egan v. Hammond, 502 P.2d 856 (Alaska 1972) and Groh v. Egan, 526 F.2d 863 (Alaska 1974); the Alaska Supreme Court held that exclusion of the military from the population base without consideration whether the individual member of the military was a resident of the state was irrational.

My understanding of the reason for the deletion of the reference to the census was simply that the sponsor wanted the reapportionment board able to use the "best available evidence", whether that was the census reports or something else. As suggested, that represents a policy goal sought by the sponsor.

Note that sections 4 and 5 of art. VI are proposed for repeal. See resolution section 7.

Section 4 established an obsolete concept of reapportionment based on "equal proportions." Section 5 permitted the combining of house districts in certain instances. Both concepts have been obsolete since the original U. S. Supreme Court decisions mandating "one person, one vote."

Section 4 of the resolution amends art. VI, section 6 of the Alaska Constitution.

The amendment makes clear in the first sentence that it applies to senate as well as house reapportionment.

Representative Mitch Abood  
Page 4  
January 26, 1984

The third sentence is deleted from the section but note that its content is carried into the new subsec. (b) in Section 5 of the resolution.

Section 5 of the resolution amends art. VI, section 6 of the Alaska Constitution by adding a new subsection.

It provides that each "election district" for the election of house members and each senate district shall each contain "a population as nearly equal as possible." The last two sentences state a mathematical requirement for deviations from the ideal district population.

Note that section 7 of art. VI has been repealed. See resolution section 7.

Section 7 dealt with limitations on the modification of senate district boundaries. It has been obsolete since 1964.

Section 6 of the resolution amends art. VI, section 8 of the Alaska Constitution.

The amendment recognizes that that there have not been regional senate districts since the 1964 reapportionment.

As noted above, secs. 4, 5, and 7 of art. VI are proposed for repeal in section 7 of the resolution.

Also proposed for repeal in section 7 is art. XIV of the Alaska Constitution. Art. XIV establishes a reapportionment schedule: the listing of the various house and senate districts and their boundaries.

It should be understood that the material contained within art. XIV will continue to be necessary but since it is not truly constitutional, it will become a footnote to the provisions of art. VI, presumably secs. 1 and 2.

It is not constitutional in the sense that its provisions will necessarily receive amendment in each reapportionment but will take effect because of the reapportionment proclamation of the governor and not because they have been adopted in a constitutional amendment proposed by the legislature and ratified by the qualified voters of the state.

Representative Mitch Abood

Page 5

January 26, 1984

Section 8 of the resolution is standard language directing the election officers to put the resolution before the qualified voters of the state at the next general election in conformity with the constitution and election laws.

The amendments would become a part of the constitution 30 days after the certification of the election results by the lieutenant governor. See art. XIII, sec. 1. The implementation of the provisions would not be called for until after the reporting of the next decennial census, after 1990.

If I may be of further assistance, please advise.

PAB:ojb

J2/080



*Superior Court  
State of Alaska*

THIRD JUDICIAL DISTRICT  
303 K STREET  
ANCHORAGE, ALASKA  
99501

CHAMBERS OF  
MILTON M. SOUTER, JUDGE

November 14, 1983

Honorable Terry Martin  
Chairman, Labor and Commerce Committee  
3960 Reka Drive-B6  
Anchorage, Alaska 99504

Dear Representative Martin:

This morning you delivered to my office a three page letter together with enclosures, pertaining to the on-going reapportionment proceedings. It appears to me that you are perhaps laboring under a misconception of those proceedings at present, so I feel it appropriate to take this opportunity to present a brief explanation.

A newly constituted reapportionment board is presently handling the reapportionment proceedings. Accordingly, nothing is occurring in court with respect to those proceedings at this time. Further, it is unlikely that anything further will occur in court until the reapportionment board has made its recommendations to Governor Sheffield and he has issued an amended reapportionment order. Therefore, it would have been better for your purposes if you had delivered your letter and enclosures to the reapportionment board, rather than to me.

Because you are not a party to the reapportionment court case, you do not have the right to file with the court any written arguments, suggestions or comments regarding the

Representative Terry Martin  
November 14, 1983  
Page Two

case. This is the rule pertaining to non-parties in all court cases. Accordingly, I am returning to you the letter and enclosures which you delivered to me, since it is not proper for me to consider items from a non-party. It might be possible for you to become a party to the case or to submit argument, etc., as an "amicus curiae", but you should consult with a lawyer to determine whether and how to do this.

Despite the formal tone of this letter, I wish to assure you that I appreciate the interest which you have shown in this matter, and I am sure that the active participants in the reapportionment proceedings will wish to consider your views. I have therefore instructed my secretary to send a xerox copy of your letter and enclosures to the formal parties in the reapportionment court case.

Sincerely yours,



Milton M. Souter

MMS/pb

cc: Holli Ploog w/enclosures  
701 West 58th Ave., Suite F  
Anchorage, AK 99503

Timothy A. McKeever w/enclosures  
2550 Denali Street, Suite 700  
Anchorage, AK 99503

Jonathan B. Rubini  
Assistant Attorney General  
Pouch K  
Juneau, AK 99811

Court file

Alaska State Legislature

REPRESENTATIVE  
**TERRY MARTIN**  
DISTRICT 8  
CHAIRMAN—LABOR AND COMMERCE COMMITTEE  
PHONE 463-3873



3960 REKA DRIVE—86  
ANCHORAGE, AK 99504  
PHONE 333-6990

DURING LEGISLATURE  
POUCH V  
STATE CAPITOL  
JUNEAU, AK 99811  
PHONE 463-3784

November 11, 1983

Judge Milton Souter  
Superior Court, Third District  
303 "K" Street  
Anchorage, Alaska 99501

Dear Judge Souter:

Alaska's history of apportionment and reapportionment has been one of much concern by all citizens, for this state of just twenty-five years belonging as an equal partner in the United States. Our youth as a state has its benefits, in that we have learned by the mistakes of other states and took advantage of major U.S. Supreme Courts decisions pertaining to the equality of each citizen in equal representation. This is verified in Article IV Sections 4 and 6. Both of these sections are based on the decennial census of the United States [Art. IV. Sec. 3]

Sec.4. Reapportionment shall be by the methods of equal proportion, except that each election district having major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Sec. 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other features shall be used in describing boundaries whenever possible.

As you are aware the "forty" formula was most distorted in the 1972 and 1974 reapportionments. In the 1990 reapportionment, the committee achieved a much more desirable equal apportionment, but even this missed the mark with some representative districts being as much as 5.8% above the quotient or 4.18% below the quotient, thus a difference of almost 10% inequality of representation, from an average population of 9,228 per house member of the 1980 census of 400,481 people. This excludes transient military population. [See attached "State Government News" - Oct. 1981]

Since the Federal Census of 1980, every state has gone through the traumatic reapportionment mandated. It can be concluded that most states tried to adhere to the U.S. Supreme Court's requirements for "one person, one vote." Many have less than 1% difference. In some states the governors took this criterion so serious that they vetoed badly drawn plans of their legislature - even against their own party. In one case, Colorado, the governor vetoed the new reapportionment plan although the largest and smallest districts had a population difference of only 41 people. In Texas, Supreme Court ruled the House plan split counties unnecessarily in violation of the state constitution. Some states use the Federal Census as their base, some use less of that figure and others do not use the decennial census at all.

In Alaska, it is clearly the intent of the Constitution [Art. VI. Sec. 3] to use the decennial census of the United States. While the intent of this was good - since in the territory era we had no better way of counting people nor the ability to pay for such an undertaking - this method is extremely limiting today. The Constitution, as I interpret it, does not limit the state to outdated statistics when reapportioning between decennial periods. If this is not true, then we are severely limited in complying to the "one person, one vote" equality concept and the current exercise of the Reapportionment Board is diminished in value. Another approach should be considered that is much more reliable and annually takes into consideration the annual fluctuation of population, also. The true military resident count should be added to the Constitution.

I would like to bring to your attention the potential use of statistics completed by the Department of Revenues for recipients of the Permanent Fund dividends. If we are going to reapportion it seems only logical and certainly within the constitution concept of "one person, one vote" equality to use the best census available. While the Federal census of 1980 shows 400,000 plus residents, the Permanent Fund dividends of 1982 has verified 474,000 plus residents. Thus, in the current scheme of reapportionment, almost twenty percent of the population will not be considered for the quotient obtained divided by forty. Alaska can be quite unique in its abilities of combining this new program and using its statistic to allow other departments, commissions, and legislature to share the information of exactly where the people are.

Combining the total recipients of 1982 Permanent Fund checks with the U.S. Post Office zip code numbers makes it easy for any reapportionment committee to combine an equal number for each political districts. [See attached letter and stats - Nov 3, 1983] This obviously is a far superior method of census counting than any yet devised. We know these citizens have been checked for residency and volunteer the information of each household with no additional cost to the state. A most unique aspect in this program is the pre-counting of persons. It allows a pregnant woman of six month pre-birth to count the child to be and receive a dividend check.

