ALASKA LEGISLATURE COMMITTEE FILE 1985-1986 8672

214.12 HCRA HB 90 - HB 139

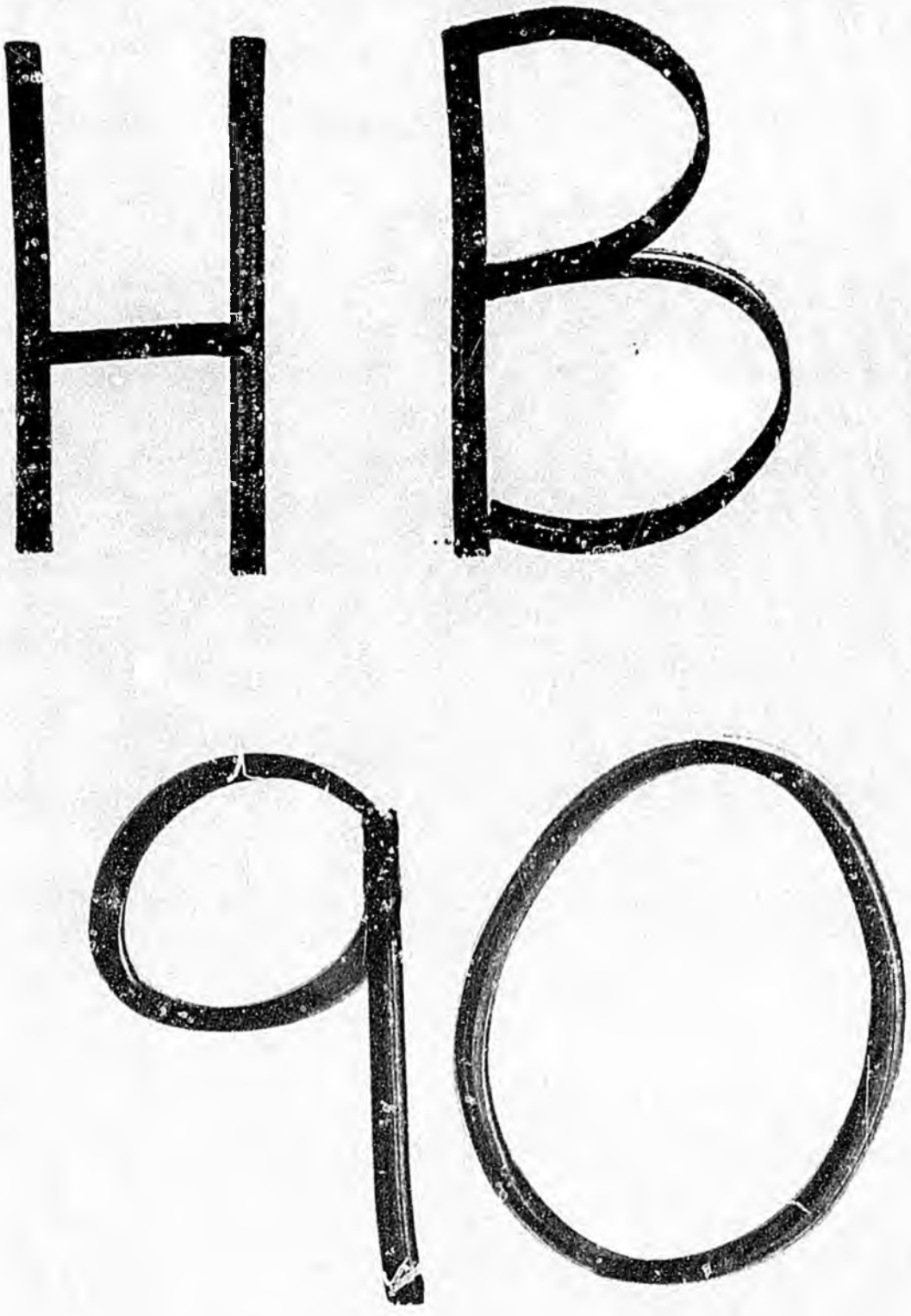
RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)


HB
90

Rep Gon

C-17

DELIVER TO: TCJNU

ORIGINAL
SENT: 02/21/86 TIME: 15:46
FROM: ELAINE SUNDE
SUBJECT: 2/21 H-CRA FINAL STATS
PRINT DATE: 02/21/86 TIME: 15:48

TO MODERATOR
FR ELAINE, SITKA

FINAL STATS 2/21 H-C&RA HB 90

TESTIFYING IN SITKA:

1. LENNIE SHOREY, SITKA SCHOOL DISTRICT EMPLOYEE
BOX 2182, SITKA 99835 747-5075

DELIVER TO: TCJNU

ORIGINAL
SENT: 02/21/86 TIME: 16:33
FROM: JUNE GALLEY
SUBJECT: T/C FINAL STATS WRANGELL
PRINT DATE: 02/21/86 TIME: 16:34

*** FINAL T/C STATS ***

DATE: FEBRUARY 21, 1986
SITE: WRANGELL
SPONSOR: HOUSE COMM. AND REG. AFFAIRS
SUBJECT: HB 90--LABOR RELATIONS
LOCAL MODERATOR: MABEL PENNIMORE

TESTIFIED:
NAME/REPRESENTING ADDRESS PHONE

1. TEDI SIMS, PO BOX 1553, WRANGELL, AK. 99929 (874-3720)

OBSERVED:
NAME/REPRESENTING ADDRESS PHONE

1. ANN KIRKWOOD, PO BOX 798, WRANGELL, AK. 99929 (874-2301)
2. MAUREEN LAURENCE, PO BOX 1311, WRANGELL, AK. 99929 (874-3391)
3. ROBERT S. PRUNELLA, PO BOX 197, WRANGELL, AK. 99929 (874-3738)
4. EADIE MONTGOM ERY, PO BOX 1002, WRANGELL, AK. 99929 (874-3934)
5. DICK BARTON, PO BO X 1018, WRANGELL, AK. 99929 (874-3045)
6. CHERIE YOUNG, PO BOD 1230, W RANGELL, AK. 99929 (874-3037)

TESTIFIED: 1
SERVED: 6
TOTAL: 7

TIME START: 3:00PM
TIME END: 3:45PM

DELIVER TO: TCJNU

ORIGINAL
SENT: 02/21/86 TIME: 15:53
FROM: TCANC
SUBJECT: (H) C&R AFFAIRS T-C STATS
PRINT DATE: 02/21/86 TIME: 15:55

*** FINAL T/C STATS ***

DATE: FEBRUARY 21, 1986
SITE: ANCHORAGE
SPONSOR: HOUSE COMMUNITY AND REGIONAL AFFAIRS
SUBJECT: HB 90 - LABOR RELATIONS
LOCAL MODERATOR: DAVID J

TESTIFIED:

NAME/REPRESENTING	ADDRESS			PHONE
WILLIAM ECKELS	4600 DEBARR ROAD	ANCH	99503	264-2178

OBSERVED:

NAME/REPRESENTING	ADDRESS	PHONE
NONE		

TESTIFIED: 01
OBSERVED: 00
TOTAL: 01

TIME START: 3PM
TIME END: 4:45PM

DELIVER TO: TCJNU

ORIGINAL
SENT: 02/21/86 TIME: 15:48
FROM: TCFBX
SUBJECT: 2/21 HC&RA HB 90, LABOR REL
PRINT DATE: 02/21/86 TIME: 15:50

FINAL T/C STATS

DATE: 2/21/86
SITE: FAIRBANKS MODERATOR:PAULA GRAY

SPONSOR: HOUSE COMMUNITY AND REGIONAL AFFAIRS
SUBJECT: LABOR RELATIONS

NAME/REPRESENTING	ADDRESS	PHONE
TESTIFIED:		
1. FRANK BELTS	218 CUSHMAN ST, FBX 99701	452-2023
OBSERVED		
1. CINDY SPANYERS	819 1ST AVE, FBX 99701	456-2030

TESTIFIED: 1 TIME START: 3:00 PM TIME END: 3:40 PM

OBSERVED: 1
TOTAL: 2

DELIVER TO: TCJNU

ORIGINAL

SENT: 02/21/86 TIME: 16:19
FROM: JUNE GALLEY
SUBJECT: KTN. FINAL STATS HB 90
PRINT DATE: 02/21/86 TIME: 16:20

*** FINAL T/C STATS ***

DATE: FEBRUARY 21, 1986
SITE: KETCHIKAN
SPONSOR: HOUSE COMM. AND REG. AFFAIRS
SUBJECT: HB 90--LABOR RELATIONS
LOCAL MODERATOR: JUNE GALLEY

TESTIFIED: 0

OBSERVED: 0

TESTIFIED: 0
OBSERVED: 0
TOTAL: 0

TIME START: 0
TIME END: 0

DELIVER TO: TCJNU

ORIGINAL
SENT: 02/24/86 TIME: 10:31
FROM: LIOBAR
SUBJECT: 2/21 HB 90 T/C
PRINT DATE: 02/24/86 TIME: 10:35

****FINAL STATS****FINAL STATS****FINAL STATS****FINAL STATS******

BORROW LIO
2/21/86
HOUSE C&RA
HB 90: LABOR RELATIONS

---TESTIFY/OBSERVE

BARROW PARTICIPANTS:
1)NO ONE

TESTIFIED: 0 OBSERVED: 0 TOTAL: 0

DELIVER TO: TCJNU

ORIGINAL

SENT: 02/21/86 TIME: 15:50
FROM: LIOBET
SUBJECT: FINAL STATS
PRINT DATE: 02/21/86 TIME: 15:51

FINAL STATS

T/C: HOUSE STATE AFFAIRS
SUBJECT: LABOR RELATIONS
DATE: 2-21-86
SITE: BETHEL
TIME IN: 3:00
TIME OUT: 3:40
MODERATOR: REGGIE BELDEN

IN BETHEL TESTIFYING

1. BILL ADAMS BOX 27 BEHTEL, AK 99559 543-2172
2. STEVE MURAT BOX 522 BETHEL 543-3109
3. DON FANCHER GENERAL DELIVERY BETHEL, AK 99559 543-3611 XT 252

DELIVER TO: TCJNU

ORIGINAL
SENT: 02/21/86 TIME: 16:47
FROM: FALEENE BIGGS
SUBJECT: HAINES STATS
PRINT DATE: 02/21/86 TIME: 16:50

*** FINAL T/C STATS ***

DATE: FRIDAY, FEBRUARY 21, 1986
SITE: HAINES LTC
SPONSOR: HOUSE COMMUNITY & REGIONAL AFFAIRS COMMITTEEE
SUBJECT: HB 90, LABOR RELATIONS--SCHOOL BOARDS & PUB. EMPLOYEES
LOCAL MODERATOR: ELAINE SUNDE & FALEENE BIGGS

TESTIFIED:

1. ENID VERBON, P.O. BOX 252, HAINES, AK 99827
2. HENRY CHATONEY, P.O. BOX 683, HAINES, AK 99827

TESTIFIED: 2
OBSERVED: 0
TOTAL: 2

TIME START: 3:00
TIME END: 3:40

Sec. 42.05.111. Legal counsel. (a) The attorney general is legal counsel to the commission. The attorney general shall advise the commission on legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the commission, shall represent the public interest.

(b) The commission may employ temporary legal counsel from time to time in proceedings before the commission in which the attorney general is representing the public interest or a party before the commission. (§ 6 ch 113 SLA 1970)

Sec. 42.05.120. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.121. Employment of commission personnel. (a) The commission may employ an executive director who shall have had at least five years of experience in public utility management or regulation, law, accounting, engineering, or an allied field. The executive director is responsible for directing the administrative functions of the commission and carrying out the policies as set by the commission. The commission may employ engineers, hearing officers, administrative law judges to the extent provided by AS 42.06.140(b), experts, clerks, accountants, and other agents and assistants it considers necessary. Employees and agents of the commission who are not partially exempt under AS 39.25.120, other than legal counsel, are in the classified service under AS 39.25.100.

(b) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants and experts the commission considers necessary. (§ 6 ch 113 SLA 1970; am § 2 ch 103 SLA 1978; am § 2 ch 136 SLA 1980; am § 5 ch 110 SLA 1981)

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* Sec. 4. AS 42.05.121 is amended to read:

Sec. 42.05.121. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The commission may employ an executive director who shall have had at least five years of experience in public utility management or regulation, law, accounting, engineering, or an allied field. The executive director is responsible for directing the administrative functions of the commission and carrying out the policies as set by the commission. The commission may employ engineers, hearing officers, administrative law judges to the extent provided by AS 42.05.171 and AS 42.06.140(b), experts, clerks, accountants, and other agents and assistants it considers necessary. The executive director, deputy director, attorneys, hearing officers, and administrative law judges are in the partially exempt service under AS 39.25.120. Other employees [EMPLOYEES] and agents of the commission [WHO ARE NOT PARTIALLY EXEMPT UNDER AS 39.25.120, OTHER THAN LEGAL COUNSEL,] are in the classified service under AS 39.25.100.

(b) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants and experts the commission considers necessary to advise, recommend, or testify in a specific proceeding. The commission may not contract for advice on legal matters unless the attorney general is representing the public interest under AS 42.05.111.

* Sec. 5. AS 42.05.121 is amended by adding a new subsection to read:

(c) The commission shall maintain accurate records of the time devoted by a consultant or expert to each matter and the services provided. The services shall be described in reasonable detail.

Sec. 42.05.123. Communications carriers section. (a) There is established within the commission a communications carriers section which shall develop, recommend and administer policies and programs with respect to the regulation of rates, services, accounting and facilities of communications common carriers within the state involving the use of wire, cable, radio and space satellites.

