

ALABAMA LEGISLATIVE COUNCIL FILED 1905-1900

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HJUD

HB 232 - HB 237

189

Section 9. Effect of chapter upon disciplinary proceedings.

Nothing contained herein shall limit the authority of the commissioner to take disciplinary action against any licensee for a violation of any of the provisions of A.S. 08.88 or the regulations promulgated by the commission, nor shall the repayment in full of all obligations to the Real Estate Surety Fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought against the provisions of A.S. 08.88.



Elizabeth I. Johnson
Counsellor and Attorney at Law

540 "L" Street Suite 304
Anchorage, Alaska 99501
(907) 277-3025

April 9, 1984

RECEIVED
APR 20 1984

Representative John Cowdery, Chairperson
House Labor and Commerce Committee
Alaska State Legislature
Pouch B
Juneau, Alaska 99811

AK. REAL ESTATE COM. A.

RE: House Bill 705, Senate Bill 537
Relating to the Real Estate Surety Fund

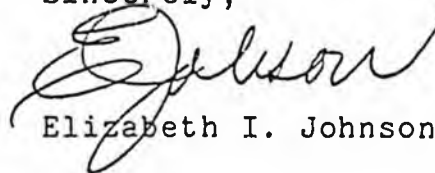
Dear Representative Cowdery:

Enclosed please find a summary of my oral testimony before the House Labor and Commerce Committee last Tuesday. I understand that the Bill was passed out of the Committee unanimously.

As you will recall I am adamantly opposed to not only the concept of House Bill 705 but to specific provisions. I am sending copies of this letter to other legislators in the hope that they will review the legislation more carefully.

I thank you for the opportunity to testify but believe there has been inadequate public comment on this bill and that it deserves more attention from both the House and Senate.

Sincerely,



Elizabeth I. Johnson

EIJ/kkr

Letters to the editor

Real estate sales legislation

Dear Editor:

As a former public member of the Alaska Real Estate Commission (1976-82), I am concerned about changes being proposed to the laws governing the Real Estate Surety Fund.

On April 3, the House Labor Committee held a teleconference hearing on HB-705, "an act relating to the real estate surety fund." This bill will make substantial changes to the process used to reimburse individuals who are damaged monetarily in a real estate sales transaction when a licensee is involved.

The bill will also change the law so that an individual will only be able to claim damages if the loss is due to intentional misrepresentation. At present the licensee is held responsible even if the misrepresentation is unintentional.

Also, an individual will have to get a judgment in court before a claim against the surety fund can be filed. At present an administrative hearing is required. These are major changes to the law that should have a great deal of public discussion before they are enacted.

I was surprised and then shocked by the action of the House Labor Committee on this bill. It was introduced by the committee on March 26. Eight days later the committee held a teleconference hearing and at the end of the hearing passed the bill from the committee. I understand that it was a unanimous do-pass by the members of the committee present.

Other than the testimony by Elizabeth Johnson, an attorney who has conducted many of the administrative hearings on surety fund claims, the most distinguishing feature of the hearing was what I would describe as the committee's lack of understanding of the bill. I think this will be supported by the report of the hearing if one is prepared.

During the hearing several of the committee members asked that those testifying provide them with written comments so

stand the relations between the comments and the bill. Their action in passing the bill out of the committee with a do-pass recommendation makes these requests ludicrous.

Why was the bill moved so fast? The following is my guess. The language in the bill was developed by the Alaska Association of Realtors. I understand that it was first presented to the state Real Estate Commission for consideration at its last meeting.

I was also told by a current public member on the commission that the commission decided to study the proposal and determine what action it would take on the proposal at the next meeting. This is not an unusual action for the commission.

The proposal next surfaced as HB-705 and a companion bill in the Senate. However before this happened the state Realtors association held its annual cocktail party for legislators in Juneau.