The 1983 P.F. statistics can be readily obtained if you approve of the concept for Governor Sheffield's Reapportionment Board. This applied to the latest zip codes of each city, municipality and village will help decrease conflicting reports from various state agencies and local governments as to how many people live where.

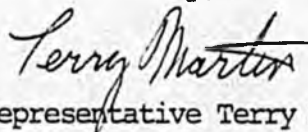
Judge Milton Souter  
November 11, 1983  
Page 3

Judge Souter, I appeal to you to ask the present Board appointed by Governor Sheffield to reapportion the whole State of Alaska and to use the very latest and factual statistics available - namely the 1983 Permanent Fund Dividend recipients.

If you would like to explore this concept with me personally or need additional information, I will make myself available at your convenience.

Thank you very much for your consideration of my request. I look forward to hearing from you soon.

Most sincerely,



Representative Terry Martin

TM:jl

Enclosures:

P.S. Currently I am having the Legislative legal service research for legislation to be introduced in January 1984 to allow for the above to be voted on in the 1984 November election and to include a clause to specifically count military residents for purposes of political reapportionment.

cc: Governor William Sheffield  
Attorney General's Office  
Senate President Jay Kerttula  
Speaker Joe Hayes  
Supreme Court Chief Justice Edward Burke

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

BILL SHEFFIELD  
GOVERNOR

# NEWS RELEASE



ET  
RO

FOR INFORMATION CONTACT:  
Pete Spivey  
Press Secretary

John Greely  
Deputy Press Secretary  
Office of the Governor  
Pouch A, Juneau, AK 99811

Eus. Phone: (907) 465-2500

SHEFFIELD APPOINTS FIVE MEMBER STATE REAPPORTIONMENT BOARD  
OCTOBER 20, 1983  
NO. 83-172

## FOR IMMEDIATE RELEASE

ANCHORAGE -- Governor Bill Sheffield today announced the appointment of a five-member State Reapportionment Board, in compliance with an order issued by Superior Court Judge Milton Souter on October 12.

Appointed were: Joseph H. McKinnon, an Anchorage lawyer and former member of the Legislature; Felix Toner, a Juneau engineer with previous Reapportionment Board experience who also served on the Juneau Assembly; Mary Nordale, a Fairbanks lawyer; Richard Borer, a Cordova hotel owner and former member of the Legislature; and Willie Hensley of Anchorage, a former Legislator who now is President of NANA Development Corporation and Chairman of United Bank Alaska.

Toner, McKinnon, Nordale and Hensley are Democrats. Borer is a Republican.

The board is charged with presenting the Governor with a proposal to amend a final Proclamation of Reapportionment approved by former Governor Hammond. The Alaska Supreme Court ordered the plan revised last July 23 and returned the case to the Superior Court. In his order last week, Judge Souter ordered the reapportionment plan amended so that the city of Cordova is "placed in a contiguous, compact and relatively integrated socio-economic election district...."

-MORE-

Cordova lies in House District 2, the so-called "Iceworm District." The district currently stretches from Prince William Sound to the state's southernmost border, excluding the largest towns and cities of Southeast Alaska.

The board members will convene in Juneau October 26, and will meet with Department of Law representatives to review their authority and discuss administrative matters before beginning their deliberations.

The proposed amended plan is to be delivered to Sheffield by January 3. The Governor is to then issue the revised final plan by February 3.

Alaska State Legislature

REPRESENTATIVE  
TERRY MARTIN

DISTRICT 8  
CHAIRMAN—LABOR AND COMMERCE COMMITTEE  
PHONE 465-3673



5960 REKA DRIVE—04  
ANCHORAGE, AK 99504  
PHONE 333-6990

DURING LEGISLATURE  
POUCH V  
STATE CAPITOL  
JUNEAU, AK 99811  
PHONE 465-3754

November 11, 1983

Judge Milton Souter  
Superior Court, Third District  
303 "K" Street  
Anchorage, Alaska 99501

Dear Judge Souter:

Alaska's history of apportionment and reapportionment has been one of much concern by all citizens, for this state of just twenty-five years belonging as an equal partner in the United States. Our youth as a state has its benefits, in that we have learned by the mistakes of other states and took advantage of major U.S. Supreme Courts decisions pertaining to the equality of each citizen in equal representation. This is verified in Article IV Sections 4 and 6. Both of these sections are based on the decennial census of the United States [Art. IV. Sec. 3]

Sec.4. Reapportionment shall be by the methods of equal proportion, except that each election district having major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Sec. 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other features shall be used in describing boundaries whenever possible.

As you are aware the "forty" formula was most distorted in the 1972 and 1974 reapportionments. In the 1980 reapportionment, the committee achieved a much more desirable equal apportionment, but even this missed the mark with some representative districts being as much as 5.8% above the quotient or 4.18% below the quotient, thus a difference of almost 10% inequality of representation, from an average population of 9.228 per house member of the 1980 census of 400,481 people. This excludes transient military population. [See attached "State Government News" - Oct. 1981]

Since the Federal Census of 1980, every state has gone through the traumatic reapportionment mandated. It can be concluded that most states tried to adhere to the U.S. Supreme Court's requirements for "one person, one vote." Many have less than 1% difference. In some states the governors took this criterion so serious that they vetoed badly drawn plans of their legislature - even against their own party. In one case, Colorado, the governor vetoed the new reapportionment plan although the largest and smallest districts had a population difference of only 41 people. In Texas, Supreme Court ruled the House plan split counties unnecessarily in violation of the state constitution. Some states use the Federal Census as their base, some use less of that figure and others do not use the decennial census at all.

In Alaska, it is clearly the intent of the Constitution [Art. VI. Sec. 3] to use the decennial census of the United States. While the intent of this was good - since in the territory era we had no better way of counting people nor the ability to pay for such an undertaking - this method is extremely limiting today. The Constitution, as I interpret it, does not limit the state to outdated statistics when reapportioning between decennial periods. If this is not true, then we are severely limited in complying to the "one person, one vote" equality concept and the current exercise of the Reapportionment Board is diminished in value. Another approach should be considered that is much more reliable and annually takes into consideration the annual fluctuation of population, also. The true military resident count should be added to the Constitution.

I would like to bring to your attention the potential use of statistics completed by the Department of Revenues for recipients of the Permanent Fund dividends. If we are going to reapportion it seems only logical and certainly within the constitution concept of "one person, one vote" equality to use the best census available. While the Federal census of 1980 shows 400,000 plus residents, the Permanent Fund dividends of 1982 has verified 474,000 plus residents. Thus, in the current scheme of reapportionment, almost twenty percent of the population will not be considered for the quotient obtained divided by forty. Alaska can be quite unique in its abilities of combining this new program and using its statistic to allow other departments, commissions, and legislature to share the information of exactly where the people are.

Combining the total recipients of 1982 Permanent Fund checks with the U.S. Post Office zip code numbers makes it easy for any reapportionment committee to combine an equal number for each political districts. [See attached letter and stats - Nov 3, 1983] This obviously is a far superior method of census counting than any yet devised. We know these citizens have been checked for residency and volunteer the information of each household with no additional cost to the state. A most unique aspect in this program is the pre-counting of persons. It allows a pregnant woman of six month pre-birth to count the child to be and receive a dividend check.

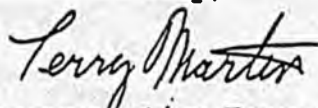
The 1983 P.F. statistics can be readily obtained if you approve of the concept for Governor Sheffield's Reapportionment Board. This applied to the latest zip codes of each city, municipality and village will help decrease conflicting reports from various state agencies and local governments as to how many people live where.

Judge Souter, I appeal to you to ask the present Board appointed by Governor Sheffield to reapportion the whole State of Alaska and to use the very latest and factual statistics available - namely the 1983 Permanent Fund Dividend recipients.

If you would like to explore this concept with me personally or need additional information, I will make myself available at your convenience.

Thank you very much for your consideration of my request. I look forward to hearing from you soon.

Most sincerely,



Representative Terry Martin

TM:jl

Enclosures:

P.S. Currently I am having the Legislative legal service research for legislation to be introduced in January 1984 to allow for the above to be voted on in the 1984 November election and to include a clause to specifically count military residents for purposes of political reapportionment.

cc: Governor William Sheffield  
Attorney General's Office  
Senate President Jay Kerttula  
Speaker Joe Hayes  
Supreme Court Chief Justice Edward Burke



Official Business

# Alaska State Legislature

## House of Representatives

Fouch V  
State Capitol  
Juneau, Alaska 99811

November 14, 1983

FOR IMMEDIATE RELEASE  
CONTACT: Rep. Terry Martin  
333-6990

### REP. TERRY MARTIN SAYS PERMANENT FUND STATISTICS SHOULD BE USED FOR REAPPORTIONMENT

ANCHORAGE - Rep. Terry Martin is asking the Superior Court to have the Sheffield administration use population statistics compiled from the Permanent Fund Dividend program as a basis for reapportioning the state's election districts.