(b) The section shall advise and make recommendations to the commission and represent the commission in matters pertaining to communication common carrier regulation and licensing and shall participate, as a party, in adjudicatory hearings in which significant common carrier issues are involved.

(c) It is the responsibility of the communications carrier section in its participation in rate or tariff adjudication proceedings to advocate and provide support for the lowest practicable rate under the circumstances. (§ 1 ch 224 SLA 1976)

Collateral references. — Community antenna television systems (CATV) as subject to jurisdiction of state public utility or service commission, 61 ALR3d 1150.

Who is a "common carrier" or "carrier" within the meaning of § 3(h) of the Communications Act of 1934 (47 USCS § 153(h)), 46 ALR Fed 626.

Federal legal problems arising from subscription television or "pay TV" broadcast over the air, 61 ALR Fed 809.

Sec. 42.05.130. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.131. Restrictions on members and employees. (a) A member of the commission or an employee of the commission may not have an official connection with, or hold stock or securities in, or have a pecuniary interest in a public utility within the state. Membership in a cooperative association is not a "pecuniary interest" within the meaning of this section; however, a member or employee of the commission may not be an officer, board member or employee of a cooperative association. A member or employee may not act upon a matter in which a relationship of the member or employee with any person creates a conflict of interest.

(b) A member or employee of the commission may not, after leaving the position as a member or employee of the commission, act as agent for or on behalf of a public utility in any matter before the commission that was before the commission during the employee's employment or the member's term of office. A violation of this subsection is a class A misdemeanor. (§ 6 ch 113 SLA 1970; am § 3 ch 136 SLA 1980)

Alaska State Legislature

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE: Feb. 11, 1986 Local Boundary Commission North Slope Borough Decision

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
DENNIS K. KOPER	5130 HERMAN ST	N/SB	✓	852-8600
2 WILLIE HENSLEY	7045 TREETOP Nuch AK.	NANA	✓	248-3030
1 HAROLD CURRAN	PO Box 117 Barrow	NSB	✓	852-2611
Wilson L. Condon	711 H St	Local Boundary Comm		276-2713
Dave Hanson	1577 C St. Anch.	Local Boundary Comm		276-8874
[illegible]	PO Box [illegible]	Local Boundary Comm.		[illegible] 561-5780
Jeff Smith	PO Box B	DCRA	Y/S	

HOUSE
COMMITTEE REPORT

(7)
Date referred: 1/24/86

(HESS WAIVED 1/24)

FURTHER REFERRALS: FINANCE

DATE: 2-21-86

The COMMUNITY & REGIONAL AFFAIRS Committee has considered HB 90

"An Act relating to labor relations between school boards and other public employers and their employees."

and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title
[ ] new title

and recommends _____

[ ] further referral to the Finance Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[X] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

A.U.M. Marrou DO NOT PASS
OVERRULES LOCAL ELECTED SCHOOL BOARDS.

J. Kaufmann DO NOT PASS

Peter Cole
Chairman

STATE OF ALASKA

DEPARTMENT OF LABOR

LABOR STANDARDS AND SAFETY DIVISION

BILL SHEFFIELD, GOVERNOR

P.O. BOX 630
JUNEAU, ALASKA 99802
PHONE: (907)-465-4870

February 11, 1986

The Honorable Kay Wallis
Vice-Chairman
Community and Regional Affairs Committee
House of Representatives
P.O. Box "V" - Mail Stop 3100
Juneau, Alaska 99811

Dear Representative Wallis:

In reference to my testimony before the committee on February 10, 1986, with regards to House Bill 90. I have enclosed ten (10) copies of the Department's Briefing Paper which defines the Department's role under this bill. This document was prepared during the waning day of the last session, however, was not submitted as the bill was not scheduled for hearing.

If I can be of any further assistance or you have any questions, feel free to contact me at anytime.

Very truly yours,

Robert Bacoles
Director
Labor Standards and Safety

07-G33LH

BRIEFING PAPER
HOUSE BILL No.90

Under this bill, the Department of Labor would act as the labor relations agency for 53 separate school districts involving approximately 4,400 non-certified employees. The Department would be responsible for investigating representation petitions, determining appropriate units for collective bargaining purposes, conducting elections, investigating unfair labor practices, conducting preliminary hearings and formal hearings under the Administrative Procedure Act, mediating labor disputes, strike action, resolving grievances, acting as a mediation and conciliation service subsequent to impasse during collective bargaining negotiations, and acting as an arbitration tribunal for the formal resolution of grievances pursuant to a collective bargaining agreement being entered into between school districts and labor organizations.

There are a number of employee groups and labor organizations that have indicated an interest in organizing this sizable group of public employees. Except for the four larger school districts in the state (Juneau, Anchorage, Kenai, and Fairbanks) which are loosely organized, virtually all other school districts are unorganized and unaffiliated. It would be necessary for the labor relations agency to determine community of interest groups, to hold representational elections, and to respond to unfair labor practice charges and related disputes.

Other states which have enacted PERA laws to cover this class of employees have advised the Department that during the first few years the laws were in effect, management or employee representatives of 50 percent of the covered school districts filed unfair labor practice charges which resulted in hearings before the labor relations agency. The hearings typically last from one to five days. Assuming that our experience would be comparable to that of other states, we would expect that approximately 26 of the school districts would generate unfair labor practice charges requiring hearings before the labor relations agency. Under PERA, such hearings are required to be heard by an attorney hearing officer using the Administrative Procedure Act guidelines.

In addition to unfair labor practice proceedings, we expect approximately 50 percent of the 53 school districts to be involved in employee organizing during the first year the new law is in effect. In each case, the Department would be responsible for determining the appropriate unit for collective bargaining, based upon such factors as community of interest, wages, hours, and other working conditions of the employees involved, and the history of collective bargaining and the desires of the employees.

Our experience with political subdivisions shows that the average representation/certification proceeding spans a period of two months. The proceeding begins with the filing of a petition by a labor organization with the agency which demonstrates a showing of a community of interest within the employee group to be represented.

The Department must then examine employer records to determine the accuracy of the information listed in the petition and whether or not a showing of a community of interest actually represents a minimum of 30 percent of the work force required for an election to be conducted. Once the community of interest has been verified, the petition is then posted for a period of 15 days to allow sufficient time for the employer or other interested persons to file objections to the conduct of an election or for intervention by other labor organizations. The 15-day posting period is also used to respond to inquiries generated by the petition and to prepare ballots, mailers, and other documents required by statute.

After the 15-day posting period, there is then a period of about two to three weeks when the agency will schedule hearings to resolve objections or challenges to the conduct of an election, to clarify the community of interest, and to make investigations into the right of an intervener to appear on the ballot. Once these issues have been resolved, the election can proceed. Two persons are required to conduct an election at the polling place to ensure that the persons voting are so entitled, that there is no tampering with the secret ballot process, and that electioneering is not conducted within the restricted limits of the polling place. After polling is completed, the ballots must be counted and notification given to all parties, who may challenge the conduct of the election, challenge any ballot, call for recount, or challenge the right to vote of any member of the community of interest. Once the election challenges have been resolved, a bargaining unit is then certified or representation is denied, based upon the vote of the majority. After certification, the agency acts as mediator if the parties reach an impasse during collective bargaining negotiations or acts as an arbitration tribunal to resolve formal grievances under the executed collective bargaining agreement.

Based on past experience, the Department anticipates that coverage of non-certified school employees will require substantial time and resources. Even though many of the employees covered by this legislation are in communities accessible by road, the majority of the school districts are located in the rural areas of Alaska and are accessible only by air travel, ferry, or charter aircraft. Typically, it would require two days of travel to conduct pre-election hearings, and two days of travel to conduct post-election hearings and certification. Moreover, if unfair labor practice charges are generated during the organizational activities or as a result of pre-election campaign interference, this would increase costs significantly. Hearings on unfair labor practice charges require an attorney hearing officer and are conducted under the formal rules of the Administrative Procedure Act. Such hearings are required whenever mediation or conciliation fails to resolve the unfair labor practice complaints or objections to the conduct of an election.

To illustrate the costs associated with representation/certification proceedings, the Department acting as a labor relations agency was recently involved in a lengthy and complex case involving 253 employees in the City of Fairbanks. This situation came about when the City of Fairbanks opted back into PERA in September of 1983. The size and composition of the unit would be equivalent to one medium-sized school district. The Department expended over 1,200 manhours to resolve the issues and certify the bargaining units. The personal services cost of these manhours which include clerical support,

investigators, hearing officers, and board member activities was $34,000; travel and per diem was $3,600; transcription cost was $2,900; mailing, postage, and phone costs were $300; the total cost of this activity was over $41,000.

Other examples of the magnitude and complexity of labor relations activity related to school districts and PERA include the following:

A. The State of Florida by legislative act recently transferred Labor Relations activity for school districts to their public employees relations board. The board's estimated cost for the initial hearings for each school district to clarify communities of interest, appropriateness of bargaining units, and intervention was approximately $1,500 per day including transcription of the record but exclusive of travel and per diem costs. Hearings for small school districts usually required only one day. The larger districts, however, took several days. The Florida board estimates the cost of an onsite election for their school districts at $5.00 per employee. Their largest district has 800 workers and cost $4,000 for the election proceedings alone.

B. The State of Oregon Public Employee Relations Board has an annual budget of $1.25 million. They carry an annual case load of 300 matters including elections, unfair labor practices, petitions, and de-certifications. Sixty (60) cases deal with representation, which is about 1/5 of their case load. They allot $250,000 each year to this type of activity. This figure is slightly larger than what the Department expects with 53 school districts in Alaska.

In summary, the Department believes that our first-year costs are comparable to those of other states. Moreover, in consideration of the higher cost of doing business in Alaska, particularly travel costs, we do not believe that the fiscal note associated with this legislation is extraordinary.

Without adequate funding, the Department would be unable to comply with the statutory mandate of this legislation and could well find itself explaining to a Superior Court judge why it is unable to hold hearings, conduct elections, and otherwise carry out its duties. The end result could be similar to the litigation that occurred a few years ago when the Workers' Compensation Division was unable to get the decisions out on time.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/19/86

REQUEST

Bill/Resolution No. : HB 90
Title : "An Act relating to labor relations between school boards...."

Sponsor : Kopponen
Requestor : House Comm. & Regional Affairs
Date of Request : 2/7/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards & Safety

Components : Wage and Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		43.7	43.7	43.7	43.7	43.7
TRAVEL		18.9	19.7	15.9	16.5	17.5
CONTRACTUAL		49.5	51.5	25.7	26.7	27.8
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		2.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	115.1	115.9	86.3	87.9	89.7

CAPITAL						

REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	115.1	115.9	86.3	87.9	89.7
FEDERAL FUNDS						
OTHER						
TOTAL	0	115.1	115.9	86.3	87.9	89.7

POSITIONS :

FULL-TIME	0	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : RB Robert J. Bacolas, Director — Phone : 465-4870
Division : Labor Standards and Safety — Date : 2/19/86

Approved by Commissioner : RB Jim Robison — Date : 2/19/86
Agency : Labor

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ____ of ____

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 90

Under this bill, the Department of Labor will act as the Labor Relations agency for all school districts and will be responsible for investigating representation petitions; determining appropriate units for collective bargaining purposes; investigating unfair labor practices; monitoring elections; and holding representation and unfair labor practices hearings.

One investigator (located in Anchorage) is required to conduct the investigations, to monitor the elections, and to hold informal hearings.

In addition to the costs associated with the one Wage and Hour Investigator, the fiscal note also includes costs to contract for a hearing officer on 13 occasions ($12,000) and court reporting services including transcripts ($12,300), plus printing ($7,200) and legal costs ($7,000), and telephone and postage ($9,000). A total of $8,400 has been included in travel for the hearing officer's transportation and per diem - thirteen trips of two days each [($466 + $180) x 13].

Total line item costs for FY 87 are as follows:

Personal Services	$ 43,680
Travel	18,900
Contractual Services	49,500
Commodities	1,000
Equipment	2,000
TOTAL	$115,080

Of these costs, only the equipment costs of $2,000 are one-time items.

For FY 88 through FY 89, an inflation rate of 4.0 percent has been used for all line items except personal services.

Other Assumptions:

1. Effective date of July 1, 1986

2. There are 52 school districts in the state and contracts of 26 school districts will come up for renegotiation each year.

3. Twenty-five percent of the school districts which equates to approximately 13 per year for the first two years, will file unfair labor practice charges requiring hearing before the labor relations board. After the first two years the organizational activities will be completed and hearing officer costs for travel and professional fees will decline by 50%. Hence the reduced cost in FY 89 and forward.

Position Title	Time Status	Staff Months	RP Number
Wage and Hour Investigator I	P F T	12	

No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
	16A				

Location	Election District	Leg.
Anchorage		

Type of Expenditure		Amount
1	2	3
Salary	33,600	
Benefits	10,080	
Premium Pay	-	
Other	-	
Total Personal Services		43,680
Travel		10,500
Contractual		2,000
Commodities		1,000
Equipment		2,000
Other		
Total Cost		59,100

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	59,100
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

Justification

This position will conduct investigations and informal hearings of unfair labor practices complaints filed with this agency. The position will be responsible for monitoring school district representation elections and assisting school districts in complying with state and federal labor relations laws. The investigator will travel extensively throughout the state performing these investigations, hearings, and monitoring functions.

Travel funds allow for 12 (four-day) trips, costing an average of $539 for transportation and $340 for per diem.

Contractual services costs include average costs of $2000.

Normal commodities of $1,000 and a one-time equipment expense of $2,000 are also included.