I have seen no problem with the Labor Committee's introduction of HB-705. I also see no problem with the legislators attending the Realtors' annual cocktail party. Realtors are constituents and deserve no less. However, I am shocked that a bill with such potential impact on the public would be moved from the committee with so little regard for public input.

The record will show that of the persons in attendance at the teleconference hearing (persons attended at Fairbanks, Homer and Anchorage), less than 10 per-

cent were not real estate licensees. The hearing was scheduled so fast that it was not even listed on the weekly list of hearings mailed out by the Legislative Affairs office.

Why is the association so interested in getting HB-705 passed? Testimony at the hearing indicated that they think that the surety fund is paying out too many claims under the present system. A comparison was made between the claims paid by the California fund and our fund to emphasize this. They feel that the hearing office is responsible for this.

This is also ludicrous since the hearing office presents findings to the commission (five real estate brokers and two public members) who can adopt, change or reject the findings. Also, so far less than 30 percent of the claims filed against the fund have been paid. The present process gets the job done in less than six months. If HB-705 passes the process will go back to the civil courts and have to compete with other matters on the court calendar.

These proposed changes have the potential of affecting every person who buys or sells real estate in Alaska. It should have much more public discussion. I would also suggest that it is important enough for the state real estate commission to hold a special meeting to hold a public hearing on the changes.

Frank Austin
3839 Apollo Drive

WRITTEN COMMENTS
REGARDING HOUSE BILL 705 AND SENATE BILL 537
RELATING TO THE REAL ESTATE SURETY FUND

Since 1980 a fund created by the Alaska Real Estate Commission has allowed payment up to \$10,000.00 per transaction to consumers who have suffered financial loss because of a real estate licensee's action that involved fraud, deceit, misrepresentation, or conversion of trust funds. The fund is maintained by payment of a yearly surety fee not to exceed \$125.00 for each licensee. After the fund reaches \$250,000.00 the Real Estate Commission adjusts the fees so that the fund is maintained at a level not less than \$250,000.00.

Prior to 1980 persons making a claim against the fund had to first secure a court judgment against the licensee. In 1980 after Sunset review of the legislation, the requirement of a judgment was dropped and the Real Estate Commission set up a procedure whereby complainants could make a claim directly against the fund.

Once a complaint is received an administrative hearing is held. The hearing consists of presentations by the claimant and the licensee or licensees. The Administrative Hearing Officer has the power to subpoena evidence including documents and to require the attendance of witnesses. Both parties are allowed counsel if they so choose.

At the conclusion of the hearing, Findings of Fact and Conclusions of Law are entered with a recommendation to the Real Estate Commission on whether the claim should be paid.

It should be noted that once a Hearing Officer has made a recommended decision the Real Estate Commission reviews the case and decides whether the claim should be paid. After the final decision, the licensee still has the option to appeal to the Superior Court.

Attached is a summary of the claims paid since the inception of the administrative proceedings in 1980.

House Bill No. 705 and Senate Bill No. 537 substantially amend the current procedure to again require that members of the public obtain a judgment against the licensee prior to making a claim against the fund. The legislation then requires a second hearing by the court to determine that the judgment creditor has no other assets available and that payment from the fund is proper. The proposed legislation also restricts the type of claims which are paid from the fund.

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Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

(d) Page 2, lines 12-14 -- specifically prohibits payment on claims for innocent misrepresentation.

Section 3, page 2, AS 08.88.465 requires a second hearing after entry of a judgment and before amount is paid from Surety Fund.

(a) Page 2, lines 20 and 21 -- requirement of hearing within 30 days is virtually impossible to enforce administratively with the current backlog in the court system.

(b)(4) Page 3, lines 4-6 -- What is a "reasonable attempt"? Open to judicial interpretation and "mini trial" on attempt to find judgment creditor and determine assets.

(b)(5) Page 3 -- requires a separate court hearing on whether creditor has been able to locate assets and has taken the "necessary action" to apply the assets to the judgment. What is "necessary action"?