In a letter sent to Superior Court Judge Milton Souter on Monday, Martin said the Permanent Fund Dividend program's statistics were the most current and accurate population figures available for reapportionment. Martin also asked that the entire state be reapportioned using these statistics.

"While the federal census of 1980 shows 400,000 plus residents, the Permanent Fund dividends of 1982 has verified 474,000 plus residents," Martin said. "Thus, in the current scheme of reapportionment, almost 20 percent of the population will not be considered" in the pending reapportionment process.

Martin, R-Anchorage, said because the Permanent Fund Dividend applications have already been thoroughly checked for accuracy, the program offers a unique and inexpensive means of determining a current population count.

"This obviously is a far superior method of census counting than any yet devised," Martin said. "We know these citizens have been checked for residency and volunteer the information of each household with no additional cost to the state."

Martin added, "A most unique aspect in this program is the pre-counting of persons. It allows a pregnant woman of six month pre-birth to count the child to be and receive a dividend check."

Martin said equitable election districts could be designed by using the program statistics and postal zip codes.

"Judge Souter, I appeal to you to ask the present (reapportionment) board appointed by Gov. Sheffield to reapportion the whole State of Alaska and to use the very latest and factual statistics available - namely the 1983 Permanent Fund Dividend recipients," Martin concluded in the letter.

Martin said he is also having the Legislative legal service conduct research on his behalf for legislation which would allow Martin's recommendation to be voted on in the 1984 general election, and also include a clause which would specifically count military residents for political reapportionment. Martin intends to introduce the legislation at the beginning of the upcoming session in January 1984.

#

#

#

#

#

#

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

November 18, 1983

~~Healey will be~~  
~~back~~ I'll try to  
get back to me today  
or first thing  
tomorrow

for 1:30 meeting:  
get there early &  
let Willie Hensley  
know you're there -  
he'll get you on early.

Terry - afternoon  
~~evening meeting~~  
Class at 3:00, so  
before that.

Dear Legislator:

William Hensley, Chairman of the Reapportionment Board, requested that I provide all incumbent legislators with the various proposed plans adopted by the 1983 Reapportionment Board. As you know, the Alaska Supreme Court ruled that the 1981 Plan improperly included the Cordova area within House District 2. With the advise of the Reapportionment Board, Governor Sheffield must therefore formulate amendments to the 1981 Plan which relocates the Cordova area and which satisfies the constitutional guarantee of equal representation.

The Reapportionment Board recently concluded a series of meetings in Juneau, during which the Board drafted two proposed plans for amending the 1981 Plan. Included in the packet is a news release which fully explains the proposed changes. The Board has not as yet had an opportunity to address whether changes in either Senate districts or Senate terms is advisable.

The news release also describes the public hearings scheduled by the Board. You are, of course, invited to attend any of the scheduled public hearings. If you would like to offer comments to the Board, but are unable to attend a scheduled public hearing, you may submit written testimony. All written testimony should be mailed by December 5, 1983, to:

Reapportionment Board  
Pouch A  
Juneau, AK 99811

If you need any additional information please feel free to contact the Reapportionment staff at 465-3538.

Sincerely, *Dana LaTour*  
Dana LaTour  
Staff Assistant

*Testimony is important!*

Enclosures

Alaska State Legislature

REPRESENTATIVE  
**TERRY MARTIN**

DISTRICT 8  
CHAIRMAN—LABOR AND COMMERCE COMMITTEE  
PHONE 465-3873



3960 REKA DRIVE—D6  
ANCHORAGE, AK 99504  
PHONE 333-6990

DURING LEGISLATURE  
POUCH V  
STATE CAPITOL  
JUNEAU, AK 99811  
PHONE 465-3784

December 29, 1983

Mr. Willie Hensley  
c/o Reapportionment Board  
Pouch A  
Juneau, AK 99811

Attention: Karen Rehfeld

Dear Mr. Hensley:

A copy of the Board's most recent reapportionment plan (Dec.19) was most appreciated and I take this opportunity to express my concerns.

Because of past actions of the 1981 Reapportionment Board, Judge Souter's very restrictive directions, Governor Sheffield's concerns that all persons be counted, outdated constitution wording and fast growing, population, your Board faces an impossible task and is severely hampered in doing a responsible and constitutionally sound job of reapportionment. The previous Board's action seriously discriminated against the majority of Alaska's true population. All plans thus far proposed by your Board only exasperate the problem of meeting the superior requirement of one person equals one vote.

In order to save excessive court costs in the immediate future, I believe it imperative that the Board request Gov. Sheffield to ask Judge Souter and/or the Alaska Supreme Court to lift the current restrictions imposed and allow a statewide reapportionment that will properly use Federal census figures of 1980 (if we must be limited to this) and insure equal and fair representation for all Alaskans.

Admittedly this may delay reapportionment taking place until after the 1984 election but in the long run, without broader direction for the Board and considering the court's previous recommended changes in Alaska's constitution, all your current efforts seem futile.

Please also consider the following points of views on the past and present reapportionment plans.

Yours very truly,

A handwritten signature in cursive script that reads "Terry Martin".

Rep. Terry Martin

cc: Board Members  
Executive Director  
Gov. Wm. Sheffield  
Speaker of House

Senate President  
Media  
Attorney General's Office

In the wake of the Carpenter v. Hammond decision it seems that the current Board has strayed from the controlling consideration in reapportionment - one man, one vote. The 1980 Board strove to keep combined variances between any two districts below ten per cent. This ten per cent total population variance (from highest to lowest) seems to be the rule of thumb. In Carpenter v. Hammond, Judge Moore required the adjustment of district boundaries in Southwest Alaska to reduce the combined population variance between Districts 25 and 26 (11.5%).

The current Board appointed by Governor Sheffield, seems to weigh the socio-economic guideline (brought out in the Carpenter Case) equal to if not more important than equally populated districts. In the original reapportionment plan (June 10, 1981) there was only one variance between districts greater than ten per cent and Judge Moore required adjustment of those districts. In the plan adopted by the current Board on Dec. 19, 1983 (Plan 2) there are 28 cases where combined variances between districts exceed ten per cent. (TABLE X) Granted, there may be uncontrollable factors involved, but to leap from 1 to 28 seems excessive.

In examining past Supreme Court decisions the basis for apportionment is clearly stated. The opinion of the U.S. Supreme Court in Wesberry v. Sanders 376 U.S. 1 at 180 was: "While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives." And although the previous quote refers specifically to Federal Representatives, the same applies to state legislatures as noted in the opinion of the Alaska Supreme Court in Egan v. Hammond, Alaska 502P2d 856 at 875: "Under the Equal Protection & Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowing from malapportionment of either the House of Representatives or the Senate."

Some would argue that the Alaska State Constitution provides guidelines other than population alone to be used for reapportionment. While continuity, compactness, and socio-economic integration can be considered, they are not to be the controlling factors. This point is in the U.S. Supreme Courts opinion in Reynolds v. Sims 377 U.S. 533 at 579-580: "But neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population - based representation." In the same opinion on page 581 the Justices noted, "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired."

In utilizing the variance concept to achieve equitable representation, there must be an underlying assumption of randomness in those variances. If one region is biased with non-random variations then the cumulative effect of those variations can be substantial. Southeast Alaska is a good example of these non-random variances and their effect. With 5 of 6 S.E. districts having significant negative variations, the average negative variation for all 6 seats is 3.5%.

While statistics are useful aids for comparison, they can also be quite misleading. In Reapportionment Plan 2 (Dec 19, 1983) the average population variance in Southeast from the ideal House seat size is -3.5%. The variance for the 17 Anchorage seats from the ideal is +1.8%. (TABLE I)

Neither variance sounds excessive, but when actual numbers from Southeast and Anchorage are compared, the problem becomes apparent. The total population for six Southeast House seats is 53308 or 8885 per seat. Likewise, Anchorage's population is 159,466 for 17 seats or 9380 per seat. Direct comparison shows a difference of 495 people per average seat size. (TABLE I)

While individual variances may seem reasonable, the cumulative effect is not. Essentially, Anchorage is under represented by 495 people per seat. For 17 Anchorage seats that works out to 8415 people, which is a significant number when compared with the Southeast seat size of 8885 and the ideal seat size of 9211. Anchorage is under represented by one seat. (TABLE II)

When comparing the rest of Alaska (excluding Anchorage) with Southeast similar problems occur. There is a 271 person per seat difference between Southeast and the rest of Alaska. This works out to a cumulative inequity of 4607 people between the two regions. The total overpopulation for the whole state vs. Southeast is 8415 (Anchorage) + 4607 (Remaining Alaska) or 13022. This emphasizes that not only is most of Alaska under represented, but that Southeast Alaska is over represented when compared with the rest of the state. (TABLE III)

As noted in the order of the Alaska Supreme Court in Egan vs. Hammond, Alaska, 502P2d 850 at 875: "Under the Equal Protection and Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowing from malapportionment of either the House of Representatives or the Senate."