Request For New Position

Agency: Department of Labor
BRU: Labor Standards and Safety
Component: Wage and Hour Administration

Revised Date

FY 87

Alaska State Legislature

House of Representatives

SPECIAL

COMMITTEE ON FISHERIES (C&RA)

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE: feB 21, 1986 HB 90 2nd hearing

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
Bob Bacolas	Plywood Palace	P. O. L HB90	IF Needed	465-4878
Bob Cooksey		NEA-AK	yes	586-3080
Lee Powelson	210 Ferry Way	APEA	yes	6-2384

Bill No. House Bill No. 90

Date February 7, 1986

Title "An Act relating to labor relations between school boards and other public employers and their employees."

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

This legislation makes it mandatory for all school boards and municipalities to permit their noncertificated employees to enter into collective bargaining and mandates coverage by the Public Employment Relations Act (PERA).

Under this bill, the Department of Labor would become the labor relations agency for 53 separate school districts (including REAA's) involving approximately 4,400 noncertificated employees. The Department would be responsible for investigating representation petitions; determining appropriate units for the purpose of collective bargaining; conducting elections; investigating unfair labor practices; conducting preliminary hearings and formal hearings under the Administrative Procedures Act; mediating labor disputes; monitoring strike actions; resolving grievances; and mediating and arbitrating disputed issues subsequent to impasse during collective bargaining negotiations.

Section 1: Amends AS 23.40.100(b) to make it mandatory that "no representation" be a choice on all election ballots for elections conducted by the labor relations agency under PERA.

Section 2: Amends AS 23.40.200(c) to permit noncertificated employees of a school board to engage in a strike.

Section 3: Adds a new section to AS 23.40 to prohibit a school board or municipality from rejecting having the provisions of the PERA apply to its relations with its noncertificated school employees.

Section 4: Amends AS 23.40.250(6) to define public employees to include noncertificated employees of school boards and to exclude certificated employees.

Section 5: Amends AS 23.40.250(7) to define a public employer to include school boards.

Section 6: Amends AS 23.40.250 by adding a new paragraph to define a school board as including a regional education attendance area.

Section 7: Provides for existing collective bargaining units, agreements, and recognized bargaining representatives to remain status quo.

There are 53 school boards within the State of Alaska (including REAA's). Therefore, the Department of Labor as the labor relations agency could be monitoring elections for the 53 separate school boards and holding hearings to settle grievances or unfair labor practice charges involving approximately 4,400 noncertificated employees.

POSITION PAPER/Department of Labor

Four school districts are presently organized or have a collective bargaining agreement with a union or an association. These are Fairbanks, Kenai, Juneau, and Anchorage.

The Department supports the concept of extending collective bargaining to this group of public employees.

The Department's fiscal note is attached.

APPROVED:

Jim Robison, Commissioner
Department of Labor

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M February 21, 1985

SUBJECT: Sectional analysis of HB 90 (Labor relations between school boards and their employees)

TO: Representative Mike Koponen

FROM: Teresa B. Cramer Teresa Cramer
Legislative Counsel

You have asked for a sectional analysis of HB 90.

Section 1 amends the Public Employment Relations Act (PERA) by requiring that in an initial election to select which bargaining organization will represent the employees of a bargaining unit, the ballot must include a "no representation" choice.

Section 2 amends the subsection that defines those public employees whose right to ~~strike~~ is limited and removes the noncertificated employees of school boards from that group. This removal, when combined with the amendment in section 4 of this bill, has the effect of making noncertificated employees members of the class in AS 23.40.200(a)(3) with an unlimited right to strike.

Section 3 requires school boards to negotiate with noncertificated employees who choose to participate in collective bargaining.

Section 4 amends the definition of "public employee" in the PERA to remove noncertificated employees from the exception to the definition. This has the effect of including noncertificated employees of school boards within the definition and making the PERA applicable to them. The change from "school districts" to "school boards" is a stylistic change only.

Section 5 makes technical amendments for style to the definition of "public employer." The municipal code does

not refer to towns and therefore "town" is deleted from this definition.

Section 6 adds a definition of "school board" to the Public Employment Relations Act since noncertificated employees of school boards are now included within its scope.

Section 7 guarantees that the bill will not be interpreted to change any existing collective bargaining contracts. This is required by the constitutional prohibitions against impairing the obligations of contracts.

If I may be of further assistance, please advise.

TBC:ojb
J12/001

Alaska Public
Employees Association APEA
~~State Headquarters: 240 N. Franklin, Juneau, AK 99801 (907) 586-2334~~
210 Ferry Way, Suite 200, Juneau, AK 99801
(907)586-2334

MEMORANDUM

TO: Representative Peter Goll, Chairman
House Community and Regional Affairs Committee

FROM: Cherie Shelley
Executive Director

SUBJECT: HB 90: Collective Bargaining for School Employees

DATE: February 10, 1986

The Alaska Public Employees Association supports the provisions of HB 90 which grants collective bargaining rights to the noncertificated employees of school boards. These employees are the only public employees excluded from collective bargaining.

Noncertificated employees include teachers' aides, secretaries and custodians. They are traditionally the lowest paid public employees in Alaska. The are the only employees in the educational system who absorb the economic backlash when school boards intimate financial problems.

APEA urges the committee to act favorable on this bill. Passage will promote better employer-employee relations by affording noncertificated school employees the same collective bargaining rights provided to teachers and other public employees.

CS/kr

FROM: Frank Beltz
Classified Personnel - 452-2023
2118 Cushman St.
Fairbanks, Alaska

January 25, 1985

TESTIMONY IN SUPPORT OF HOUSE BILL 90

In 1972 the Alaska State Legislature established the Public Employment Relations Act. The Legislators recognized the benefits of joint decision making, the need for established guidelines and the necessity for a rational method to resolve disputes.

The Declaration of Policy states: The Legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.

This statute determined the rights of public employees and employers. Then it singled out the classified employees of school districts, for reasons unknown to us, and denied those established rights.

The bill before you, H.B. 90, seeks to amend the Public Employment Relations Act and rectify this injustice.

The inequity created by the lack of legislation has had far reaching effects. There are many specific incidents where the classified employees of the Fairbanks North Star Borough School District have suffered from this disparity. At this time I would like to relate just a few of those incidents to you in an effort to illustrate the pressing need for this legislation.

In 1976 the sense of responsibility by individual employees was the only element that prevented the school district from being totally disrupted by internal union problems. At that time the employees and the School Board found themselves caught in the middle of a representation struggle between APEA and the Teamsters with no where to turn for help. The lack of legislation is also the absence of guidelines to be followed for representation elections. The employees were not guaranteed their freedom of choice nor were they assured that their choice would be honored by the School Board. This was a frightening situation that we do not wish to repeat. What we left to chance in 1976 we now seek to be guaranteed by H.B. 90.

all other public employees the current statute defines and provides ... ef for unfair labor practices. That is the section our organization would have looked to when the district imposed a new interpretation of a currently negotiated clause in response to the membership vote to increase dues. Except for classified employees, that type of interference in the administration of an organization is not tolerated by Alaska State Law.

Nor may public employees other than school districts restrain or coerce an employee in the exercise of guaranteed rights. Yet we contend that has been the case several times in our district. An employee who filed a grievance over working conditions found herself involuntarily discharged-fired, within nine days, and just three days before her probationary period was to end.

Another employee of our district found it necessary to contact her building representative with questions about her evaluation. From that point on the employee was faced with intense harrassment forcing her to resign. At the ensuing grievance hearing the employee testified that her supervisor had promised that if she would resign he would destroy her evaluations and attempt to secure for her a teacher's aide position. In order to receive that position she was also instructed not to go to her building representative or to the union business agent for help. That employee decided to exercise her rights, discovered that she had none and is now no longer a Banks North Star Borough School District employee.

The need for this legislation is shown every time we enter negotiations with the school district. After six months at the table we have been told that a settlement must be reached. If agreement had not been reached the School Board would have ceased to recognize us as the exclusive bargaining representative for noncertified employees. Our fring benefits would cease, and we would be placed under a unilaterally imposed personnel system. Because we are not recognized under the Public Employment Relations Act, the School Board could do as threatened. There is no protection from this type of bad faith bargaining nor do we have access to an agency to assist in rectifying such situations.

That single episode illustrates two things: Recognition is strictly voluntary and tenuous at best; and employee concerns are not taken seriously. The School Board was only willing to go through the motions of bargaining.

Needless to say we folded and reached agreement by the imposed deadline, but quickly found ourselves unable to enforce the provisions of the negotiatied agreement in a critical situation. The School Board bargained to include school crossing guards in the contract. Seeking enforcement of that agreement we began the grievance process. In order to avoid satifying the grievance the School Board contracted out those positions and caused the individual employees not only to be cut in salary, but also to lose all fringe benefits, including membership in the Public Employees Retirement System, and to sacrifice their right of representation. We do not question the right of management to contract for services but to seek relief from the use of this tactic to circumvent a negotiated agreement.

The need of the classified employees to come under the auspices of the Public Employment Relations Act is great. The lack of legislation not only allows but encourages injustices to continue, and until classified employees have a forum for resolution of disputes arising from representation elections, the collective bargaining process, and the administration of a negotiated agreement, we will continue to feel the low morale and distrust of the system shared by all second class citizens.

STATE OF ALASKA 1986 - 14TH LEGISLATURE
SECOND SESSION
FISCAL NOTE

Bill/Resolution No.: SB 113

ANALYSIS:

Assumptions:

The zero fiscal note is based on an assumption that the prorationing language enacted into law last year (SB 190) would be employed beginning in FY 87. Below are estimates showing the anticipated growth of these programs if fully funded through FY 91.

	FULL FUNDING WITHOUT $200,000 CAP	FULL FUNDING WITH $200,000 CAP	GOVERNORS ACTUAL BUDGET REQUEST
FY 87	$ 7,842,300	$ 6,862,000	$4,008,600
FY 88	$ 9,018,700	$ 7,891,300	
FY 89	$10,371,500	$ 9,075,000	
FY 90	$11,927,200	$10,436,300	
FY 91	$13,716,300	$12,001,800	

1336W

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 12, 1985

MEMORANDUM

TO: Representative Peter Goll

FROM: Nancy Pease *Nancy Pease*
Legislative Analyst

RE: Deposits to Public Utilities
Research Request 85-142

Bob Berry of your office requested the following information on deposits that public utilities may require of first-time customers or those with no established credit:

- the representative low, high and average deposit required;
- the total amount of deposits held by public utilities;
- the length of time the deposits are held;
- the administrative cost and the burden to public utilities if they were required to pay interest on the deposits, and;
- an indication of the lead time utilities would require to begin paying interest on deposits without undue burden to the utilities.

The attached table presents information on the customer deposit requirements of 28 electric, natural gas, water, sewer or refuse utilities across the state. The four smallest utilities surveyed do not require deposits from first-time customers or those with no established credit.[1] In addition, several utilities waive their deposit requirement for new customers who provide good credit references or for new residential customers who own or purchase a home.

---

[1]The Cities of Kotlik, Seldovia, North Pole and Dillingham each provide utility services to no more than 225 customers.

Average deposits

Utilities which require a standard deposit from their new customers charge, on average, a $74 deposit to open a residential account and $142 to open a commercial account.

However, many utilities adjust the amount of a customer's deposit according to the monthly bills or credit histories of previous customers with similar service needs. Depending upon the methods used to calculate customer risk, residential deposits range from $10 for water and sewer service in Fairbanks to $600 for telephone service from the Matanuska telephone utility. Deposit requirements for new commercial accounts range from $19 for water service in Wrangell to $2,500 for electricity in Dillingham.[2] For those utilities which reported varying deposit requirements, the average low and high residential deposits are $29 and $130 respectively. The average low and high commercial deposits are $89 and $950 respectively.

Total Amount of Deposits Held by Public Utilities

Bob Berry indicated that the Alaska Public Utilities Commission (APUC) was providing you with the total deposits held by all APUC-regulated utilities. Based on the information gathered in this survey, we are unable to estimate the amount of deposits held by unregulated utilities. The 10 unregulated utilities which indicated in this survey that they require customer deposits hold a total amount of at least $1,180,000. Four of the unregulated utilites surveyed do not require deposits.

These 14 unregulated utilities represent only 20 percent of the approximately 70 unregulated utility corporations which provide electricity, natural gas, water, refuse removal, sewer or telephone service to Alaska consumers.[3] It is difficult to assess how accurately this survey reflects the sizes and types of unregulated utilities as well as

---

[2]David Bowker, General Manager of Nushagak Electric Co-operative in Dillingham, stated that Nushagak received permission from the Alaska Public Utilities Commission to charge commercial users a deposit of up to the estimated two-month billing. This policy was directed specifically toward fish processors after the utility suffered $50,000 in losses when fish processors went bankrupt.

[3]The survey included the following unregulated utilities: Fairbanks Municipal Utilities Systems, Ketchikan Public Utilities, Kodiak Municipal Utilities, and the Cities of Kenai, Petersburg, Sitka, Nome, Wrangell, Palmer, Unalaska, Kotlik, Seldovia, Dillingham and North Pole.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 1/16/86

REQUEST

Bill/Resolution No. : SB 113
Title : State & Municipal Tax

Sponsor : Rules by request of Governor
Requestor : Community & Regional Affairs
Date of Request :

FISCAL DETAIL

Agency Affected : State Assessor
BRU : Senior Citizens/Disabled Veterans Tax Relief

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

*See estimates attached.

Prepared by : Michael W. Worley
Division : Municipal & Regional Assistance
Phone : 465-4730
Date : 1/16/86

Approved by Commissioner :
Agency : Community & Regional Affairs
Date : 1/16/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

other unknown factors which may correlate to deposit policy. Because this sample is not necessarily representative, the information cannot be used to extrapolate the total amount of deposits for all utilities.