(b)(6) Page 3, lines 13-16 -- requires the court to make an independent determination that the claimant has "diligently pursued other remedies." What is meant by this phrase? Requires a separate showing that there is no other person that could be liable in the transaction -- in other words the claimant could obtain a judgment against licensee A and during the hearing under this section, a different judge could conclude that licensee B is responsible and deny payment from the fund. This is a peculiar provision which could result in contradictory findings by judges with regard to the same transaction, thereby allowing licensees to shift responsibility and avoid payment from the fund.

Section 4 AS 08.88.470 repealed and reenacted:

(a) Page 3, lines 17-21 -- requires a separate court hearing and in effect a "mini trial" on the validity of the claim.

(b) Page 3, lines 22-27 -- requires the claimant to prove his case twice. Note that if the action was defended by a Trustee in Bankruptcy there has to be an entirely new hearing, although many times there will have already been a complete trial in Bankruptcy Court.

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Section 7 AS 08.88.475(b):

(b) Page 4, lines 16-20 -- there is no definition of "transaction." This section appears to read that no matter how many people are involved nor how much money is lost, if the licensee can claim that there was only one "transaction" then the \$10,000.00 limit applies. For example, in the case of the sale of shares in a limited partnership, if the licensee makes fraudulent sales to 50 people, obtains \$5,000.00 from each, and takes the money, is this construed as "one transaction" where the \$10,000.00 limit would apply?

Comments:

Suggestion for changes in current statute and administrative proceedings.

Some of the primary complaints I've heard about the Surety Fund can be solved easily within the context of the present procedure administered by the Real Estate Commission by making changes to the current statute.

1. Elimination of "frivolous" claims. Some licensees have complained that they are burdened with responding to "frivolous" claims which are then denied. It has been my experience that there are very few "frivolous" claims. Many claims are settled or withdrawn prior to hearing or during the hearing process. If there is a problem with inadequate initial screening of complaints, I would suggest the following:

a. Establish a mandatory filing fee of perhaps \$50.00 to discourage those persons who feel the fund is a source of free money.

b. Allow the staff of the Real Estate Commission to do an initial screening of the complaint. If the complaint is not recommended for an administrative hearing and the claimant wishes to go forward, they must post a bond of \$250.00 to secure payment of hearing cost and partial attorney's fees to the licensee if the claim is denied.

2. Denial of Due Process -- there have been some feelings by claimants that because they are not entitled to a jury trial, the administrative proceeding denies them due process. No administrative proceeding provides for a jury trial and as a practical matter all the rights and privileges accorded in a court hearing are preserved in the administrative procedure process. The only exception is the relaxed standard for the rules of evidence. This has not been a significant problem in any case I have handled, in which either an attorney appeared or in which licensees represented themselves.

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If this is perceived as a problem, the current statute can be amended to provide for de novo review by the Superior Court as is done in school employment cases.

3. Allowance of claims based on innocent or negligent misrepresentation. Some of the most vociferous opposition to the Surety Fund has been to claims which have been allowed on the basis of innocent or negligent misrepresentation. This theory of recovery is consistent with the holdings of the Alaska Supreme Court. Thus, licensees are going to continue to be held responsible for mistakes which are innocently made regardless of the status of the Surety Fund.

In short, with the above-noted exceptions, the Surety Fund works well in protecting the public interest and insuring that licensees receive a fair hearing. In addition, the administration of the Surety Fund over the past three years has caused the industry to "self police" to a great degree. The problems with the fund can be more readily addressed by amending the current procedure than requiring consumers to prosecute claims through civil court.