While there have been instances where Courts have upheld reapportionment plans with variances greater than ten per cent, there are usually specific reasons for this. In Abate v. Mundt, 403 U.S. 182, the U.S. Supreme Court upheld an 11.9% total variance due to historical considerations and the fact that there were no built in bases which favored a certain area or interest. Just the opposite is true in Alaska. The variances in the reapportionment plan are strongly biased in favor of Southeast Alaska and against the Anchorage area.

In Kilgarlin v. Hill, 386 U.S. 120, the U.S. Supreme Court set a precedent in allowing a combined variance of 26.48%. They reasoned that the under populated area had a high growth rate and would soon have the population to eliminate the variance. In examining Alaska's reapportionment under this growth principle, inequities surface once again. Those areas growing fastest, which would soon justify more representation are the regions with the highest variances above the average. North Kenai - South Anchorage (+4.0%), Campbell-Hillside (+4.4%), Turnagain-Sandlake (+4.0%), Kenai-Cook Inlet (+4.2%) are all rapidly expanding, yet they all have large positive variances. It seems the Board could at least consider growth areas and rather than becoming more under represented, a region could grow into fair representation.

The major problem with all the reapportionment plans is the unequal representation afforded certain regions of the state. The 1981 Board made some mistakes which when coupled with mandates from the Carpenter v Hammond case further exacerbate the problem.

Throughout the reapportionment process the Anchorage area has been allocated more people and the Southeast region has been allocated less. This is specifically due to three things; the movement of Cordova out of Southeast, the alternative treatment of the military, and the 1980 census revisions. All of these further the inequity of representation between the two regions.

The 1981 Board received its official census data on March 12, 1981. The first Draft of the reapportionment plan, issued May 5, 1981, did not include an April Census revision which added 1414 people to Eagle River, 50 to the Mat Su Borough and subtracted 94 from the S.E. Fairbanks area. The Board still did not consider the corrections when it made revisions and issued its final plan on May 22, 1981.

Reasons for not using the updated census data are unknown. Fortunately, the current board appointed by Gov. Sheffield has utilized these corrections in at least one of its reapportionment plans (2). The reasons for still considering Plan I, which doesn't use corrected data, are unclear. The 1414 people in Eagle River need to be represented. They can't be just overlooked.

The 1981 Board utilized a plan to consider a certain proportion of military personnel as residents for reapportionment purposes. In the original reapportionment plan (June 10, 1981, resident military personnel were determined at only 7 major military installations (Elmendorf, Eilson, Ft. Wainwright, Ft. Richardson, Ft. Greeley, Adak Naval Base, and the Kodiak Coast Guard Station). This resulted in 31,363.8 non-resident military personnel. Since all military were included in Alaska's population during the 1980 Federal census, these 31,363.8 were subtracted from the census figures to arrive at Alaska's resident population for reapportionment ( $400,481 - 31,353.7 = 369,117.2$ ).

Problems arise in the application of the plan. Why did the 1981 Board only consider the seven major military installations? They didn't include approximately 2491 other military personnel throughout the state. Of the 2491 only 424 were considered residents. Therefore 2067 more people should be subtracted from the total state population to arrive at the base figure for reapportionment.

Fortunately, the current Board has considered these additional personnel in formulating both of their reapportionment plans (Plan 1 and Plan 2). The only criticism to be levied upon the current Board is their lack of public disclosure. No where do they explain this exclusion of the additional 2067 non-resident military personnel in the current plans (Plan 1 & 2). The population figures change in many districts without any explanations or indications of change.

In the Carpenter v Hammond case the Alaska Supreme Court decided that Cordova was not similar enough in socio-economic terms to be included in the Iceworm District. Their mandate was to take Cordova out of the Southeast district and move it elsewhere. This snift reduced Southeast's population base by 2241.

Also, in Carpenter v Hammond, Judge Souter,, who has jurisdiction in the case, ordered that the reapportionment be done consistent with federal and state constitutional requirements of equal representation, but with the fewest possible changes to the original plan (June 10,1981). All of these guidelines make the current Boards reapportionment job extremely difficult.

To tie in all three problem areas it must be noted again that throughout the reapportionment process, Anchorage has been gaining people and S.E. has been losing them, resulting in an unacceptable imbalance of representation. Due to the census correction, Anchorage area gained 1414 people. As a result of considering additional non-resident military, rural Alaska lost 2067 people, and specifically Southeast lost 484. Most significant of all is moving Cordova, thus reducing Southeast's population by another 2241 people. So, as a result of the reapportionment the disparity between Anchorage and Southeast has grown by 4139 people (1414 + 2241 + 484).

Since the Carpenter v. Hammond case which required removal of Cordova from the Iceworm District, the current Board seems to be picking and choosing when to apply the socio-economic test and when not to. In Plan 2 (Dec. 19,1983) Port Graham and English Bay were reincluded in District 5 because of the feeling from public testimony that their ties were with Seldovia and Homer. This move increased the variances of both Districts 5 and 6, but the Board made the move because of the economic ties and they felt it was reaching a long way from Prince William Sound just to include these two communities.

The same socio-economic and distance arguments can be made for Metlakatla in Southeast, yet no changes were made. The people of Metlakatla have strongly voiced their desire to be politically attached to Ketchikan only a few miles away and not be forced to vote for a representative that lives four or five hundred miles away. All of their ties are with Ketchikan - social, economic, transportation, communication, yet Metlakatla is included with Yakutat, Haines and Skagway who are far away and have few if any direct ties. It seems the Board is reaching as far in this Southeast District as it did with Port Graham and English Bay, yet no changes have been made.

Including Nikishki (North Kenai) in one district with South Anchorage seems as bad as the above cases. People from North Kenai and South Anchorage have expressed their displeasure at being combined into one district. All of Nikishki's ties are with Kenai. Travel must be through Kenai to get to Anchorage. Nikishki belongs to the Kenai school district not Anchorage. Again, despite few ties between two areas and public opposition the Board has placed them in the same district.

Why are a few blocks from Muldoon placed in District 15 which is primarily Eagle River-Chugiak? Why is Tyonek, an area in the Kenai School District and with all its ties to Anchorage or Kenai, the only coastal village in a huge district stretching far into the Interior? It seems that the current Board lacks a consistent set of guidelines to apply during the reapportionment process.

One guideline which would improve representation would be to fashion all single member House and Senate seats. The history of Alaska since the Statehood convention of 1955-56 has shown a continuous effort to move toward single member elected House and Senate seats. Catering to this principle that insures and enhances one person one vote will readily decrease the problems of equal representation and drawing of election boundary lines.

Single member seats would guarantee that your representative would live in your District. One strong block of voters, such as Eagle River or downtown wouldn't be able to elect both representatives for the whole election area.

Single seat districts further guarantee representation for neighborhoods in large urban areas. In the future Fairview and Mountain View will always be sure of a Representative that truly lives in their area. Chugiak-Eagle River can easily support its own single Senate seat and two House seats. Under the current districts (1981) there are no Senators living in District 13. If Plan 2 (Dec. 19, 1983) were adopted and the current Senators were re-elected, Districts 13 and 14 (all of east Anchorage) would lack senators living in their district.

Multi-member districts also discriminate against the political candidates in them. It costs a lot more to run a campaign focused at 18,500 people (multi-member district size) than one for 9250 people. Single member districts make it more feasible (less money) for the average person to run for office. And once in office it costs less for mailouts to smaller districts. Fewer people to represent would hopefully result in better representation. In large districts (area wise) single seats cut down the distance a representative must travel to physically meet constituents.

It must be noted again that many of the problems mentioned in this report are unsurmountable when working within the constraints given the current Board. The Boards current plans (1 and 2) which discriminate against a large number of people and many regions of the state, will no doubt face expensive and time consuming litigation. Rather than end up with a patch-work reapportionment that must be lived with until 1990, why not take the necessary time and use specific guidelines to fashion a fair and equitable state reapportionment plan.

TABLE I

Anchorage vs Southeast

Plan 2  
Dec. 19, 1983

Southeast 6 House Seats

Anchorage

| <u>District</u>                   | <u>Population</u> | <u>Variance</u> | <u>District</u> | <u>Population</u> | <u>Variance</u> |
|-----------------------------------|-------------------|-----------------|-----------------|-------------------|-----------------|
| D1                                | 16602             | -9.9            | D7              | 9580              | +4.0            |
| D2                                | 8924              | -3.1            | D8              | 19231             | +4.4            |
| D3                                | 8449              | -8.3            | D9              | 19156             | +4.0            |
| D4                                | 19333             | +4.9            | D10             | 18184             | -1.3            |
| 6/53308 =                         |                   | 8885/seat       | D11             | 18804             | +2.1            |
| Ave. S.E. variance) 3.5%          |                   |                 | D12             | 18678             | +1.4            |
| Ave. Anchorage Variance +1.8%     |                   |                 | D13             | 19173             | +4.1            |
| State Total 368,420 ÷ 40 = 9210.5 |                   |                 | D14             | 18265             | - .1            |
|                                   |                   |                 | 17/159466 =     |                   | 9380/seat       |

Difference per average seat Anchorage vs S.E. 9380 - 8885 = 495

Total people not represented in Anchorage 495 x 17 = 8415

TABLE II

Southeast vs Anchorage

Plan 2  
Dec 19, 1983

Total Population            53308 + 159466 = 212774  
                                 Southeast Anchorage

Ave Juneau Seat Size 8885            212774 ÷ 8885 = 23.95

$$23.95 - 6 = 17.95$$

Should be 6 seats in Juneau and 18 in Anchorage

S.E.