We were also unable to estimate the total amount of deposits by determining the average deposit charged per customer or per capita. Utilities' records show the number of customer accounts, but not necessarily the number of actual customers. One customer may pay a single deposit for several services or he may pay multiple deposits either to the same or different utility companies. An extrapolation of total deposits based on a per capita estimate would also be inaccurate because the percent of the population who are utility customers varies greatly in different localities.

Length of Time Deposits Are Held

Most of the surveyed utilities which require deposits refund them after either one or two years if the customer maintains good credit with the company. Nearly half (42 percent) of those utilities keep the deposits for two years. Four of the utilities surveyed hold the deposit until the customer closes the account. For those utilities which return customer deposits after a scheduled interval, the average period for holding deposits is 16 months.

Administrative Cost, Burden and Lead Time for Requiring Interest Payments on Deposits

The administrative cost to utilities of paying interest on customer deposits depends largely on whether the utility has a computerized accounting system. Spokespersons for several utilities which currently pay interest indicated that implementing the interest paying policy incurred a one-time computer programming cost. Their computers calculate interest monthly on each customer's deposit. The interest is either credited to the customer's bill once per year or is refunded with the deposit. Utility spokespersons who currently use computerized accounting systems to pay interest estimated that implementing an interest paying policy would require very little lead time.

Some of the small utilities balance their customer accounts by hand. Calculating and paying interest for each customer deposit would increase considerably the accounting and clerical work for these utilities. The utilities clerk for the city of Kenai stated that the Kenai utility might find it advantageous to stop requiring deposits rather than handle the paperwork of paying interest on each deposit.

Several utilities spokepersons mentioned that administrative complications would arise in calculating and paying interest to customers delinquent on their payments. The amount held in deposit for a customer may change many times at irregular intervals if the customer is consistently late with his payments and is disconnected, has part of his deposit confiscated, or is required to pay additional deposits.

Utility spokespersons were not able to estimate the financial burden of paying interest without determining what portion of their customer deposits would be affected. The burden to each utility will depend on the amount of deposits on which it must pay interest and on the utility's current use of the deposits. There was no consistent pattern to utilities' management of the deposits. Some of the utilities hold their deposits in a general fund and use them for general operating expenses while other utilities keep the deposits in checking accounts or interest bearing saving accounts, either separately or in combination with other daily cash deposits.

Chugach Electric keeps its deposits in a noninterest bearing checking account because it must frequently make refunds. If the utility were forced to commit its deposits to an investment account, it would lose this flexibility. Utilities which enter deposits into their general funds would also lose operating flexibility.

Ketchikan Public Utilities currently keeps customer deposits in an interest bearing savings account and passes along interest to the depositers. The City of Sitka invests its customer deposits for a return of 8 or 9 percent, also passing most of the interest to depositers. These utilities will incur a minimal burden if interest payment is mandated.

* * *

We hope you find this information to be useful. Please contact us if you have further questions.

NP

Attachment

PETE: HERE'S SUGGESTED AMENDMENT TO SB 113, AS WE DISCUSSED IN COMMITTEE YESTERDAY. Andre 28 JAN 86 1:48P

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 28, 1986

SUBJECT: State and municipal tax exemptions (SB 113)

TO: Representative Andre Marrou

FROM: Richard A. Bradley
Legislative Counsel

↓ ALSO: NOTE COUNSEL'S COMMENTS BELOW.

The amendment you requested is enclosed.

And while your amendment has no serious problems (but see below), I note that the main bill itself has a one or two problems; I believe that the committee may be addressing them.

Among those problems is the fact that the revision of the municipal code rendered essentially all of the references to AS 29 sections obsolete, e.g., secs. 3 - 9 of the bill.

While some of the provisions have been carried forward in more or less the same phrasings, the references should be corrected.

And the revisor advises me that the 1986 revisor's bill (HB 493), now pending in the House Judiciary Committee, repeals AS 28.10.4100(d) because, I am advised, it is "rendered redundant and meaningless by the revised municipal code."

If I may be of further assistance, please advise.

RAB:csh
c5/028

Bill No. House Bill No. 90

Date February 7, 1986

Title "An Act relating to labor relations between school boards and other public employers and their employees."

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

This legislation makes it mandatory for all school boards and municipalities to permit their noncertificated employees to enter into collective bargaining and mandates coverage by the Public Employment Relations Act (PERA).

Under this bill, the Department of Labor would become the labor relations agency for 53 separate school districts (including REAA's) involving approximately 4,400 noncertificated employees. The Department would be responsible for investigating representation petitions; determining appropriate units for the purpose of collective bargaining; conducting elections; investigating unfair labor practices; conducting preliminary hearings and formal hearings under the Administrative Procedures Act; mediating labor disputes; monitoring strike actions; resolving grievances; and mediating and arbitrating disputed issues subsequent to impasse during collective bargaining negotiations.

Section 1: Amends AS 23.40.100(b) to make it mandatory that "no representation" be a choice on all election ballots for elections conducted by the labor relations agency under PERA.

Section 2: Amends AS 23.40.200(c) to permit noncertificated employees of a school board to engage in a strike.

Section 3: Adds a new section to AS 23.40 to prohibit a school board or municipality from rejecting having the provisions of the PERA apply to its relations with its noncertificated school employees.

Section 4: Amends AS 23.40.250(6) to define public employees to include noncertificated employees of school boards and to exclude certificated employees.

Section 5: Amends AS 23.40.250(7) to define a public employer to include school boards.

Section 6: Amends AS 23.40.250 by adding a new paragraph to define a school board as including a regional education attendance area.

Section 7: Provides for existing collective bargaining units, agreements, and recognized bargaining representatives to remain status quo.

There are 53 school boards within the State of Alaska (including REAA's). Therefore, the Department of Labor as the labor relations agency could be monitoring elections for the 53 separate school boards and holding hearings to settle grievances or unfair labor practice charges involving approximately 4,400 noncertificated employees.

POSITION PAPER/Department of Labor

Four school districts are presently organized or have a collective bargaining agreement with a union or an association. These are Fairbanks, Kenai, Juneau, and Anchorage.

The Department supports the concept of extending collective bargaining to this group of public employees.

The Department's fiscal note is attached.

APPROVED:

Jim Robison, Commissioner
Department of Labor

Alaska Public
Employees Association APEA
Old Headquarters: 840 N. Franklin, Juneau, AK 99801 (907) 586-2334
210 Ferry Way, Suite 200, Juneau, AK 99801
(907)586-2334

MEMORANDUM

TO: Representative Peter Goll, Chairman
House Community and Regional Affairs Committee

FROM: Cherie Shelley
Executive Director

SUBJECT: HB 90: Collective Bargaining for School Employees

DATE: February 10, 1986

The Alaska Public Employees Association supports the provisions of HB 90 which grants collective bargaining rights to the noncertificated employees of school boards. These employees are the only public employees excluded from collective bargaining.

Noncertificated employees include teachers' aides, secretaries and custodians. They are traditionally the lowest paid public employees in Alaska. The are the only employees in the educational system who absorb the economic backlash when school boards intimate financial problems.

APEA urges the committee to act favorable on this bill. Passage will promote better employer-employee relations by affording noncertificated school employees the same collective bargaining rights provided to teachers and other public employees.

CS/kr

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)

HB
139

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 139

Title: An Act Relating to the Administration of Certain Grants

Sponsor: Governor

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Administration

Program Category Affected: General Government

BRU, Program or Subprogram(s) Affected: General Services & Supply

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	0	0	0	0	0	0
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0
POSITIONS:	0	0	0	0	0	0
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary) This Bill recognizes that a grant is more often akin to a unilateral contract (in that there is no specific performance on the State's part other then the provision of funding) than it is to a bilateral contract (where there is an exchange of promises with specific performance on the part of both parties). This bill further recognizes that the difference warrants a separate set of procedures under which the grant will be expended.

Prepared By: Robert J. Link Phone: 465-2250

Division: General Services & Supply Date: December 27, 1984

Approved by Commissioner: Lisa Rudd Date: 1/11/85

Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Alaska State Legislature

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

LETTER OF INTENT
for
CSHB 139 (CR&A)

The House Committee on Community and Regional Affairs has considered House Bill 139 at length.

During committee discussion the following areas were considered appropriate for the focus of regulation.

1. Establishment of adequate accounting procedures to ensure proper documentation of financial activity;

2. Provision of an annual status report on ongoing projects;

3. Project completion within 7 years, with funds lapsing after that time subject to reappropriation;

4. Compliance with local and state laws required;

5. Prohibition of discrimination in hiring by contractors including all constitutional protections plus prohibition of discrimination based upon political affiliation or opinions;

6. Funds to be deposited in a federally insured interest bearing account or federally insured instrument;

7. Audit requirements; and

8. Encouragement of local hire.

_____
Peter Goll
Chairman

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Representative Peter Goll, Chair
Members of the House Community & Regional Affairs Committee

FROM: Scott A. Burgess
Executive Director

DATE: April 8, 1985

SUBJECT: HB 139 - Administration of Certain Grants

As you know, the Alaska Municipal League is concerned about HB 139 and the "carte blanche" authority that would be given to the Department of Administration (DOA) to adopt regulations for AS 37.05.315-317 grants under AS 37.05.318. The concern is that excessive, complex and burdensome regulations may be developed that would tie the hands of municipal officials, preventing efficient administration of grant funds and projects, and result in further project delay and increased project cost. The concern was increased last week when the Committee agreed in concept to several proposed amendments to add specific requirements. Many of the suggested amendments do not address the Administration's stated intent of the bill (Governor's Letter of Transmittal, January 28, 1985) of insuring that the projects are completed "expeditiously".

You asked me for comment at the meeting the suggestions were made and I was unprepared to comment. I will comment below on some of the concepts and hope that other municipal officials, more knowledgeable of specific day-to-day problems faced by administering "315" or "316" grant funds and projects will have the opportunity to do so as well.

1. Federally-insured, interest-bearing account. I do not know if this concern was raised because of the topical Ohio situation but I am sure municipalities do not have to be told to invest the money to gain maximum interest with the least risk. The language implies a hypothetical $500,000 advance payment on a $2.5 million grant invested in five (5) pass-book savings bank accounts each insured to the maximum of $100,000 and each gaining 5½% interest. This is unreasonable and unnecessary, and certainly does not address expeditious completion of a project.

In talking to a couple of individuals involved with municipal grants administration, they indicate it is good money management to have a centralized treasury where the funds are co-mingled for investment and the interest is allocated by overall increase to each project where necessary. For funds in excess of the institution's ability to insure (e.g.

$100,000), municipalities may require the institution to pledge collateral for the additional amount with another institution.

2. Interest earned. How the interest money earned is used is a policy question. Municipalities would probably agree more with the position stated by Representative Marrou that as long as the original grant amount is spent to complete the project the Legislature should not remove the incentive for a local government to invest and manage the funds well. However, the maximum restriction should include the option to apply the interest earned toward the project.

3. AICPA procedures. The American Institute of Certified Public Accountants does not set accounting procedures but relies on the National Council on Government Accounting and others. The language, if necessary at all beyond that the funds be auditable, should be, "Establish and use recognized accounting procedures." This language may even conflict with Title 29 that requires only that a municipal treasurer keep an itemized account of money received and disbursed. (AS 29.33.390)

4. Require audits as an expense of the grant. DOA can require an audit currently under statute. If the municipality is required to audit the grant, then it should be an allowable expense <u>over and above</u> the amount necessary to do the project.

5. Anti-discrimination language. A concern here is for smaller communities where there is only <u>one</u> contractor and it is viewed as discriminatory to hire or not hire that individual.

6. Status report - I would concur in the clarification of "brief" discussed by the Committee to minimize any additional or unreasonable burden of such a requirement.

7. 20% limitation. To include architectural and engineering services with contract administration seems to be mixing apples and oranges. What if the project is for design? No such limit should be included, or a limit should not be included without additional inquiry as to what is customary and reasonable.

Again, while the League does not oppose the concept of insuring that a sound project for which grant funds are appropriated is completed expeditiously as possible, the League is opposed to excessive and burdensome regulations. By the same token, the League does support the adoption of policies for pass-through funds to non-profit corporations that do not cause any present or future liabilities to municipalities.

It would appear that statutory safeguards exist in AS 37.05.315 and the problem may be an internal and financial one to the Department of Administration. If legislation is necessary to implement the legislative

intent contained in AS 37.05.315, or to require necessary protection to municipalities for pass-through grants, then I would suggest amending the original bill by:

1. changing "shall" to "may" on line 6; and,

2. adding a letter of intent to require that the subsequent regulations be adopted only after reasonable attempts and opportunities are made by the Department of Administration to get input from municipal officials including managers, finance officers, attorneys and clerks. The purpose of the intent statement is not to give municipal officials veto power but, instead, to encourage the Department and municipalities to share concerns and information to avoid unnecessary regulation.

Thank you.

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue
P.O. Box 6-614
Anchorage, Alaska 99502-0614
[907] 333-9561

March 29, 1985

The Honorable Max Gruenberg, Jr.
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Gruenberg:

The Anchorage School District has reviewed House Bill No. 139 which is a bill entitled: "An Act Relating to the Administration of Certain Grants Passed by the Legislature; and Providing for an Effective Date".

Our School District is in support of this legislation which was introduced at the request of the Governor. We believe that regulations should be adopted to include provisions that establish procedures for safekeeping and investment of grant money, management and disposition of property acquired by grant money, and that a post audit of grant transactions should be undertaken upon project completion. We would also request for your consideration, that the cost of post audits be an allowable cost under the terms and conditions of any grant award.

The above-mentioned provisions relating to grants under AS 37.05 are sound financial management policies and should be required of agencies that receive state funding.