9. Surety Claim Recovery:

Hoey, Thomas	Recovery complete.	1,000
Congdon, Renwick	Recovery complete 030383.	1,139
Lankford, Daniel	Billed 011883, no response.	
McCormick, Gail	Recovery complete 052683.	11,275
Motonaga, Gary	Recovery complete.	4,225
Calvo, Tony	Claim repaid; hearing costs unpaid.	10,000
Odell, Mina	Claimant paid, hearing costs unpaid.	1,000
McCourt, James	Billed 830718; no response.	
Jones, Jerry	Claimant paid, hearing costs unpaid.	800
Ruszkowski, Alvin	Claimant paid, hearing costs unpaid.	1,000
Rink, Robert	Claimant paid, hearing costs unpaid.	1,000
		<u>31,429</u>

10. Surety claims statistics:

	Fiscal Year			Calender Year		
	Filed	Paid		Filed	Paid	
1981	31	0		52	3	\$ 11,943
1982	70	13	\$ 41,853	93	18	62,612
1983	99	20	80,346	123	14	67,644
1984	97	3	30,000	29	1	10,000
Totals to date	<u>297</u>	<u>36</u>	<u>\$152,199*</u>	<u>297</u>	<u>36</u>	<u>\$152,199*</u>

* This amount includes paid claims that have since been recovered from the licencees, and therefore differs from the total that is stated on the Surety Claim Case summary and as shown below.

Surety claim totals:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	12.5%	\$ 124,974.24	8.1%
Paid, recovered	*	*	29,025.00	1.9%
PD-Approved	3	1.0%	18,012.00	1.2%
Denied	69	23.2%	317,898.97	20.5%
PD-Denied	1	0.3%	11,000.00	0.7%
Withdrawn	30	10.1%	134,878.25	8.5%
In process	157	52.9%	901,657.39	58.2%
Total filed	<u>297</u>	<u>100.0%</u>	<u>\$1,547,945.85</u>	<u>100.0%</u>

Decided claims:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	26.4%	\$124,974.24	19.3%
Paid, recovered	*	*	29,025.00	4.5%
PD-Approved	3	2.1%	18,012.00	2.8%
Denied	69	49.4%	317,898.97	50.8%
PD-Denied	1	0.7%	11,000.00	1.7%
Withdrawn	30	21.4%	134,878.25	20.9%
Total decided claims	<u>140</u>	<u>100.0%</u>	<u>\$646,288.46</u>	<u>100.0%</u>

* These numbers are included in the paid, unrecovered, category because there is overlap where the hearing costs are outstanding after repayment of the claim.

Mrs. Barb Hill

Please accept the attached letter
as my testimony for the public
hearing regarding HB 705.

I respectfully request that the
testimony be read into the record.

Thanks for the opportunity to
participate.

Sincerely yours,


Gary Wilken

April 24, 1984

TO: Alaska Real Estate Commission

RE: Testimony: HB 705 and SB 537

24 APR 84
JDR

For Record

Regarding the existing surety fund structure, I have had the opportunity to read both the State Association's position paper and the corresponding pending legislation to which this testimony is addressed.

My first concern is the broad brush method by which the legislation would apply to the existing Surety Fund. One does not, when one's automobile requires a tune-up, replace the entire engine. Instead, one performs the required adjustments to continue on. The analogy appears to be very appropriate to HB 705 in regard to the Surety Fund. The legislation would replace the heart of the system when indeed only a tune-up is required.

I am sympathetic to the Association's concerns and claims of frivolous and/or vindictive claims being filed against licensed real estate agents. I believe this to be a legitimate concern and one that must be addressed. When the current Surety Fund system was formulated in 1979-1980, the experience of a significant number of less than valid claims was not fully anticipated.

The concept of a filing fee is a step in the right direction for remedy. The suggestion that it be \$50 to \$100 is good, however, in my opinion the amount is not sufficient. I am in favor of a filing fee of some greater amount, perhaps \$250-\$500, a portion of which is refundable if the plaintiff prevails in his argument. As we have seen, there must be some consideration on the part of the plaintiff as to their liability in filing a claim against the Surety Fund. If a plaintiff understands from the outset that a substantial fee is required to file, and that if unsuccessful, the fee is considered a cost of litigation, the vast majority of those people now filing frivolous or vindictive claims will be markedly reduced.