Anchorage

$$6 / \overline{53308} = 8885/\text{seat}$$

$$17 / \overline{159466} = 9380/\text{seat}$$

Ave S.E. variance - 3.5%

Ave Anch variance + 1.8%

$$9380 - 8885 = 495/\text{seat}$$

$$495 \times 6 = 2970$$

$$495 \times 17 = 8415$$

TABLE III

Remaining AK (excluding Anch) vs Southeast

Plan 2  
Dec. 19, 1983

Remaining Alaska (excluding Anch)

Southeast 6 seats

| <u>District</u> | <u>Population</u> | <u>Variance</u> |
|-----------------|-------------------|-----------------|
| D5              | 19190             | +4.2            |
| D6              | 8598              | -6.7            |
| D16             | 17692             | -3.9            |
| D17             | 8918              | -3.2            |
| D18             | 9300              | + .9            |
| D19             | 8934              | -3.0            |
| D20             | 18320             | - .5            |
| D21             | 9247              | + .4            |
| D22             | 8999              | -2.3            |
| D23             | 9339              | +1.4            |
| D24             | 8936              | -3.0            |
| D25             | 9432              | +2.4            |
| D26             | 9158              | - .6            |
| D27             | 9592              | +4.1            |

$17 / 155655 = 9156 / \text{seat}$

| <u>District</u> | <u>Population</u> |
|-----------------|-------------------|
| D1              | 16602             |
| D2              | 8924              |
| D3              | 8449              |
| D4              | 19333             |

$6 / 53308 = 8885 / \text{seat}$

$$\begin{array}{r} 9210 \\ -9156 \\ \hline 54 \\ 54 \\ \hline 9210 = -0.6\% \end{array}$$

$$\begin{array}{r} 9210 \\ -8885 \\ \hline 325 \\ 325 \\ \hline 9210 = 3.5\% \end{array}$$

$$\begin{array}{r} 9156 \quad 271 \\ -8885 \quad x17 \\ \hline 271 / \quad 4607 \end{array}$$

seat \*

Anchorage vs Remain Alaska (excluding S.E.)

Plan 2  
Dec. 19, 1983

|        |          |                |             |       |
|--------|----------|----------------|-------------|-------|
| Anch   | 17 seats | 159466         | 9380        | +1.8% |
| Alaska | 17 seats | <u>-155656</u> | <u>9156</u> | -0.6% |
|        |          | <u>3820</u>    | 224/seat    |       |

Anchorage vs Rest of Alaska (including S.E.)

|        |          |        |                  |       |
|--------|----------|--------|------------------|-------|
| Anch   | 17 seats | 159466 | 9380/seat        | +1.8% |
| Alaska | 23 seats | 208954 | <u>9085/seat</u> | -1.4% |
|        |          |        | 295/seat         |       |

295  
x17  
5015

Plan 1

S.E. 6 seats

Anchorage 17 seats

| <u>District</u> | <u>Population</u>           |
|-----------------|-----------------------------|
| D1              | 16602                       |
| D2              | 8924                        |
| D3              | 8449                        |
| D4              | 19333                       |
|                 | <u>6/ 53308 = 8885/seat</u> |

Ave S.E. Variance = -3.2%  
Ave S.E. Seat size = 8885

| <u>District</u> | <u>Population</u>             |
|-----------------|-------------------------------|
| D7              | 9110                          |
| D8              | 18269                         |
| D9              | 18005                         |
| D10             | 19083                         |
| D11             | 18960                         |
| D12             | 18170                         |
| D13             | 18908                         |
| D14             | 19032                         |
| D15             | 18561                         |
|                 | <u>17/ 158053 = 9297/seat</u> |

Ave Anch Variance = +1.3%  
Ave Anch Seat size = 9297

$$9297 - 8885 = 412/\text{seat}$$

$$6 \text{ S.E. seats vs } 6 \text{ Ave Anch seats } \quad 53308 - 55782 = 2474$$

$$6 \text{ S.E. seats vs } 6 \text{ most populated Anch seats } \quad 57030 - 53308 = 3722$$

$$\text{Total Anch under represented vs. S.E.} = 17 \times 412 = 7004$$

$$\text{Total Alaska under represented vs. S.E.} = 7004 + 4641 = 11645$$

TABLE X

Districts With Combined Variances  
Greater Than Ten Percent

| <u>Districts</u> | <u>Variances</u> | <u>Districts</u> | <u>Variances</u> |
|------------------|------------------|------------------|------------------|
| 1 v. 4           | 9.9 + 4.9 = 14.8 | 3 v. 4           | 8.3 + 4.9 = 13.2 |
| 1 v. 5           | 9.9 + 4.2 = 14.1 | 3 v. 5           | 8.3 + 4.2 = 12.5 |
| 1 v. 7           | 9.9 + 4.0 = 13.9 | 3 v. 7           | 8.3 + 4.0 = 12.3 |
| 1 v. 8           | 9.9 + 4.4 = 14.3 | 3 v. 8           | 8.3 + 4.4 = 12.7 |
| 1 v. 9           | 9.9 + 4.0 = 13.9 | 3 v. 9           | 8.3 + 4.0 = 12.3 |
| 1 v. 11          | 9.9 + 2.1 = 12.0 | 3 v. 11          | 8.3 + 2.1 = 10.4 |
| 1 v. 12          | 9.9 + 1.4 = 11.3 | 3 v. 13          | 8.3 + 4.1 = 12.4 |
| 1 v. 13          | 9.9 + 4.1 = 14.0 | 3 v. 25          | 8.3 + 2.4 = 10.7 |
| 1 v. 18          | 9.9 + 0.9 = 10.8 | 3 v. 27          | 8.3 + 4.1 = 12.4 |
| 1 v. 21          | 9.9 + 0.4 = 10.3 |                  |                  |
| 1 v. 23          | 9.9 + 1.4 = 11.3 | 6 v. 4           | 6.7 + 4.9 = 11.6 |
| 1 v. 25          | 9.9 + 2.4 = 12.3 | 6 v. 5           | 6.7 + 4.2 = 10.9 |
| 1 v. 27          | 9.9 + 4.1 = 14.0 | 6 v. 8           | 6.7 + 4.4 = 11.1 |
|                  |                  | 6 v. 9           | 6.7 + 4.0 = 10.7 |
|                  |                  | 6 v. 13          | 6.7 + 4.1 = 10.8 |
|                  |                  | 6 v. 27          | 6.7 + 4.1 = 10.8 |



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 6, 1984

The Honorable Terry Martin  
State Representative  
Pouch V  
Juneau, AK 99811

Dear Mr. Martin:

Thank you for your recent letter expressing your concerns with the 1981 Reapportionment Plan, the restrictions placed on this Board by the Court, and our current proposals to amend the plan. We appreciate your time in preparing the extensive background information that accompanied your letter.

First, let me say that it is unlikely that this Board would encourage Governor Sheffield to seek authority from the Court to undertake a comprehensive redistricting of the state. Although we understand and appreciate your contention that there may have been serious problems with the work of the previous board, it appears the courts have already made their decision on the validity of that plan.

Secondly, we have been subjected to criticism from those who believe we have already gone too far in making our revisions. Those criticisms center around the use by this Board of official corrections made by the U.S. Bureau of the Census to the 1980 census counts for Alaska. These corrections were not available to the 1981 Board. As you know, our state constitution requires that reapportionment utilizes federal census data. We feel that this implies use of the most accurate census data available.

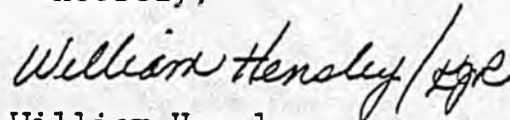
Finally, we realize that some people will be unhappy with our recommendations. Reapportionment is a very difficult task and one that is surrounded by controversy. Given the history of reapportionment litigation in our state, it is

January 6, 1984

likely that this plan will face legal challenge. Please be assured that this Board has made every effort to follow the constitutional and court-mandated guidelines in developing our proposal.

Thank you again for your letter.

Sincerely,

A handwritten signature in cursive script that reads "William Hensley" followed by a stylized flourish.

William Hensley  
Chairman  
Reapportionment Board

cc: Governor Sheffield  
Senator Jalmar Kerttula  
Representative Joe Hayes  
Attorney General Gorsuch  
Press



Official Business

# Alaska State Legislature

Pouch V  
State Capitol  
Juneau, Alaska 99811

January 9, 1984

FOR IMMEDIATE RELEASE  
CONTACT: REP. TERRY MARTIN  
465-3783 or 465-3784

## REP. MARTIN SEEKS CONSTITUTIONAL AMENDMENT ON REAPPORTIONMENT PROCESS

JUNEAU - Rep. Terry Martin today introduced a House Joint Resolution which would place a constitutional amendment to alter the state's reapportionment process on the 1984 general election ballot.