Thank you for reviewing the Anchorage School District's position with regards to this proposed legislation.

Sincerely,

E. E. Davis

E. E. (Gene) Davis, Ed.D.
SUPERINTENDENT

cl

cc L. T. Freeman, Assistant Superintendent
for Business Management
B. Miles, School District Lobbyist

Sec. 37.05.250. Delegation of duties. The department may delegate the duties imposed by this chapter to an employee of the state normally stationed in a town or location distant from the state capital. Agents so designated shall perform the duties as the department requires and in accordance with regulations established by the department. (§ 5 art IV ch 82 SLA 1955)

Sec. 37.05.260. Preference for Alaska products. This chapter does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or AS 36.20.010 regarding preference to producers or dealers in Alaska except as provided in AS 37.05.230(1). (§ 6 art IV ch 82 SLA 1955)

Sec. 37.05.270. Purchases through General Services Administration. This chapter does not prevent the department from purchasing through the General Services Administration as provided by law. (§ 7 art IV ch 82 SLA 1955; added by § 11 ch 186 SLA 1957)

Sec. 37.05.280. Leases. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency of the state, wherever it is necessary and feasible, subject to compliance with the requirements of AS 37.05.220 — 37.05.280. No lease or contract for a lease may provide for a period of occupancy greater than 40 years. An agency of the state requiring office, warehouse or other space shall lease the space through the department. No contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of $12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution. (§ 8 art IV ch 82 SLA 1955; added by § 1 ch 81 SLA 1959; am § 1 ch 94 SLA 1961; am § 16 ch 99 SLA 1965)

Article 4. General Provisions.

Sec. 37.05.290. Purpose. The purpose of this chapter is to provide uniform financial procedures for all state agencies with respect to accounting, purchasing, post auditing, and related financial procedures; and to revise financial procedures to obtain economy, efficiency, and integrity in handling public money. (§ 2 art I ch 32 SLA 1955; am § 2 ch 188 SLA 1970)

Sec. 37.05.300. Interpretation of chapter. This chapter shall be construed as supplemental to all other state laws not in conflict with it. If a section or part of a section of this chapter is in conflict with federal requirements for a program for which federal grant-in-aid funds are available, the section or part to the extent of the conflict is inoperative. (§ 1 art VIII ch 82 SLA 1955; am § 18 ch 186 SLA 1957)

Editor's notes. — For applicability of the chapter to the University of Alaska, see notes following chapter heading.

Sec. 37.05.305. Applicability to University of Alaska. The commissioner of administration may delegate the performance of the functions under this chapter as they relate to the university to the Board of Regents of the University of Alaska and set out the criteria and guidelines which shall be followed. The commissioner shall direct necessary stipulations and exercise monitoring responsibility for conformance through the Board of Regents of the University of Alaska. (§ 5 ch 46 SLA 1977)

Legislative history reports. — For letter of intent on ch. 46, SLA 1977 (HCSSB 261), see 1977 House Journal, p. 1019.

Sec. 37.05.310. Fiscal year. The fiscal year of the state begins on July 1 of each year and ends at midnight on the following June 30. The accounts of the Department of Administration, the Department of Revenue, and all other state officers whose accounts are in any way connected with the treasury shall be kept, and all duties performed with reference to the beginning and ending of the fiscal year. (§ 12-4-1 ACLA 1949; am § 2 art VI ch 82 SLA 1955)

Revisor's notes. — Section 12-4-1 ACLA 1949 was repealed and re-enacted by § 30, ch. 133, SLA 1951. Section 1, ch. 24, SLA 1953 repealed ch. 133, SLA 1951 and § 2, ch. 24, SLA 1953 re-enacted § 12-4-1 ACLA 1949 as it appeared in ACLA 1949.

Sec. 37.05.315. Grants to municipalities. (a) When an amount is appropriated or allocated as a grant to a municipality, the Department of Administration shall promptly notify the municipality of the availability of the grant. When the Department of Administration receives an agreement executed by the municipality which provides that the municipality (1) will spend the grant for the purposes specified in the appropriation or allocation; (2) will allow, on request, an audit by the state of the uses made of the grant; and (3) assures that, to the extent consistent with the purpose of the appropriation or allocation, the facilities and services provided with the grant will be available for the use of the general public, the Department of Administration shall pay the grant directly to the municipality. The agreement executed by a

municipality under this section shall be on a form furnished by the Department of Administration and shall be executed within 60 days after the effective date of the appropriation or allocation.

(b) An appropriation or allocation for a grant to a municipality for construction of a public facility lapses if substantial, ongoing work on the project has not begun within five years after the effective date of the appropriation or allocation.

(c) In accepting a grant of money for construction of a public facility, a municipality covenants with the state that it will operate and maintain the facility for the practical life of the facility and that the municipality will not look to the state to operate or maintain the facility or pay for its operation or maintenance. This requirement does not apply to a grant of money for repair or improvement of an existing facility operated or maintained by the state at the time the grant is accepted if the repair or improvement for which the grant is made will not substantially increase the operating or maintenance costs to the state.

(d) Not less than 20 percent of a grant shall be paid to a municipality within 10 days of the effective date of the agreement under (a) of this section. The remainder of the grant shall be paid either in monthly installments equal to the amount of grant money the municipality expended in the previous month or in a lump sum as determined by the Department of Administration. (§ 1 ch 156 SLA 1980; am § 1 ch 4 SLA 1982)

Effect of amendments. — The 1982 amendment in subsection (a), substituted "amount is appropriated or allocated" for "appropriation is made" in the first sentence, inserted "or allocation" in items (1) and (3) in the second sentence, and added "and shall be executed within 60 days after the effective date of the appropriation or allocation" to the end of the third sentence; redesignated the former fourth and fifth sentences of subsection (a) as subsection (d); inserted "or allocation" in two places in subsection (b); substituted "a" for "each" preceding "municipality covenants" and "the practical life of the facility and that the municipality" for "its practical life and that it" in subsection (c); added the second sentence of subsection (c); deleted the provisions of former subsections (d), (f), and (g), which may now be found in AS 37.05.316, 37.05.317, and 37.05.318, respectively; and in present subsection (d), added "under (a) of this section" to the end of the first sentence. The substance of the provisions of former subsection (e) may now be found at the end of the third sentence of subsection (c).

Sec. 37.05.316. Grants to named recipients. When an amount is appropriated or allocated to a department as a grant for a named recipient which is not a municipality, the department to which the appropriation or allocation is made shall promptly notify the named recipient of the availability of the grant and request the named recipient to submit a proposal to provide the goods or services specified in the appropriation act, or both, for which the appropriation or allocation is made. At the same time, the department may issue a request for proposals from other qualified persons to provide the same goods or services, or both, in the same area. The department shall contract with

the named recipient unless the Office of the Governor, with due regard for any local expertise or experience among those making proposals, determines that an award of the contract to a different party would better serve the public interest. If the contract is awarded to another party than that named by the legislature, the basis of that action shall be stated in writing at the time the grant is issued and a copy of the written statement shall be sent to the Legislative Budget and Audit Committee. A contract shall be executed within 60 days after the effective date of the appropriation or allocation. The purchase of the goods or services, or both, shall be in accordance with AS 37.05.230(1)(C). (§ 2 ch 4 SLA 1982)

Sec. 37.05.317. Grants to unincorporated communities. When an amount is appropriated or allocated as a grant under this section to an unincorporated community, it shall be disbursed as follows:

(1) Within 45 days after the effective date of the appropriation or allocation, the Department of Community and Regional Affairs shall notify the governing body of the unincorporated community, if any, that a grant is available.

(2) The Department of Community and Regional Affairs shall determine if there is a qualified incorporated entity in the community area that will agree to receive the grant and administer it, subject to terms generally applicable to private grantees. If there is more than one such entity, the Department of Community and Regional Affairs shall select the most qualified and the grant shall be awarded to that incorporated entity for the purposes specified in the appropriation act. However, the Department of Community and Regional Affairs shall give preference to a nonprofit corporation organized by a community for receipt of the grant.

(3) If there is no incorporated entity qualified to receive the grant, the Department of Community and Regional Affairs shall administer the program as specified in the appropriation act directly or through agents or contractors with whom it may contract in the community area. (§ 2 ch 4 SLA 1982)

Sec. 37.05.318. Further regulations prohibited. Notwithstanding the Administrative Procedure Act (AS 44.62), the Fiscal Procedures Act (AS 37.05), and the Executive Budget Act (AS 37.07), a state agency may not adopt regulations or impose additional requirements or procedures to implement, interpret, make specific, or otherwise carry out the provisions of AS 37.05.315 — 37.05.317 unless required by the federal government for participation in federal programs. (§ 2 ch 4 SLA 1982)

Sec. 37.05.325. Definitions for AS 37.05.315 — 37.05.317. In AS 37.05.315 — 37.05.317, "allocation" and "appropriation" have the meanings given in AS 37.07.120(2) and (3). (§ 2 ch 4 SLA 1982)

Revisor's notes. — Formerly AS 37.05.319. Renumbered in 1983.

Sec. 37.05.400. Definitions for chapter. In this chapter

(1) "fiscal year," "budget year," "accounting year," or similar term means a year beginning on July 1 of one calendar year and ending on June 30 of the following calendar year;

(2) "handicapped individual" means an individual under a physical or mental disability which constitutes a substantial handicap to employment;

(3) "sheltered workshop" means a place where manufacture or handiwork is carried on, and which is operated for the primary purpose of providing remunerative employment to handicapped individuals.

(4) "state agency," "agency," "department," or similar term means a department, office, institution, board, commission, bureau, division, or other administrative unit forming the state government, and includes the Alaska Pioneers' Home and the University of Alaska. (§ 3 art I ch 82 SLA 1955; am § 1 ch 186 SLA 1957; am § 2 ch 92 SLA 1975; am § 6 ch 46 SLA 1977)

Revisor's notes. — Formerly AS 37.05.320. Renumbered in 1983 and reorganized to alphabetize the defined terms.

NOTES TO DECISIONS

Cited in Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

Sec. 37.05.410. Short title. This chapter may be cited as the Fiscal Procedures Act. (§ 1 art I ch 82 SLA 1955)

Revisor's notes. — Formerly AS 37.05.330. Renumbered in 1983.

Chapter 07. Executive Budget Act.

Bannister
4/9/85

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 139 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the administration of certain grants passed by the legislature; and providing for an effective date."

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

* Section 1. AS 37.05.316 is amended to read:

Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is appropriated or allocated to a department as a grant for a named recipient that [WHICH] is not a municipality, the department to which the appropriation or allocation is made shall promptly notify the named recipient of the availability of the grant and request the named recipient to submit a proposal to provide the goods or services specified in the appropriation act [, OR BOTH,] for which the appropriation or allocation is made. At the same time, the department may issue a request for proposals from other qualified persons to provide the same goods or services [, OR BOTH,] in the same area. The department shall award the grant to [CONTRACT WITH] the named recipient unless the Office of the Governor, with due regard for the [ANY] local expertise or experience of [AMONG] those making proposals, determines that an award [OF THE CONTRACT] to a different party would better serve the public interest. If the grant [CONTRACT] is awarded to a [ANOTHER] party other than that named by the legislature, the basis of that action shall be stated in writing at the time the grant is issued and a copy of the written statement shall be sent to the Legislative Budget and Audit Committee. A grant agreement must [CONTRACT SHALL]

be executed within 60 days after the effective date of the appropriation or allocation. [THE PURCHASE OF THE GOODS OR SERVICES, OR BOTH, SHALL BE IN ACCORDANCE WITH AS 37.05.230(1)(B).]

* Sec. 2. AS 37.05.318 is repealed and reenacted to read:

Sec. 37.05.318. REGULATIONS. The commissioner of administration shall adopt regulations to implement the provisions of AS 37.05.315 - 37.05.316. The commissioner of community and regional affairs shall adopt regulations to implement the provisions of AS 37.05.317. These regulations must include provisions that establish procedures for the safekeeping and investment of grant money, the management and disposition of property acquired by grant money, and the post audit of grant transactions. An audit required by these regulations is a cost of the grant. The regulations adopted under this section may not interfere with the implementation of the grant, but shall be designed to prevent the mismanagement of the grant and the misuse of grant funds.

* Sec. 3. This Act takes effect July 1, 1985.

Fairbanks
North
Star
Borough

Mayor: B.B. Allen

April 3, 1985

Representative Niilo Koponen
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Koponen:

Attached is a Position Paper on House Bill No. 139, "An Act relating to the administration of certain grants passed by the Legislature; and providing for an effective date." Section 2 of this act has the potential to increase the Borough's administrative cost thereby reducing program dollars. As stated in the Position Paper, we have already established procedures which are consistant with statutes, Borough ordinances, and accepted accounting principles. We believe that this is the most effective method to regulate these grants in terms of both cost and programs.

While we realize the need to regulate grants, we hope the Legislature realizes that many communities such as Anchorage, Mat-Su and ourselves have effective local regulations already in place. These regulations provide all of the safeguards for grant funds that are provided to every other public dollar which we are entrusted to handle. We would, therefore, urge you to give consideration to our efforts in your quest to protect against abuses in the use of grant funds.

Sincerely,

Bill

B. B. Allen,
Borough Mayor

BBA/rek
Enclosures

P.O. Box 1267 Fairbanks, Alaska 99707 (907) 452-4761

POSITION PAPER - HOUSE BILL NO. 139

Section 1 of this bill does not apply to the Fairbanks North Star Borough.

Section 2 of House Bill No. 139 would amend A.S.37.05.318 to require the commissioner of administration to adopt regulations pertaining to grants awarded by the Legislature through the Department of Administration. This requirement is a total reversal of the existing A.S.37.05.318 which prohibits the commissioner from regulating these grants. While we can support the fact that grant monies need to be controlled, we do have some concerns.