This concept embodies two factors. First, the plaintiff understands that there will be a filing fee that will not be refundable, let us say \$100 out of the deposit. Secondly, the plaintiff must consider the remaining amount to be a "gamble", if you will, that he will prevail. In brief, the large filing policy requires some serious economic forethought on the part of the complainant.

My second concern centers around the numerous references to innocent misrepresentation which appears to exclude such action from the protection of the Fund. I think back to the lady in Wasilla that, upon closing a deal for her new country residential acreage, discovered that when it came time to build, half of her property was over a cliff and she had purchased a wonderful set of mud flats. The agent had flagged the corners incorrectly. He did not mean to. He really believed he was selling her the correctly staked land and told her so. He did not do his job properly and consequently, the lady's property was worth one-half of what she paid for it.

I recall the family in Juneau that purchased a previously occupied house with the assurance from the selling agent that the foundation was high and dry. Reality surfaced when a high tide increased the water level to the point it flooded the basement and created a difficult problem with the potential rotting of the supporting members. The agent had represented the house to be free of flooding problems and he really believed it was because he did not do his job as well as he should have: he never inspected the crawl space and the supports for existing water damage and potential of same.

Should the lady in Wasilla or the family in Juneau suffer economic hardships on what could well be the biggest financial transaction of their lives because two agents did not do their job as completely as they should have? I do not believe so. The agent or the industry, must provide a vehicle to make these two people whole and a reasonable accessible Surety Fund is that vehicle. The buyers in these instances, are the last people that should suffer due to what would be termed innocent misrepresentation.

Thirdly, it has been suggested a small claims court action may be utilized to resolve a dispute. While this may appear on the surface to be viable, even with the existing \$2000 limit or with an increase thereof, one who has worked within the small claims system knows that a simple checkmark in the proper box on the defendants reply form turns a small claims proceeding into a full district court case. Thus the benefits of the small claims system are easily lost.

In summary, it is my opinion the proposed changes are a backward step in the protection of the public from damage incurred in a real estate transaction. The judgement method, used prior to the existing Surety Fund method has proven itself to be totally ineffective from both a time and money standpoint in dealing with alleged wrongs on the part of real estate agents. It is difficult to consider returning to that system as a means to remedy the current ills of the Surety fund.

Panel submits real estate bill to end simplified surety fund rule

by Annette Taylor
Times Business Writer

The House Labor and Commerce Committee this week introduced a bill that would require victims of shoddy real estate transactions to win their case in court before tapping the surety fund for compensation.

The Alaska Association of Realtors proposed the legislation to rectify the current system in which members believe they are exposed to double jeopardy.

Under the current system, victims of fraud, deceit or misrepresentation by licensed agents can be awarded surety fund claims — for which the realty is billed — and then can sue the agents in court.

In surety fund claims, the procedure

involves both parties presenting their case before a hearings officer, who then makes a recommendation to the Alaska Real Estate Commission. The maximum award is \$10,000.

Real estate agents want the procedure changed back to the way it was before 1980, when people had to go to court before having access to the surety fund. The 1980 legislature simplified the procedure to save people the time and expense of going through the court system.

The proposed legislation also would require people who have won their court cases to exhaust all remedies for getting their money back from the guilty agents or brokers before being allowed to tap the fund.

Real estate agents said the current

system penalizes all licensed agents who pay into the fund rather than focusing on the wrong-doer. Although the real estate commission bills the guilty agents, there is no legal mechanism to ensure payments, agents said.

The surety fund is a special account set up by the legislature to reimburse people who have been defrauded or misled by licensed agents in real estate transactions.

Agents pay up to \$125 into the fund in lieu of obtaining private bonds. The amount they pay is based on how much money is in the fund. The fund cannot exceed \$500,000, half of which is designated for education.