Martin said the constitutional amendment is needed to "correct the potential for party politics of being the major consideration for reapportionment."

As proposed in HJR 53:

- The entire state would be reapportioned into single-member House and Senate election districts;
- Only a two percent disparity in population will be allowed statewide and no more than five percent disparity per district;
- All military personnel and their families must be counted equally throughout the state.

"This resolution calls for the necessary changes in the state constitution pertaining to equality of representation for all Alaskans," said Martin, R-Anchorage.

"A major feature of this is to correct a problem that discriminates against military residents," Martin said. "As it is now, most military residents are treated like second-class citizens."

Currently, most military residents living in the southeast and southwest portions of the state are counted as "100 percent" residents. But in Anchorage and Fairbanks, Martin said, the military residents count as only "15 percent" residents. This inequitable formula, Martin said, inflates the population statistics for the southern parts of the state while "robbing Anchorage and Fairbanks of equal representation."

"The disparity from district to district is appalling," Martin said. "Some areas, primarily Anchorage, are under represented."

Martin said his resolution would allow only a five percent disparity in population in each district "with some justification for socio-economic factors."

"But in the last reapportionment (1980) and the current reapportionment negotiations, the boards have put socio-economic factors ahead of equal representation."

Martin said he is confident the resolution would be approved by the voters, "If this does pass both houses I'll be surprised," Martin said. "It won't allow them to play as many games."

But Martin said he felt the public, if given the opportunity, would support his measure.

"It's fair, it's equal and I just hope the other members of the legislature put aside party politics and vote for something that allows the state equal representation for all residents.

"This is really getting down to the fundamentals of pure democracy," Martin concluded. "The goal is to get this on the ballot and let the people see the value of it and vote accordingly."

#

#

#

#

#

#

# Plan would redistrict entire city

by Ryan

**State Bureau**  
**ureau** — All nine of Anchorage legislative election districts would have their boundaries changed under one of two primary plans developed Wednesday by the state's reapportionment board. A second plan put forward by the panel would make what at first glance appears to be only minor changes in five of the nine election districts. The reapportionment board,

appointed Oct. 20 by Gov. Bill Sheffield, is scheduled to present the Sheffield with a final plan for redrawing the state's election lines by Jan. 3. The governor then has until Feb. 4 to adopt a plan of his own, employing the board's recommendations as he sees fit.

Last month, Judge Milton Souter ordered that a new reapportionment board be created.

Souter's action was in response to a July ruling by the state supreme court, which held that a 1981 reapportionment

board erred when it included Cordova in the so-called "Iceworm" election district — a 700-mile-long corridor extending from Prince William Sound to the southern tip of the Alaska Panhandle.

In ordering the new board, Souter directed that it shift a minimum of existing election district boundaries. He also ordered that the board only use census data available at the time the 1981 reapportionment was challenged.

Jon Rubini, an assistant state attorney general serving as the board's lawyer, said the panel developed two plans because, due to a clerical error, the 1980 U.S. Census failed to count 1,039 people in the Eagle River area.

If those people are included in a redistricting plan, he said, it will be necessary to draw new boundaries for all of Anchorage's election districts.

Rubini said, Souter's instructions were "do not use adjustments."  
 See GOPs, page A-10

0 The Anchorage Times, Thursday, November 10, 1983

## GOPs blast plan

Continued from page A-1

Based on the census data which was not adjusted prior to (the challenge of the 1981 reapportionment).

Technically, these adjustments were released by the Census Bureau prior to (that challenge). We certainly recognize it's not within the spirit of the judge's order."

But to ignore the new census figures for Eagle River, Rubini could render a new reapportionment plan subject to legal challenges.

It's not right that if we know there was a clerical error in the magnitude of 1,000 people, it's fair to the people of that side of the state that their reapportionment would be based on erroneous numbers."

Anchorage Republicans, however, said today that the idea of shifting the new Eagle River census data is a ruse by the Democratic-controlled board to get under Anchorage's political skirts.

An initial look at the options would shift the lines the board dramatically indicates they would force some incumbent Republicans from Anchorage out of

One option would put Reps. Charlie Bussell, John Lindauer, Terry Martin and John Cowdery in the same two-seat district; and Reps. Ramona Barnes, Walt Furnace and Jerry Ward in another two-seat district.

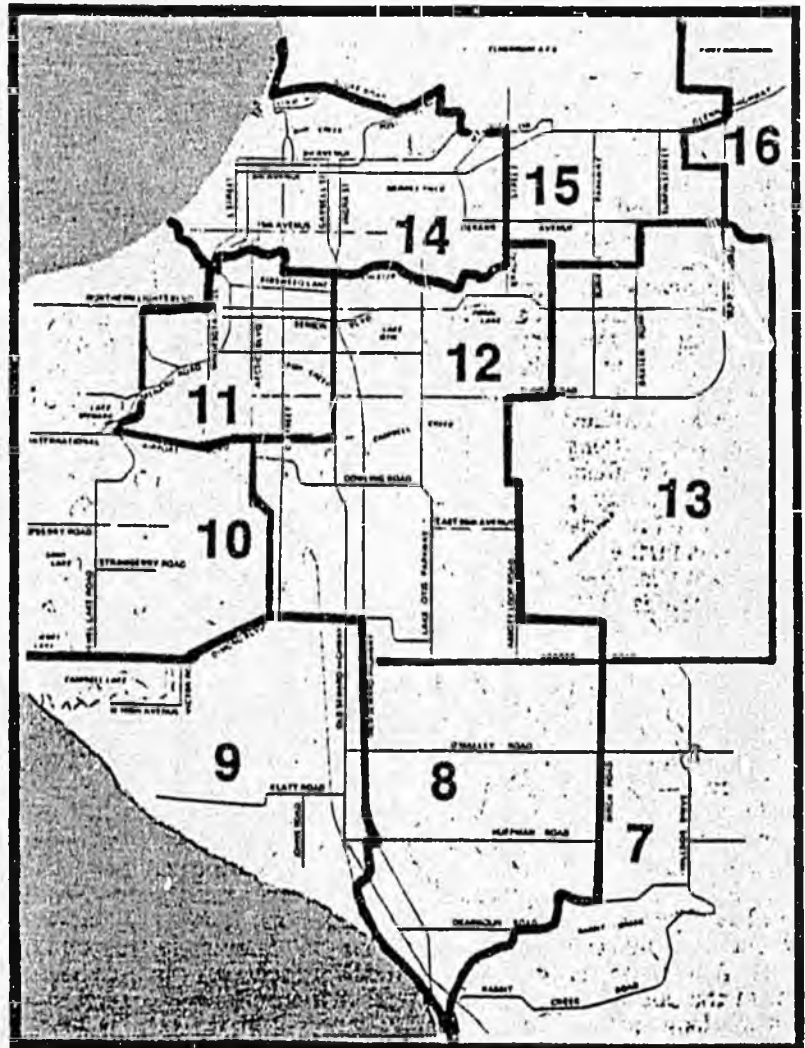
The other option would put Barnes, Ward, Lindauer and Furnace in a two-seat district.

"The key to this whole reorganization is whether they're going to count increased population out in Eagle River-Chugiak. If they can do that, they're going to use that as an excuse to rewrite the entire Anchorage area," said Sen. Tim Kelly, R-Anchorage.

Another Anchorage Republican, Sen. Arliss Sturgulewsk, said that even if the new Eagle River numbers are counted, wholesale redistricting in Anchorage will not be necessary.

Jeff Day, a spokesman for House Speaker Joe Hayes, R-Anchorage, said, "There appear to be substantial changes in most of the districts, and you'd have to question whether those changes are really necessary."

Willie Hensley, chairman of the reapportionment board, could not be reached for comment this morning on the Republicans' statements.



Charles Atkins for The Times

A reapportionment option that would take care of Eagle River undercount

ARTICLE VI

LEGISLATIVE APPORTIONMENT

Election Districts

SECTION 1. Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.

Senate Districts

SECTION 2. Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.

Reapportionment of House

SECTION 3. The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon civilian population within each election district as reported by the census.

Method

SECTION 4. Reapportionment shall be by the methods of equal proportions, except that each election district having the major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Combining Districts

SECTION 5. Should the total civilian population within any election district fall below one-half of the quotient, the district shall be attached to an election district within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article.

Redistricting

SECTION 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.

Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

Modification of Senate Districts

SECTION 7. The senate districts, described in Section 2 of Article XIV, may be modified to reflect changes in election districts. A district, although modified, shall retain its total number of senators and its approximate perimeter.

Reapportionment Board

SECTION 8. The governor shall appoint a reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

Organization

SECTION 9. The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members is required for a ruling or determination, but a lesser number may conduct hearings or otherwise act for the board.