Responsible local governments in various parts of the state have long recognized that the grant funds need to have rules and safeguards. As a result, we have created our own administrative regulations to ensure that grant funds - like all public dollars - are handled in accordance with existing statutes, regulations and accepted principles of government accounting. During the time that these local safeguards have been in place, they have served to ensure that grant funds receive the same scrutiny as other Borough funds. Therefore, where those safeguards are in effect and have proven to work, we feel that the local standard should prevail over any regulations developed by the commissioner of administration.

If the alternative is to be pursued, Section 2 of House Bill No. 139 should be changed by adding a sentence to the end as follows:

> "When procedures established by the municipality provide for the aforementioned safeguards and are consistant with state statute, the provisions of the municipal codes shall prevail over regulations promulgated under the authority of this section.

If this solution is not acceptable, then we would like to see some language built into the statute that would protect political subdivisions from wasteful redundancy and artificial requirements that serve only administrative convenience at the expense of the various programs. To this end, we would propose that the audit of grant funds be made as a part of the annual external audit of municipal funds required by A.S.29.48.220. Under this solution, all grant funds would be audited at the end of each fiscal year. This is currently done in the Fairbanks North Star Borough. There are multiple benefits to this approach. First, it would provide a mechanism to systematically have grants examined each fiscal year. Second, it would prevent the loss of staff time occasioned by multiple audits per year. Third, it would prevent an increase in costs to the state by not requiring the hiring of auditors by the Department of Administration.

We would further propose that the right of municipalities to maintain a central treasury be protected. The costs of establishing separate accounts and tracking the investments for each grant fund would greatly outweigh any benefit to be derived. Further, the position that municipalities are gaining great amounts of interest from grant dollars at the expense of projects just is not true in the Fairbanks North Star Borough. The majority of our grants provide only 20% in front money. This means that during our short construction season, we are often using the Borough's General Fund to pay contractors prior to obtaining reimbursement.

Therefore, any system requiring interest tracing would have to be a by day system calculating not only how much interest a grant was earning but also how much grant interest is due to the Borough for revenues lost between the time we spend Borough money and the state reimburses it. A system of this type would be extremely expensive and would erode program dollars by driving up indirect costs.

If this alternative is chosen, then Section 2 of House Bill No. 139 should be changed by adding two sentences at the end as follows:

> "An audit conducted in accordance with A.S.29.48.220 may be used to satisfy any post audit requirement imposed by regulations of the commissioner. Nothing prescribed by this section or regulations promulgated hereunder may be construed to interfere with the right of a municipality to establish and maintain a central treasury."

COMMITTEE REPORT

HOUSE

4/11

(7)

FURTHER: FINANCE

1/28/85

Date: _____

The Committee on COMMUNITY & REGIONAL AFFAIRS has had HB 139

"An Act relating to the administration of certain grants passed by the legislature; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for Hr. 139 (C+RA) [✓] same title [ ] new title

and recommends _____

[✓] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[✓] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Peter Joe

MEMBERS HAVING
OTHER RECOMMENDATIONS:

F. Kerkvliet Do Not Pass

Bill Kernan no rec.

Peter Joe

CHAIRMAN

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 19, 1985

MEMORANDUM

TO: Representative Peter Goll

ATTN: Bob Berry

FROM: Jonathan Sherwood
Legislative Analyst

RE: Oversight of State Grants in Other States
Research Request 85-245

You requested that we provide information on the statutory or regulatory requirements of other states regarding the oversight of state grants to local governments and nonprofit agencies. We were also requested to contact the Division of Management in the Alaska Office of Management and Budget to determine what ideas for oversight of Alaska grants have been developed.

We contacted five states--California, Louisiana, Minnesota, New Mexico, and Texas--to determine the methods of grant oversight used in other states. In addition, we discussed procedures in other states with Linda Delaney of the Division of Management, who has also researched grant oversight in other states. Before presenting our findings regarding individual states; it is useful to discuss some of our general findings.

None of the states we contacted reported any major grant programs similar to AS 37.05.315-.317, in which the legislature designates the recipient of the grant. Grant programs in other states generally involve an appropriation to a program administered by an executive branch agency, which then designates the grant recipients and establishes the grant compliance and oversight requirements specific to that program.

Many state grant programs involve the appropriation of funds received from the federal government. These federal pass-through programs are subject to federal grant oversight requirements. One of the most significant federal provisions is the requirement mandating the single audit for state, local, and tribal governments receiving federal assistance. This audit requirement, established by Attachment P of OMB Circular A-102, unifies the auditing done on governments receiving funds from various federal programs, thus reducing duplication of audit

efforts by the federal government. Attachment P also outlines the recipient's responsibility for monitoring the expenditures of subrecipients (agencies or local governments receiving pass-through funds). We have included Attachment P with this memorandum along with an article explaining Attachment P audit procedures.

An Attachment P audit considers not only whether the recipient's financial statements are in order, but also whether laws and regulations pertaining to the expenditure of federal funds have been complied with, and whether internal procedures have been established to meet the objectives of the grant program. Although the Attachment P audit requirement does not apply to state-funded grant programs, it appears that some states have altered their audit requirements to coordinate with the Attachment P process.

Oversight in Other States

California. According to Kurt Sjoberg, Chief Deputy Auditor General with the California Joint Legislative Audit Committee, state grants in California are administered by many different agencies, but all grants relating to a particular function are administered by the same state agency. Mr. Sjoberg stated that the California Legislature generally does not identify grant recipients in the appropriation process; instead, it funds programs which have a specified class of recipient agencies.

In some instances, the legislation authorizing a grant program specifies the grant compliance procedures; in others, the executive branch agency responsible for administering the program develops the compliance procedures. Mr. Sjoberg stated that for most grant programs, recipients are required to submit monthly cost reports, obtain an audit by an independent auditor, and make themselves available to state audit.

The California legislature can direct the Auditor General's office to review any state expenditure, including grants. In addition, other audit functions exist within the executive branch of government. However, Mr. Sjoberg noted that while provisions for grant compliance are in place, the state may not always have sufficient staff available to ensure that compliance is obtained.

Minnesota. According to Elaine Hansen, with the Minnesota State Auditor's Office, Minnesota appropriates relatively more grant moneys to local governments than do most states. Most local units of government have annual audits; it is the responsibility of the state auditor to audit local units of government (the Legislative Audit Committee audits executive branch expenditures). Minnesota has tied its audit program

into the federally mandated single audit program; local units of government have a state audit in conjunction with the federal Attachment P audit. In practice, the grant recipient has one total audit, which accounts for all funds received. The audit considers both the financial statements and the program compliance of the grant recipient.

The State of Minnesota has developed a compliance manual for local government units. This manual outlines proper procedures or standards for functions such as minutes of meetings, bidding, subcontracting, claims payment, and indebtedness. In addition, the state has developed charts of accounts for counties, cities, and school districts. In theory, use of these charts will result in local government units keeping their accounts in the same format, although Ms. Hansen acknowledges that this result is not always achieved.

Grants to nonprofit agencies are distributed through programs administered by executive branch agencies. Although different programs may be administered by different agencies, all grant funds are paid out by the Department of Finance, which requires all state agencies to include audit requirements in every grant agreement.

According to Ms. Hansen, if a lack of compliance is found during any audit, the state will stop giving money to the grant recipient. It will also attempt to collect any misspent monies. While she acknowledged that collection was sometimes difficult in the case of nonprofits and small cities without substantial revenue sources, Ms. Hansen noted that the state is particularly aggressive in collecting from county governments.

Louisiana. In Louisiana, the Legislative Auditor is responsible for auditing all state and local governmental units, except for municipalities, which are required to arrange for an audit by an independent accounting firm through the Legislative Auditor's office. Local governments are audited according to Attachment P procedures.

According to Charles Collier, with the Louisiana Legislative Auditor's Office, no overall grant compliance measures have been established. Each state department develops its own guidelines for the programs it administers. Virtually all grant programs are either federally funded, and thus must comply with Attachment P audit procedures, or are distributed by formula, such as the school foundation formula.

All state expenditures are audited by the Louisiana Legislative Auditor at some level. The State of Louisiana as a whole is audited--special reports are compiled on each department--and audits are performed on local governments. school districts, and independent taxing authorities. However, no provisions are made for a state audit of grant recipients

that do not fall into one of these categories, such as nonprofits receiving state funds. In such cases, the expenditure is audited at the state government level.

New Mexico. According to Jim Macias, with the State Auditor's Office in New Mexico, the State of New Mexico is constitutionally prohibited from giving grants to nonprofit agencies. However, the state does give grants to local governments. Each municipality is audited annually; grant funds are included in this audit. Each year, the State Auditor's Office audits a small percentage of the local governments itself; other municipalities are audited by independent public accountants.

The state agencies administering the grant programs are responsible for oversight provisions. According to Jeanne Zoltai, with the New Mexico Department of Finance and Administration, different programs have different oversight requirements. However, Ms. Zoltai noted that there is ongoing monitoring of grant expenditures. Grant recipients are required to submit regular statements showing expenditures billed to the program.

Texas. Jerry Nieff, with the Texas Legislative Audit Committee, stated that Texas has very few state grants. Agencies that do receive grants from the state are either required to have an "Attachment P" audit or are audited by the state agency responsible for administering the grant program. The individual state agencies are responsible for incorporating performance measures in the grant agreements. Where audits turn up expenditures not in compliance with the grant, the recipient agency usually receives a cut in funding for the following fiscal year.

Grant Oversight in Alaska

According to Linda Delaney, with the Alaska Office of Management and Budget's Division of Management, the State of Alaska plans to implement a single audit process beginning in FY 86. The plan has recently been submitted to the Governor's Office for final approval.

Under the proposed guidelines for the program, every grant recipient that receives more than $300,000 in State funds in a fiscal year will automatically recieve a single audit; recipients of $100,000 per year will automatically be audited biennially. Recipients of smaller amounts will still be subject to audits at the discretion of the State.

The State single audit process as proposed is very similar to the federal Attachment P audit process and is designed to be merged with the federal audit requirement so that agencies receiving both State and federal funds will be able to have one audit satisfy both State and federal audit requirements. The single audits will not only review

financial statements, but also consider compliance with fiscal requirements of grant programs and internal controls to ensure such compliance. Individual State agencies responsible for grant administration will still be responsible for performance evaluation of the grant recipients.

Attached are the appropriate sections of the draft Grants Management Handbook which describe the single audit process in more detail. According to Ms. Delaney, the only major change between the draft and current plans is that the dollar limit used to trigger the mandatory audit provisions will be the amount awarded to a grant recipient, not the amount actually received by the grant recipient by the end of the fiscal year.

Also in FY 86, the Office of Management and Budget plans to begin operating a computerized grants information system which will enable the State to track all State grant awards and expenditures.

* * *

If you have any questions, or if we can be of further assistance to you, please do not hesitate to contact us.

JS

Attachments

AUDIT REQUIREMENTS

1. This Attachment establishes audit requirements for State and local governments, and Indian tribal governments that receive Federal assistance. It provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulation. The requirements are established to ensure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis. Such audits are to determine whether (a) financial operations are conducted properly, (b) the financial statements are presented fairly, (c) the organization has complied with laws and regulations affecting the expenditure of Federal funds, (d) internal procedures have been established to meet the objectives of federally assisted programs, and (e) financial reports to the Federal Government contain accurate and reliable information. Except where specifically required by law, no additional requirements for audit will be imposed unless approved by the Office of Management and Budget.

2. Definitions.

"Cognizant agency" means the Federal agency that is assigned audit responsibility for a particular recipient organization by the Office of Management and Budget.

"Recipient organization" means a State department, a local government, an Indian tribal government, or a subdivision of such entities, that receives Federal assistance. It does not include State and local institutions of higher education or hospitals, which are covered by Circular A-110.

3. State and local governments and Indian tribal governments shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth below. Where contracts are awarded for audit services, the contracts shall include a reference to this Attachment.

4. The provisions of this Attachment do not limit the authority of Federal agencies to make audits of recipient organizations.

However, if independent audits arranged for by recipients meet the requirements prescribed below, all Federal agencies shall rely on them, and any additional audit work shall build upon the work already done.

5. Audits shall be made in accordance with the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

6. Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether:

a. There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.

b. The financial statements are presented fairly in accordance with generally accepted accounting principles.

c. The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of this Circular.

d. Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

7. In order to accomplish the purposes set forth above, a representative number of charges to Federal awards shall be tested. The test shall be representative of (1) the universe of Federal awards received, and (2) all costs categories that materially affect the award. The test is to determine whether the charges:

a. Are necessary and reasonable for the proper administration of the program.

b. Conform to any limitations or exclusions in the award.

c. Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient.

d. Were net of applicable credits.

e. Did not include costs properly chargeable to other federally assisted programs.

f. Were properly recorded (i.e., correct amount, date) and supported by source documentation.

g. Were approved in advance, if subject to prior approval in accordance with Circular 74-4.

h. Were incurred in accordance with competitive purchasing procedures if covered by Attachment O of this Circular.

i. Were allocated equitably to benefiting activities, including non-Federal activities.

8. Audits usually will be made annually, but not less frequently than every two years.

9. If the auditor becomes aware of irregularities in the recipient organization, the auditor shall promptly notify the cognizant agency and recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

10. The audit report shall include:

a. Financial statements, including footnotes, of the recipient organization.

b. The auditors' comments on the financial statements which should:

(1) Identify the statements examined, and the period covered.

(2) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(3) State that the audit was done in accordance with the standards in paragraph 5.