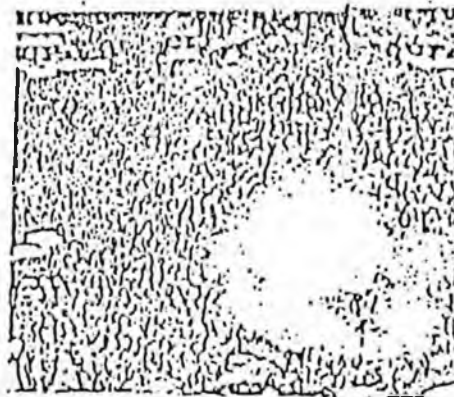
Include
in
2/21/84
APR 1 1984

Campbell to switch from tin to plastic

Associated Press

Camden, N.J. — The Campbell Soup can will be replaced by a plastic container

own cans in 1954, has become the third largest manufacturer in the business, turning out about 4 billion tin cans in 1983 — behind American Can Co. and



MEMORANDUM

State of Alaska

23

TO: Richard A. Lyon
Commissioner
Dept. of Commerce and
Economic Dev.

DATE: April 26, 1984

FILE NO:

TELEPHONE NO:

FROM: James L. Magowan
Executive Director
Alaska Real Estate Commission

SUBJECT: Real Estate Commission
Hearing on HB 705 &
SB 537

The commission held a public meeting on April 24 in Anchorage. The meeting was scheduled from 2 to 5 P.M. and from 7 to 10 P.M. There were 20 to 40 people in attendance most of the time. We estimate 50 to 70 members of the public, at least, attended the meeting.

Licensees were there in greater numbers than non-licensees, however, both licensed and unlicensed members of the public attended in significant numbers.

Public testimony ran until after 9:00 P.M.

After the testimony was heard, it was the definite opinion of the commission that important issues and questions have been raised by both licensees and non-licensees. Many of these are not adequately dealt with under the current statute and must be addressed.

The commission determined that these concerns are also not adequately resolved by the current bills (HB 705 - SB 537).

It was, therefore, the commission's decision that it does not support the passage of HB 705 or its companion, SB 537. The commission hopes that it will be given the chance to work with the industry and the public to come up with recommendations for legislation that it can support, legislation that will resolve the existing problems without introducing new problems of at least equal concern.

It is the commission's intention to have alternate legislative recommendations ready for the next session.

This is a high priority with the commission.

The commission has asked that copies of its minutes of the meeting and its decision be passed on to Chairman John G. Fuller, House Rules Committee, Chairman Richard A. Eliason, Senate Labor and Commerce Committee and Carol Derfner, Special Assistant, Boards and Commissions. These copies are attached.

Attachments

JLM/cw/0702C50

DRAFT/April 26, 1984

ALASKA REAL ESTATE COMMISSION

April 24, 1984

Anchorage, Alaska

Call to Order

By authority of AS 08.88.051, and in accordance with AS 44.62, the Alaska Real Estate Commission was called to order by Vice Chairman Ribacchi at 2:10 on 24th of April 1984. He welcomed the presence of visitors and called the meeting to order as a public hearing.

Vice Chairman Ribacchi acknowledged the absence of Chairman Hill due to the illness of her father, Earl Silberer, a former commissioner, and one of the originators of the real estate commission as well as a long time practitioner in the real estate industry. Vice Chairman Ribacchi stated that the purpose of the public hearing was to obtain a feel from the public as well as the industry regarding two bills that have been introduced into the Legislature, HB 705 and SB 537. These bills would significantly amend the current procedure in filing a claim against the surety fund. The following commissioners were in attendance:

Dave Ribacchi, Vice Chairman, Broker-At-Large
Karen Morris, Broker
John Benson, Broker
LaVerne Collins, Public Member
Gil Serrano, Broker

Absent:

Ed Anders, Public Member
Chairman Hill, Broker

Commission staff present:

James L. Magowan, Executive Director
Joseph P. Koss, Investigator/Auditor
Lois B. Waugh, License Examiner

Before proceeding, Commissioner Ribacchi asked each of the commissioners if they would like to make a comment. At this particular time, none of the commissioners wished to make a comment. Commissioner Ribacchi then asked for the public to present testimony regarding the bills.