Reapportionment Plan and Proclamation

SECTION 10. Within ninety days following the official reporting of each decennial census, the board shall submit to the governor a plan for reapportionment and redistricting as provided in this article. Within ninety days after receipt of the plan, the governor shall issue a proclamation of reapportionment and redistricting. An accompanying statement shall explain any change from the plan of the board. The reapportionment and redistricting shall be effective for the election of members of the legislature until after the official reporting of the next decennial census.

Enforcement

SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

ARTICLE VII

HEALTH, EDUCATION, AND WELFARE

Public Education

SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

State University

SECTION 2. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for and conveyed to it. Its property shall be administered and disposed of according to law.

Board of Regents

SECTION 3. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance

Public Health

Public Welfare

Statement of Policy

General Authority

Common Use

Sustained Yield

Facilities and Improvements

State Public Domain

with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

SECTION 4. The legislature shall provide for the promotion and protection of public health.

SECTION 5. The legislature shall provide for public welfare.

ARTICLE VIII

NATURAL RESOURCES

SECTION 1. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

SECTION 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

SECTION 3. Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use.

SECTION 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

SECTION 5. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

SECTION 6. Lands and interests therein, including submerged and tidal lands, possessed or

# MEMORANDUM

Note Copy

# State of Alaska

TO: William Hensley, Chairman  
Reapportionment Board

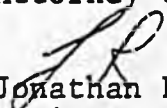
DATE: January 10, 1984

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Legal review of  
proposed reapportionment  
plan

By:  Jonathan B. Rubini  
Assistant Attorney General

Following the Reapportionment Board's (Board) tentative adoption on December 16, 1983 of proposed amendments to the 1981 Reapportionment Plan (Plan), the Department of Law requested an opportunity to review certain legal concerns which had been raised during the course of the Board's deliberations. Our legal review of several probable areas of concern are set forth in this memorandum. We caution, however, that the law relating to reapportionment is, in many respects, quite unsettled and that, as a consequence, our legal analysis is intended more as an indication of probable judicial analysis than as a statement of legal validity. 1/

## I. Southeast Alaska

The proposed configuration of districts in Southeast Alaska retains the conceptual approach embodied in the 1981 Plan. Cordova, of course, has been removed from District 2. To retain the concept of a predominantly rural, "island chain" district, the communities of Metlakatla and Hoonah were removed from Districts 1 and 3 respectively, and relocated into District 2. In other respects, the 1981 Plan is unchanged. The comparative variation of this proposed plan is 14.8 percent, with District 4 (Juneau) the most overpopulated district, and District 1 (Ketchikan) the most underpopulated.

---

1/ To assist in this review, the Department of Law engaged the law firm of Sanosky, Chambers, Sachse & Guido, a firm located in Washington, D.C. with substantial expertise in the areas of reapportionment law. The views of the Sanosky firm are included within this memorandum.

To evaluate the proposed configuration, we assess the proposed Plan as opposed to Southeast Option No. 5, an alternative option considered by the Board which rejects the concept of District 2, and instead divides the region in a more horizontal fashion. Under this plan, District 1 would be a two-member district which includes Ketchikan, Metlakatla, Wrangell, and Prince of Wales. District 2 would include Petersburg, Hoonah, Gustavus, Haines, Skagway, and Yakutat. The comparative variation in this plan is 15.5 percent.

#### A. Population Variances

We first address whether the proposed comparative variance of 14.8 percent raises a substantial legal problem under the Equal Protection Clause of the United States and Alaska Constitutions.

In Reynolds v. Sims, 377 U.S. 533 (1964), the Supreme Court enunciated the basic test for judging the population distribution in a state legislative redistricting plan, with the Equal Protection Clause:

[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.

377 U.S. at 577. The Court recognized that "legitimate considerations incident to the effectuation of a rational state policy," 377 U.S. at 579, such as a desire to respect subdivision lines or to provide for compact districts of contiguous territory, justify some deviations from the principle of equal population. But it cautioned that the "overriding objective" of state redistricting plans "must be substantial equality of population among the districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen." Id. 2/

---

2/ In Reynolds, the Court struck down population variance ratios of 41 to 1 in the Alabama Senate and 16 to 1 in the Alabama House. 377 U.S. at 546. On the same day Reynolds was decided, continued

In the cases subsequent to Reynolds and its companion cases, the Court refined its analysis of permissible population variances in state legislative redistricting plans. Although the Court has acknowledged that such districts are to be judged by more flexible standards than congressional districts, see e.g., Wesberry v. Sanders, 376 U.S. 1 (1964); Kirkpatrick v. Roeisler, 394 U.S. 526 (1969); Gaffney v. Cummings, 412 U.S. 735, 742 (1973), the apparent "rule" is that state legislative districts should not exceed a maximum deviation of 10 percent, and may not exceed a maximum deviation of 16.5 percent. This rule has been applied -- virtually without exception -- since the early 1970's by both the Supreme Court and the lower federal courts.

In Swann v. Adams, 385 U.S. 440 (1967), for instance, the Supreme Court disapproved of maximum variance of 25.65 percent in the Florida legislature. Similarly, it disapproved a maximum deviation of 26.48 percent in Kilgarin v. Hill, 386 U.S. 120 (1967), and deviations of 24.78 percent and 28.20 percent in Whitcomb v. Chairs, 403 U.S. 124 (1971). On the other hand, the Court permitted a maximum deviation of 7.83 percent in Gaffney v. Cummings, 412 U.S. 735 (1973), and, with justification by the state, a deviation of 11.9 percent in Abate v. Mundt, 403 U.S. 182 (1971).

In White v. Regester, 412 U.S. 755 (1973), the Court held that a maximum deviation of 9.9 percent in a state redistricting plan did not, in itself, establish a prima facie case of invidious discrimination under the Equal Protection Clause. 412 U.S. at 764. Thus, the state bore no burden to justify any deviation up to that degree. Id. The Court did recognize, however, that "larger differences between districts would not be tolerable without justification" based on the effectuation of a rational state policy. Id.

---

2/ continued

The Court also struck down redistricting plans with a variance ratio of 1.7 to 1 in the House and 3.6 to 1 in the Senate in Colorado, Lucas v. Colorado General Assembly, 377 U.S. 713 (1964); a variance of 32 to 1 in the Senate and 6 to 1 in the House in Maryland, Maryland Committee v. Tawes, 377 U.S. 656 (1964), a variance of 2.65 to 1 in the Senate and 4.36 to 1 in the House in Virginia, Davis v. Mann, 377 U.S. 678 (1964), and a variance of 15 to 1 in the Senate and 35 to 1 in the House in Delaware, Roman v. Sincock, 377 U.S. 695 (1964). In each instance, the Court found that such wide population disparities among legislative districts violated the Equal Protection Clause.

16.4% { In a prior case, Mahan v. Howell, 410 U.S. 315 (1973), the Court permitted Virginia to adopt a plan with a maximum deviation of 16.4 percent -- but only after making a strong demonstration that the deviation was justified by the state policy of respecting subdivision boundaries. 410 U.S. at 328. The Court expressly noted that the 16.4 percent deviation approved in Mahan "may well approach tolerable limits ..." 410 U.S. at 329.

\* The Court has adopted a three part test. Maximum deviations below 10 percent are treated by the Court as "minor deviations from mathematical equality" which are "insufficient to make out a prima facie case of invidious discrimination ... so as to require justification by the State." Gaffney v. Cummings, 412 U.S. at 745. Deviation greater than 10 percent but less than the 16.5 percent in Mahan "may be sufficiently large to require justification but nonetheless justifiable and legally sustainable." Id. Finally, deviations larger than the 16.4 percent approved in Mahan would likely exceed the tolerable limits in state redistricting plans. 3/

Virtually all court rulings from the early 1970's to the present support these distinctions. Maximum deviations below 10 percent are approved with little or no further scrutiny, and those below 16.5 percent approved if justified by a rational state policy. See, e.g., Farnum v. Burns, 561 F. Supp. 83 (D. R.I. 1983) (deviation of 2.5 percent); Bover v. Gardner, 540 F. Supp. 624 (D. N.H. 1982) (deviation of 13.74 percent); Winter v. Dockering, 373 F. Supp. 308 (D. Kansas 1974) (deviation of 11.6

3/ A 1983 case, Brown v. Thomson, \_\_\_\_\_ U.S. \_\_\_\_\_, 77 L.Ed.2d 214 (1983) appears as an exception to this rule but is, we believe, of virtually no precedential value. There, the Court approved an extraordinary maximum deviation of 89 percent in the Wyoming House of Representatives on the grounds that the state redistricting plan furthered the state policy of preserving county boundaries. 77 L.Ed.2d at 272. The Court found the population variances to be "entirely the result of the consistent and nondiscriminatory application of a legitimate state policy." Id. at 223. However, the Court explicitly addressed only the marginal deviation that resulted from the overrepresentation of a particular county. Indeed, six members of the Court, including two justices from the majority, noted the limited question at issue, and as a consequence, Brown will likely have little, if any, precedential effect.

percent); Gaines v. Herskell, 362 F. Supp. 313 (S.D. W. Va. 1973) (deviation of 16.1 percent); Kelly v. Bumpers, 340 F. Supp. 468 (B.D. Ark. 1972) (deviations of 3.5 percent and 9.5 percent); Dunn v. State of Oklahoma, 343 F. Supp. 320 (W.D. Okla. 1972) (deviation of 2.2 percent); In re Senate Bill No. 220, 225 Kan. 628, 593 P.2d 1 (Kansas 1979) (deviation of 6.5 percent); In re Senate Bill 177, 318 A.2d 157 (Vt. 1974) (deviation of 16.6 percent); Franklin v. Krause, 367 N.Y.S.2d 998 (N.Y. 1975) (deviation of 8.6 percent) (county commissioners); Schneider v. Rockefeller, 31 N.Y.2d 420, 293 N.E.2d 67 (N.Y. 1972) (deviations of 1.82 percent and 3.38 percent); Davenport v. Apportionment Commission, 65 J.J. 125, 319 A.2d 718 (N.J. 1974) (deviation of 4.2 percent); In re Apportionment Law, 263 So.2d 797 (Fla. 1972) (deviations of .3 percent and 1.15 percent).