(4) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

c. The auditors' comments on compliance and internal control should:

(1) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(2) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports.

(3) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

d. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies.

e. Comments on corrective action taken or planned by the recipient.

11. Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

12. The Office of Management and Budget will work with Federal agencies and State and local governments to assure that recipient audits are made in accordance with the standards set forth in paragraph 5.

13. The Office of Management and Budget will designate cognizant agencies for major recipient organizations.

14. The cognizant agency shall have the following responsibilities:

a. Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. (If a non-Federal audit organization is responsible for audits of recipients that have different cognizant audit agencies, a single quality assessment review should be arranged.)

b. Assure that all audit reports of recipients that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

c. Whenever significant inadequacies in an audit are disclosed, the recipient organization will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient organization and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

d. Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this Attachment.

e. Provide technical advice and act as a liaison between Federal agencies, independent auditors, and recipient organizations.

f. Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

g. Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

15. Recipients shall require subrecipients that are State and local governments or Indian tribal governments to adopt the requirements in paragraph 1 through 11 above. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for these reports described in paragraph 14.

16. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded with Federal funds. Grantees of Federal funds shall take the following affirmative action to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in P.L. 95-507 are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged audit firms.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms.

d. Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small or disadvantaged audit firms as described in paragraph a when a contract is too large for an individual small or disadvantaged audit firm.

f. Use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration in the solicitation and utilization of small or disadvantaged audit firms.

the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publication Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 1st day of August 1983.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 83-21237 Filed 8-5-83 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Audit Requirements for State and Local Governments

August 2, 1983.

AGENCY: Office of Management and Budget.

ACTION: Notice for comment.

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed revision to Attachment P "Audit Requirements" to Circular A-102 "Uniform Requirements for grants to State and local governments". The revision would clarify and improve the rules governing entity-wide audits of federally assisted programs and exclude smaller recipients of Federal assistance from these audit requirements.

The revised attachment is shown below in its entirety. The major changes are as follows:

Paragraph 2 establishes a floor of $100,000 beneath which state and local government units that provide reliable financial data and have no weaknesses in internal control would need only entity-wide financial audits. Recipients that receive less than $25,000 per year would not be required to have an audit.

Paragraph 4 adds a definition of Federal assistance. It makes it clear that entity-wide audits should include audits of grants, cooperative agreements, loans, loan guarantees, interest subsidies, insurance, direct appropriations and cost type contracts.

Paragraph 4 also defines a major Federal assistance program as one for which the total expenditures for all awards made for the program exceeded either $300,000 or 3% of the entity's total expenditure of Federal assistance funds, whichever is greater, or any Federal assistance program for which $30 million or more was expended during the period.

Paragraph 8 further defines what should be included in the study and evaluation of systems of internal control and systems established to ensure compliance with laws and regulations affecting the receipt and expenditure of Federal assistance funds.

Paragraph 9 further defines what is required for the evaluation of systems established to ensure compliance with applicable laws and regulation.

Paragraph 11 clarifies the responsibilities of recipient entities that transfer Federal funds to subrecipient entities.

Paragraph 13(i) changes the rules for transmitting audit reports to the cognizant agency. Recipient agencies that have not been assigned a cognizant agency by name are not required to transmit audit reports to a Federal agency unless specifically requested to do so.

Paragraph 18 was added to make it clear that the portion of a single audit attributable to the Federal assistance awards may be charged as a direct cost or allocated as an indirect cost to the Federal assistance awards.

Paragraph 19 provides that Federal agencies may not require additional audit work unless warranted, and if they do, they must arrange for funding the cost of such work.

Comments should be submitted in duplicate to the Project Management Branch, Management Reform Division, Office of Management and Budget, Washington, D.C. 20503, Room 10202. All comments should be received within 60 days of the date of this publication. Contact person: Palmer A. Marcantonio, (202) 395-3857.

Harold I. Steinberg,

Associate Director for Management, Office of Management and Budget.

Circular A-102; Attachment P; Audit Requirements for State and Local Governments

1. This Attachment establishes audit requirements for state and local governments and Indian Tribal governments that receive Federal assistance. Specifically, it requires that financial and compliance audits of Federal assistance be made by independent auditors on an entity-wide basis rather than on an individual award basis, as part of the audits of the recipients' general purpose financial statements. Except where specifically required by law, no additional requirements for the recipient to arrange for or obtain audits may be imposed by the Federal Government, unless approved by the Office of Management and Budget.

2. The audit requirements of this Attachment need not be followed by any recipient entity that receives total Federal assistance, including Federal Revenue Sharing funds, of less than $100,000 per year, provided the recipient has an independent financial audit of its financial statements at least every two years. OMB or a Federal Agency may remove this exemption for a specific entity if it becomes aware, through a review of the audit report or by other means, that the entity has not provided reliable financial statements or has material weaknesses in internal control. The requirement for independent financial audits of financial statements is waived for recipient entities that receive total Federal assistance, including Federal Revenue Sharing, of less than $25,000 per year, although the Director of OMB may withdraw that waiver for a specific recipient.

3. The objective of the entity-wide financial and compliance audit is to provide Federal agencies with reasonable assurance that a recipient of Federal assistance has: (a) Provided financial data that can be relied upon, (b) maintained systems for controlling the receipt and expenditure of funds, and (c) complied with the terms and conditions of Federal awards, and thus its claims for funds were proper and supportable.

4. *Definitions.* "Federal Assistance," for the purpose of this attachment, means the transfer of money, property, services, or anything of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, through grants, cooperative agreements, loans, loan guarantees, interest subsidies, insurance, direct appropriations and work study programs; cost type contracts which are entered into under Federal procurement regulations for purchase, lease or barter of property or services for the direct benefit or use of the Federal Government, whether received directly or indirectly through another level of government. Federal assistance is provided through different federal assistance programs which are generally listed in the "Catalogue of Federal Domestic Assistance."

"Major Federal Assistance Program" is a Federal assistance program for which the total expenditures for all awards made for that program during the period exceeded either $300,000 or 3% of the entity's total expenditure of Federal assistance funds, whichever is greater, or any Federal assistance program for which $30,000,000 of Federal assistance funds or more was expended during the period.

"Recipient Entity" includes the following types of entities that are receiving Federal assistance directly or indirectly from a Federal agency:

(a) States and territories or a subdivision of such entities. State institutions of higher education and state hospitals are not covered by this attachment.

(b) Local governments, such as counties, boroughs, municipalities, cities, towns, townships, parishes, special districts, school districts, intrastate districts, council of governments, interstate government entities, and other local governmental entities. Local hospitals are not covered by this Attachment.

(c) Indian Tribal government means the governing body or governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the

Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Independent Auditor" means an independent certified public accountant; an independent licensed public accountant who is licensed by a regulatory body of a state or political subdivision thereof and was licensed on or before December 31, 1970; or an auditor from an independent state or local government audit organization which meets the independence requirements specified in the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.*

"Cognizant Audit Agency" means the Federal department or agency assigned responsibility by the Office of Management and Budget for monitoring audits of a particular recipient entity.

"Basic Financial Statements" are the entity's general purpose financial statements or similar statements that are prepared in order to report the financial position and results of operations of the entity.

"Entity-wide Audit" means an audit of the organizational entity that receives and administers Federal awards. It shall be the entire recipient entity, or in the instance of state and territories, the entire entity or a subdivision of the entity (e.g., Department of Health). The decision as to what constitutes the entity shall be made by the recipient entity, consistent with the objective expressed in Paragraph 1 for entity-wide audits.

5. Federal assistance agreements with recipient entities shall include a requirement for entity-wide audits that conform to the provisions of this attachment.

5. Audits are encouraged to be made annually, but are required not less frequently than every two years. If an audit is performed every two years, it shall cover the two-year period.

7. Audits shall be made in accordance with the general standards and the standards for financial and compliance audits of the U.S. General Accounting Office *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* generally accepted auditing standards, the provisions of this attachment, and *The Compliance Supplement for Single Audits of State and Local Governments* and its addendums, published by OMB.

8. Each financial and compliance audit shall include a study and evaluation of the entity's systems of internal control and the systems established to ensure compliance with laws and regulations affecting the receipt and expenditure of Federal assistance funds, as part of the examination of the entity's financial statements. The study and evaluation shall include the selection and testing of a representative number of charges to Federal assistance programs. The representative number of charges shall include charges for each major Federal assistance program operated by the entity. The specific number of charges for each major Federal assistance program shall be determined by the auditor, exercising professional judgement, after considering such factors as the amount of expenditures for the program and the individual awards, in relation to the entity's financial position and operations; the newness of/or changes in conditions of the program; prior experiences with the program, particularly as revealed in audits and other evaluations, e.g., inspections, program reviews; the extent to which the program is provided through subrecipients; the extent to which the program contracts out for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations for the grant program; and the potential impact of adverse findings for the grant program. The representative number of charges shall also include a sample, based on the auditor's judgment, of charges to other than the major Federal assistance programs.

9. The evaluation of the systems established to ensure compliance with applicable laws and regulations and the test of a representative number of charges shall consider, where applicable, whether the amounts claimed were for allowable services; the recipients of the services were tested for eligibility; matching requirements, levels of effort, and earmarking limitations were fulfilled in accordance with the applicable laws and regulations; the Federal financial reports and claims for advances and reimbursements contain reliable information; and other special requirements, pertaining to the applicable Federal assistance programs specifically, and to all state and local governmental recipients of Federal assistance generally, were fulfilled. The evaluation and tests shall also consider whether the amounts claimed or used for matching requirements were in accordance with OMB Circular No. A-87, "Cost Principles for State and Local Governments," and Attachment P of this Circular.

10. A document entitled, "Compliance Supplement for Single Audits of State and Local Governments," available from the Government Printing Office, lists the major compliance requirements pertaining to all state and local governmental recipients of Federal assistance and the major compliance requirements for the larger Federal assistance programs. Addendums will be issued periodically by OMB, providing major compliance requirements for new or significantly revised Federal assistance programs. For those assistance programs contained in this document and its addendums, the evaluation of systems established to ensure compliance and the tests of representative charges need consider only those compliance requirements listed.

The major compliance requirements for Federal assistance programs not included in the Compliance Supplement can be obtained from the administering department or agency, directly or through the cognizant audit agency, or determined from an examination of the applicable laws, regulations, and award agreements.

11. The transfer of Federal funds by the recipient entity to sub-recipient entities will result in certain additional responsibilities:

(a) The recipient entity is responsible for determining that the expenditures of Federal funds by the sub-recipients are also in accordance with applicable laws and regulations. This may be accomplished by the recipient relying upon independent audits performed for the sub-recipients, relying upon appropriate procedures performed by the recipient's internal audit or program management personnel, expanding the scope of the independent financial and compliance audit of the recipient to encompass testing of sub-recipients' charges, or a combination of these procedures. The provisions of this subparagraph do not effect the responsibilities of sub-recipients to comply with the requirements of paragraph 2, where applicable.

(b) The recipient entity is responsible for reviewing audit and other reports submitted by and for sub-recipients, identifying questioned costs and other findings, deciding whether to sustain the questioned costs, and accounting for sustained questioned costs as a receivable and pursuing recovery or taking other appropriate follow-up action.

(c) The recipient's independent auditor is responsible for reviewing to recipient's system for: (1) Monitoring and disbursing funds to sub-recipients, and (2) obtaining and acting on sub-recipient audit reports; testing to determine whether the system is functioning in accordance with prescribed procedures; commenting on the recipient's monitoring and disbursing procedures with respect to sub-recipients, if warranted by the circumstances, and considering whether reported sub-recipient questioned costs require adjustment of the recipient's financial statements, footnote disclosure, or a modification of the auditor's report on compliance.

(d) The recipient entity is responsible for providing technical advice to sub-recipients and their independent auditors, particularly if a Federal cognizant agency is not assigned to the sub-recipient.

12. If the auditor becomes aware of irregularities in the audit, he shall promptly notify the recipient management officials above the level of involvement. The auditor's written notification, together with proposed actions taken by the recipient entity, if any, shall be promptly forwarded to the cognizant audit agency. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

13. The audit report shall be prepared at the completion of the audit stating that the audit was performed in accordance with the provisions of Paragraph 7.

a. The audit report shall include:

1. An auditor's report on financial statements stating the period examined, the scope of the examination, and the degree of responsibility, if any, taken on the entity's basic financial statements and on a schedule of Federal assistance; the entity's basic financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program.

2. An auditor's report on the study and evaluation of internal control performed as part of the financial and compliance audit, including a description of material

weaknesses in internal control, if any; and specific recommendations for corrective actions.

3. An auditor's report containing an expression of positive assurance with respect to compliance with the applicable laws and regulations, including the laws and regulations pertaining to financial reports and claims to Federal agencies for advances or reimbursements for tested items and negative assurance for untested items; the instances of noncompliance with the terms of Federal awards and the amounts of the awards questioned, if any, by specific Federal assistance program where appropriate, regardless of amount of materiality, whether the condition giving rise to the questioned cost has been corrected, and/or the recipient entity does or does not agree with the finding or questioned cost; and specific recommendations for corrective actions.

b. The three parts may be bound into a single audit report or presented as three separate documents.

c. Recipient entities for whom a cognizant audit agency has been assigned by name shall transmit the audit report(s) to the cognizant audit agency. Other recipient entities need not transmit the audit report(s) to a Federal agency, unless specifically requested to do so.

14. Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant audit agency to extend the retention period. The audit workpapers shall be made available upon request to the cognizant audit agency or its designee or to the General Accounting Office at the completion of the audit.

15. The Office of Management and Budget will assign cognizant audit agencies for the larger recipient entities. Where a cognizant audit agency for a given recipient is not specifically assigned by OMB, a Federal Agency or the recipient may request OMB to assign a cognizant audit agency.