S. B. Medford

Mr. Medford stated that he was opposed to SB 705 and HB 537. Mr. Medford stated that the general public do not have access to unlimited funds. These bills, if enacted, would require hiring an attorney and going through a court process which could take up to six years before the case would be settled. The practical effect would be to deprive the claimant of ready access to justice. Mr. Medford suggested that the commission, if they decided to approve the present legislation, increase the surety fund from \$10,000 to a \$100,000 limit and that the commission strengthen their position in order to obtain more evidence and that more funds be appropriated to the investigative staff.

Commissioner Morris read a letter for the record which is addressed to Commissioner Hill from Gary Wilken, former Chairman, Commissioner and Public Member. (Letter attached to the minutes.)

Commissioner Collins read a letter for the record which is from the Department of Law, Norman Gorsuch, Attorney General. (Letter attached to the minutes.)

Janet Mischler, Claimant

Ms. Mischler spoke against changing the surety fund procedures. She related to the commission her past history in which she was injured monetarily in a real estate transaction. Her first step was to go through the courts. She incurred \$8,000 in indebtedness to an attorney and has spent over \$20,000 on the problem, which is still not corrected. Her land is deemed unsellable. She stated that she would support a filing fee for the surety fund and that she believed that the surety fund and the commission were there to assist the public.

George Oliver, Associate Broker

Mr. Oliver, Associate Broker since 1974, asked the commission to support the two legislative bills before the house and the senate. He asked the commission to make a bold decision in favor of the legislation which would give a clear message to the Governor and the Administration that there should be a change in the surety fund procedures. He stated that the commission was not equipped to handle the number of surety claims before them and that it had become a burden. He said that the majority of the Realtors were in favor of the present legislation because it is necessary to change the present surety fund procedures before the surety fund is depleted due to an overabundance of claims having been made.

Vice Chairman Ribacchi asked that there be a distinction made between a real estate licensee and the professional organization, REALTORS. Not all licensees are Realtors. Commissioner Ribacchi also stated that five of the members have served for less than six months, and that the majority may not be familiar with the history of the surety fund, and asked that the public look upon the commission as a new body with their own ideas.

Cary Vlahovich, President, Anchorage Board of Realtors

Mr. Vlahovich, President of the Anchorage Board of Realtors which has a membership of 1400, stated that the Realtors have a very strict Code of Ethics and these ethics are served by an arbitration board, which is open to the Realtors and individuals who have dealt with the Realtors to arbitrate any problems they may have. Mr. Vlahovich stated that the majority of the membership of the Anchorage Board of Realtors are discontented with the present surety fund and the hearing officer process. He stated that due process is not provided by the present procedure. It is believed by many Realtors that they not only face a surety fund hearing but will also face civil proceedings simultaneously, before or after a surety fund hearing has concluded. The real estate licensees believe that the present system is not equitable. The state makes no effort in recovering the losses to the surety fund, therefore, the licensees have to bear the burden in fees to the surety fund to maintain its present state. The hearing officer's decisions are most dissatisfying. They do not provide a full check and balance system as well the participation of the commission, therefore, due process is not given to all involved in the surety fund process.

Maureen Kennedy, Alaska Public Interest Research Group (AKPIRG)

Ms. Kennedy spoke representing Alaska Public Interest Research Group (AKPIRG), which has a membership of 400. Ms. Kennedy is not in support of the present legislation. Ms. Kennedy stated the surety fund is effective self-policing of the industry. The present Common Law allows the consumer to argue for innocent representation. She believes that a \$50.00 filing fee is adequate, that any amount above that, could cause unnecessary hardship for the consumer. Not only the consumer, but the licensees, should be concerned about going through the courts, because it would increase the cost to the consumer as well as to the licensee. If the surety fund does not bear the burden of the hearing officer procedure, then the courts would bear the burden of the costs which would also increase the cost to the State.