~~On the other hand, maximum deviations exceeding 16.5 percent are, virtually without exception, stuck down as a violation of equal protection.~~ As one federal court noted in a recent decision:

In fact, as far as we can ascertain from independent research, it appears that no court since Mahan has upheld a legislative reapportionment scheme which includes a maximum deviation of 16.5% or more. Apparently most courts have read the Supreme Court's caveat in Mahan as implicitly setting this figure as the outermost limit allowed by the Constitution.

Travis v. King, 552 F. Supp. 554, 562 (D. Hawaii 1982). A review of the court decisions confirms the view that a 16.5 percent maximum deviation is the limit permissible, and that deviations between 10 percent and 16.5 percent will be approved only if justified by the state. See, e.g., Farnum v. Burns, 548 F. Supp. 769 (D. R.I. 1982) (disapproved deviation of 88 percent); Travis v. King, 552 F. Supp. 554 (D. Hawaii 1982) (disapproved deviations of 15.02 percent and 43.2 percent); Sanchez v. King, 550 F. Supp. 13 (D. N.M. 1982) (disapproved deviations of 94 percent and 83 percent); Cosner v. Dalton, 572 F. Supp. 350 (E.D. Va. 1981) (disapproved deviations of 26.63 percent and 72.12 percent); Mader v. Crowell, 498 F. Supp. 726 (M.D. Tenn. 1980) (disapproved deviation of 18.03 percent); Sullivan v. Crowell, 444 F. Supp. 606 (W.D. Tenn. 1978) (disapproved deviations of 21.8 percent and 35.6 percent); Chapman v. Meier, 407 F. Supp. 649 (D. N.D. 1975) (disapproved deviation of 20.17 percent); Cohen v. Maloney, 410 F. Supp. 1147 (D. Del. 1976) (disapproved deviation of 18.3 percent) (city council); Winter v. Docking, 356 F. Supp. 88 (D. Kansas 1973) (disapproved deviation of 12.41

percent); Sims v. Amos, 336 F. Supp. 924 (M.D. Ala.) aff'd 409 U.S. 942 (1972) (disapproved deviation of 28.65 percent and 24.28 percent); Stuffy v. Anderson, 93 A.2d 546, 611 P.2d 764 (Wash. 1980) (disapproved deviation of 38.6 percent) (county commissioner); In re Senate Bill 177, 530 A.2d 657 (Ver. 1972) (deviation of 25.33 percent disapproved); Franklin v. Krause, 367 N.Y.S. 998 (N.Y. 1975) (deviation of 22 percent disapproved) (county commissioner); Scrimminger v. Sherwin, 60 N.J. 483, 291 A.2d 134 (N.J. 1972) (deviations of 28.83 percent and 26.20 percent disapproved); Opinion of the Justices, 307 A.2d 198 (Me. 1973) (deviation of 94.02 percent disapproved).

Thus, any state redistricting plan with a maximum deviation less than 10 percent will likely be found per se not to violate the Equal Protection Clause. A plan with a deviation between 10 percent and 16.5 percent may be upheld if the state meets its burden of rebutting a prima facie violation of equal protection by demonstrating both that the state made a good faith effort to minimize the population deviation and that the deviation is necessary to effectuate a legitimate state policy, such as compact, contiguous districts that preserve subdivision lines. Finally, the case law indicates that maximum deviations in excess of 16.5 percent will likely be held to violate the equal protection clause, no matter what justification is offered by the state. Accordingly, deviations in excess of 16.5 percent would raise substantial legal uncertainty and should thus be avoided.

~~It is our view that the projected deviation in Southeast Alaska does not violate the Equal Protection Clause. The projected variance directly results from the Board's decision to retain a two-member district within the boundaries of the City and Borough of Juneau, a district which is 4.8 percent overpopulated. Simply put, a population deviation of less than 10 percent could not be obtained unless a segment of the Juneau population was included within another southeast district. Importantly, the projected deviations under the proposed plan are less than 16.5 percent, threshold recognized as the tolerable limit to permissible population deviations. Historically, of course, the boundaries of the Juneau area have been preserved in the redistricting process. Preservation of political subdivision boundaries has been repeatedly recognized as a legitimate state objective. E.g. Mahan v. Howell, 410 U.S. at 328. More importantly, the long-standing state policy to establish districts which are socio-economically integrated, as required under article 6, section 6 of the Alaska Constitution, may well preclude the promulgation of a reapportionment plan which severs the Juneau community. See Groh v. Egan, 526 P.2d at 379, n.65.~~

why  
split up  
Anchorage  
w/  
Nikolai?

B. Voting Rights Act Considerations

Any consideration of the two identified alternative districting options in Southeast Alaska must revolve around a comparative assessment under the Voting Rights Act of 1965 (Act), as amended, 42 U.S.C. § 1973C. The inquiry as to compliance with the Act focuses on the impact on minority voting prerogatives. House District 2, as established in the 1981 Plan, contained a 27.5 percent Native population. The proposed District 2 would contain a 41.9 percent Native population, while under the alternative approach, 28.9 percent of the district would be Native.

Analysis

The Act was adopted to insure the protection of rights guaranteed by the Fifteenth Amendment and "to rid the country of racial discrimination in voting." South Carolina v. Katzenbach, 383 U.S. 301 (1966). Section 5 requires that no jurisdiction subject to "preclearance" procedures, such as Alaska, may implement any change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" unless such change has been approved by the United States Attorney General or the District Court for the District of Columbia. 42 U.S.C. § 1973C. The standard on review is to ensure that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." Id. This standard was intended to guarantee that gains in minority political participation "would not be emasculated or destroyed through new discriminatory procedures and techniques." Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979) (three-judge court).

492  
Gives  
More than  
admitted

The Supreme Court has held that section 5 applies to state legislative redistricting plans. See Georgia v. United States, 511 U.S. 526 (1973); Beer v. United States, 425 U.S. 130 (1976); Allen v. State Board of Elections, 393 U.S. 544 (1969). The burden of proof lies with the state in demonstrating the legality of its plan under section 5. Georgia v. United States, supra; South Carolina v. Katzenbach, supra.

In Beer, supra, the Supreme Court stated the test for a section 5 analysis in terms of "retrogression":

[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.

425 U.S. at 141. The central issue is whether a proposed change would "dilute the effectiveness" of the vote of a racial minority as compared to the situation prior to change. City of Rome v. United States, 446 U.S. 156, 183 (1980). Minority voting strength is impermissibly diluted when a redistricting scheme would operate "to minimize or cancel out the voting strength of racial elements of the voting population." Fortsen v. Dorsey, 379 U.S. 433, 439 (1965); Burns v. Richardson, 384 U.S. 73, 88 (1966).

In applying this test, lower federal courts have held that a redistricting plan dilutes minority votes when minority population concentrations are "unnecessarily fragmented and dispersed." Mississippi v. United States, 490 F. Supp at 582. In Kirksey v. Board of Supervisors, 554 F.2d 139 (5th Cir. 1977), for instance, the Fifth Circuit held that a reapportionment plan for a unit of local government would "tend to dilute the voting strength of the minority" because it fragmented members of the minority bloc between two districts. 554 F.2d at 144. See also Robinson v. Commissioners Court, 505 F.2d 674, 679 (5th Cir. 1974).

If viewed solely as a question of the percentage of Native voters in District 2, it would appear that neither of the two alternatives reflect a diminution in minority voting strength. While the proposed District 2 would substantially enlarge the percentage of Native residents in District 2, the state is under no affirmative obligation to maximize the percentage of Native residents in the district.

We caution, though, that the probative consideration is whether a proposed redistricting would "delete the effectiveness" of the minority vote. Were the concept of a chain of rural, island communities rejected, it is arguable that the inclusion of rural Native communities with more urbanized population centers in Southeast may, as a practical matter, dilute the effectiveness of the minority vote. 4/ And, if the alternative districting

---

4/ In preliminary research, we have not discovered any authority which directly addresses this matter.