16. The cognizant audit agency shall have the following responsibilities:

a. Establish contact with the recipient entities that the Office of Management and Budget has assigned by name, and determine the status or plans for an entity-wide financial and compliance audit.

b. Provide the liaison between the Federal audit establishment and the recipient entities and independent auditors.

c. Provide technical advice to recipient entities and independent auditors.

d. Assure that audit reports or recipient entities that the Office of Management and Budget has assigned by name are received in a timely manner, and that they, along with other audit reports received, are reviewed and distributed to audit officials of other departments and agencies providing Federal assistance. The audit officials will be responsible for distributing the audit reports to program officials.

e. Obtain or make quality control reviews of audits made by non-Federal audit organizations, or use other quality assurance techniques, and provide the results to other interested audit organizations.

f. Inform other affected Federal organizations of any reported irregularities. The Federal organizations, in turn, shall inform appropriate Federal law enforcement officials. State or local government law enforcement and prosecuting authorities, if not advised by the recipient entity, may also be informed of any violation of law within their jurisdiction by the cognizant audit agency.

g. Advise the recipient entity of audits ascertained by review to be inadequate. In such instances, the recipient entity will request the auditor to take corrective action. If corrective action is not taken, the cognizant audit agency shall notify the recipient entity and Federal awarding agencies, through their respective audit agencies, of the facts and make recommendations, if appropriate. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

h. The reasons an audit may be ascertained to be inadequate include failure to conduct the audit in accordance with the general standards and the financial and compliance standards of *Audits of Governmental Organizations, Programs, Activities, and Functions;* failure to include tests of all major Federal assistance programs; failure to include a test of a sample of the other than major Federal assistance programs; failure to include the required audit reports; or other specific instances of not performing the audit in accordance with the provisions of this Attachment.

17. The cognizant audit agency will be responsible for tracking the resolution of audit findings which affect the programs of more than one Federal agency (referred to as "crosscutting findings"). Resolution of findings which relate solely to the programs of a single agency will be the responsibility of the recipient entity and that agency. Alternate arrangements may be made on a case-by-case basis by agreement between the agencies concerned.

18. The portion of the cost of a single audit attributable to the Federal assistance awards may be charged as a direct or allocated as an indirect cost to the Federal assistance awards, in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments."

19. The provisions of this Attachment do not limit the authority of Federal agencies to perform audits or other reviews of recipient entities. If, however, audits arranged for by recipients meet the requirements of this Attachment, all Federal agencies shall rely on them, and no additional financial and compliance audit work shall be required, obtained, or conducted, unless warranted. If, on the other hand, additional audit work is performed, it shall build upon the work already done. The Federal agency requiring additional audit work shall arrange for funding the cost of such additional audit work.

20. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this chapter. Entities receiving Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in Pub. L. 95-507 are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small or disadvantaged audit firms.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms.

d. Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small or disadvantaged audit firms as described in paragraph (s) above when a contract is too large for an individual small or disadvantaged audit firm.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small or disadvantaged audit firms.

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BILLING CODE 3110-01-M

550.0 AUDIT REQUIREMENTS

Introduction

All grants are subject to audit. In the past, the decision to audit a grant program has been made by either the grantor or the grantee and many audits have been done by State agency staff. For grantees operating multiple grants, this has resulted in duplicative effort and a great deal of overlap in audit requirements.

Beginning in Fiscal Year 86 (July 1, 1985), the State's audit requirements will change for grantees. Those grantees with multiple State grants or grants totaling a specific dollar amount will be subject to a "Single Audit;" one audit that looks at all funds. Grantees not covered by the single audit may be subject to an audit if required by the grantor agency and should be familiar with general audit requirements before beginning operation of a grant.

Changes In Audit Approach

The grant process is not complete until the grant is closed out or the final audit and resolution of audit problems, if any, are finished. Prior to the Single Audit, this final step has been unnecessarily prolonged by various requirements for audits on each individual grant or program to ensure accountability and compliance. The Single Audit, by contrast, attempts to consolidate audits and cover all grants and funds in one Single Audit. By doing so, a more efficient audit process and less inconvenience to the grantees are possible.

An Overview of the Single Audit

The Single Audit will, by necessity, require changes in the way audits are approached by the grantee, grantor, and the auditor.

First, the grantee will be the entity primarily responsible for arranging for the audit. Funds will have to be set aside to pay for the audit and an auditor will have to be selected that can best meet the requirements of the Single Audit as established.

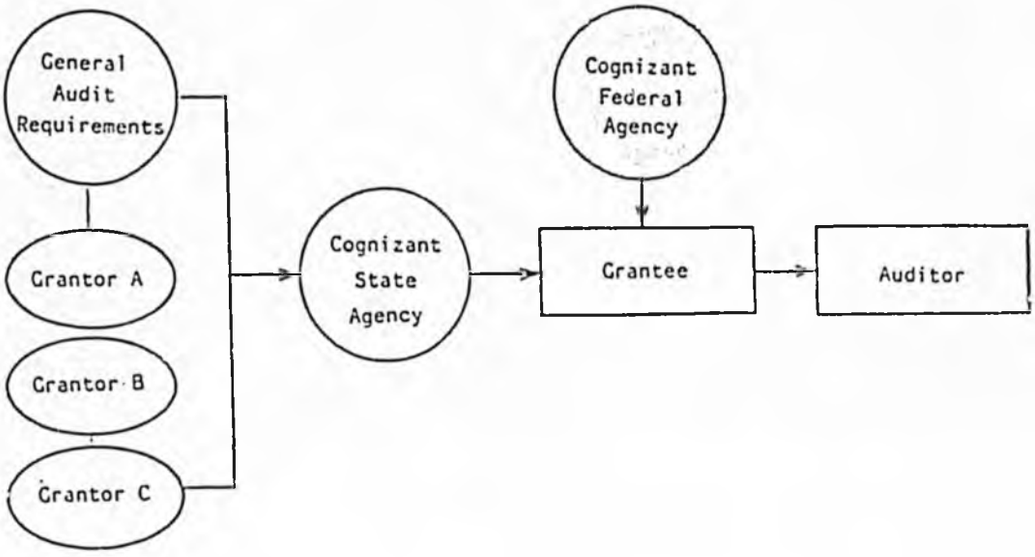
Next, the grantor will have to begin thinking of the grantee as an entity, not a recipient of various grants to be audited individually. As such, each grant or program may not be material or significant when compared to the entire entity. For audits, this means that the auditor may not spend as much time on these areas as may have been spent when each grant was audited separately.

Grantors will also have to work closely with each other so that Single Audits can meet their needs through a centralized agency, i.e., Cognizant Agency (COG).

Finally, the auditors will have to design the scope of the audit to include sufficient tests and audit procedures to enable reporting on compliance, as well as financial accountability, for the various grants and programs.

Ideally, the Single Audit should meet all of the needs in one audit, for example, the federal Office of Management and Budget Circular(102-P) (if applicable), the State requirements, and the management needs of the grantee. (see figure 1)

Single Audit Process (Part I)
(Figure 23)



The need for other audits and reviews may still exist after implementation of the Single Audit. These other audits will be either different in scope or be directed toward areas of problems that may not have been sufficiently covered in the Single Audit. The responsibility for these

audits will be with the grantor after coordination with the cognizant State agency and should build on, rather than repeat, the work of the Single Audit.

Cognizant State Agency

One of the terms associated with the Single Audit is "Cognizant State Agency" (COG). The COG is the State agency that will serve as the focal point for grantor, grantee, and auditor in the Single Audit process.

The COG will be appointed by the State Office of Management and Budget (OMB) and will be responsible for:

- Coordinating with the various grantor agencies to ensure the audit needs of each are addressed in the scope of work.
- Ensuring grantees are notified of the audit requirement.
- Providing technical assistance to auditors.
- Providing quality control reviews of completed audits and auditors.
- Distributing copies of completed audits to relevant grantee agencies.
- Ensuring audit problems are resolved by the grantee and grantor agencies in a timely manner.

OMB will serve as the COG, initially, for all grantees. Later, other State agencies may be appointed.

Audit Selection Criteria -- Grant/Fund Data Base

The State keeps a centralized data base on grant awards in order to track the amount of State funds, the source of the funds and the recipient of the funds. This data base serves as the trigger to notify OMB that State funds have been issued to a grantee and, therefore, an audit may be required. OMB will make this information available to the appointed COG so that the COG can coordinate with the various grantors and begin the Single Audit process. The exact dollar amount that triggers this process will vary from year to year depending on amounts granted.

Because there are other requirements for audits, such as the federal OMB Circular A102 Attachment P, the State's Single Audit will complement the federal requirements. For example, when a grantee has both State and federal dollars and a federal requirement for the "Attachment P" audit, both State and federal audit requirements can be met at one time.

Other criteria used to select grantees for audit will be based on random selection of those not falling within the other groups or if problems become known by grantor. The majority of State Single Audits, however, will fall under the first (Data Base) selection criteria.

Grantee Responsibilities

The grantee will be responsible for engaging an auditor to perform the Single Audit. The grantee is also responsible

for assuring that the Single Audit will be made of the entire organization in accordance with the following:

- GAO Standards (1981 Yellow Book)
- AICPA Generally Accepted Auditing Standards (GAAS)
- State Single Audit Guide
- Alaska Grant Regulations and Compliance Procedures

These standards include requirements for examining the system of internal controls, both financial and program, and the financial statements and reports published by the grantee.

As indicated above, internal controls and financial statements and reports are the responsibility of the grantee. The auditor's responsibility is to examine these and express an opinion on them, if possible.

The audits should be done annually, however, biennial audits may suffice if the audit scope covers both years. Testing conducted throughout the period covered will enhance the year end or biennial audits.

Grantees should also require subgrantees to have an independent audit following the same standards and criteria outlined for the grantee. In some cases this could be accomplished by accepting audit work done by federal, State and other independent auditors.

Costs for the Single Audit are allowable as either a direct or an indirect cost. Since grantees will be responsible for engaging the auditors and paying for the audit, funds will have to be budgeted for this cost normally, an audit is already a part of the grantee's operations.

The Single Audit, because of its expanded scope to cover compliance features, will generally cost from 10 to 20 percent more than an audit of the financial statements alone. This can be partially offset by biennial audits or multiyear audit engagement contracts. In addition, following good internal control principles and keeping accurate records simplifies the audit process which can reduce the cost. The advantage to the grantee is less audit duplication and a more thorough audit.

Initiating The Audit

The grantee will be informed by OMB of three things at the start of the Single Audit process. They are:

- The need for the Single Audit.
- The Cognizant Audit Agency.
- The types(s) of grants, dollar amount, and audit requirements for each grant.

Selecting The Auditor

Once notified, the grantee will select an auditor using criteria normally used for such purposes.

Once the auditor is selected, the grantee and auditor should jointly notify the COG of the selection decision and request the pertinent information (i.e., grant regulations and compliance procedures, and a list of all State grants or funds provided to the grantee).

Grantee - Grantor - Auditor Relationship

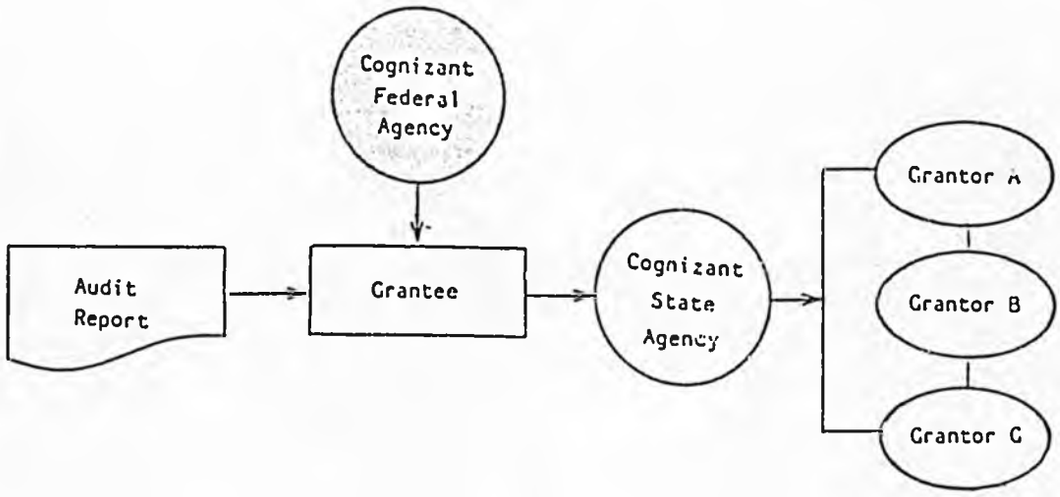
During the audit, the normal client-auditor relationship will exist between the grantee and auditor; however, the COG will have a significant role because of its responsibilities to review the final audit and coordinate the needs of each grantor agency in the Single Audit. Also, during the course of the audit, technical questions may arise and need to be resolved. The COG will have the responsibility to resolve these.

Post Audit Responsibilities

After the audit is complete, sufficient copies will be provided to the COG for distribution to the relevant grantor agencies. This should take place no later than 180 days after the end of the grantee's fiscal year. Resolution of audit findings are the responsibility of the grantee and grantor with the COG involved only to ensure that resolution is reached on each audit finding.

Single Audit Process (Part II)

(Figure 24)



General Requirements of an Audit

Audits should include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of State funds, financial transactions and accounts, and financial statements and reports of the grantee. These examinations are to determine whether:

1. There is effective control over, and proper accounting for, revenues, expenditures, assets, and liabilities;

2. The financial statements are presented fairly in accordance with generally accepted accounting principles; and