Julian Mason, Attorney

Julian Mason, representing the Alaska Association of Realtors and the Anchorage Board of Realtors, spoke supporting the proposed legislation. One of his main concerns is the damage to the licensee's reputation through adverse publicity. Mr. Mason stated that if the present surety fund system is not changed, the following things could happen:

1. The Bevins/Ballard decision from the Supreme Court establishes that the Real Estate licensee may now be held liable for in "innocent misrepresentation". The Supreme Court, in its decision, invites the Real Estate licensees' to include in listing agreements provisions which require the seller to indemnify the agents if claims are made against them. This is on page sixteen of the advance opinion. The result would be that the licensee would tender his defense to the seller, the seller will then sue the buyer. The seller would then use one form to bring all parties of the transaction together. He suggested that this would not be an easier system but one that would be made more difficult and time consuming.

2.

Mr. Mason stated that the present surety fund system is bogged down by surety claims and will continue to be so because of the easy access to the fund.

3.

The claimant will eventually bear the cost of the administrative time of the hearing officer procedure. This is now a trend in the State government.

In conclusion, Mr. Mason stated that time is not a problem in the court system, that it takes less time and is less costly than the present surety fund proceedings. The main positive reason for supporting the legislation is that it will provide a neutral forum to handle cases. It is a form by which one is not judged by one's peers or by a hearing officer who is hired by the commission which gives the appearance of unfairness. It is important to have an independent system to judicate claims against Realtors and that system is the judiciary. It is not the function of the real estate commission to compensate without finding fault.

David LeBlond, Assistant Attorney General

David LeBlond, Assistant Attorney General for the Department of Law spoke, responding to Mr. Mason's comments.

Mr. LeBlond urged the commission to inquire from staff as to what has been the record of the surety fund, what the current status of the fund is and how many claims have been paid. He suggested this due to comments made by previous speakers that the fund is possibly being depleted by paying out claims.

Mr. LeBlond addressed the notion that there is something fundamentally unfair about the surety fund process, that it denies due process and that the adjudicating official is biased. The commission and the commission's hearing officer are judges, in essence, of the surety fund claims. The hearing officers are not part of the proceedings, they are not one of the parties. There is a claimant and a respondent. The hearing officers are all licensed attorneys with at least two years experience in the practice of law in the State of the Alaska. The commission reviews and adopts the hearing officer's findings of fact pursuant to the Administrative Procedures Act. The APA is well established. It is not considered an unfair procedure.

The last point Mr. LeBlond wished to make was in regard to the liability of the licensee. He said this has been well established through the Bevins/Ballard case. Under common law the licensee is liable for innocent misrepresentation.

Bob Arwezon

Bob Arwezon, Realtor, an Associate Broker since 1967, spoke in favor of the present legislation. Mr. Arwezon wanted to inform the commission of HB 561 which would increase small claim limits from \$2,000 to \$5,000. Mr. Arwezon feels this would be an avenue to adjudicate most real estate disputes in which the liability is \$5,000 or less. Mr. Arwezon submitted a copy of an article which appeared in the Anchorage Times and was written by Annette Taylor. The title of the article is "State Opts Out of Trailer Owner Maker Suits". The essence of the article is that the proposed bill would allow

homeowners to bring suit in civil court on the bond itself whenever a dispute should arise in regards to a mobile home transaction.

Mr. Arwezon expressed concern about "double jeopardy" on the part of the real estate licensee. By "double jeopardy" he meant that a claim could be made against the surety fund and at the same time a civil law suit could be filed. He expressed concern that the licensee would be liable to pay a double amount. He said that there was dissatisfaction with the present surety system, that the original intent in 1974 had never been changed and that if the intent was to be changed, the legislature should readdress the fund as its intent for the fund. The surety fund was originally to act only in place of bonds to be an indemnity when a licensee was either bankrupt or out of state.

Julian Mason, Attorney

Julian Mason, representing the Alaska Association of Realtors and the Anchorage Board of Realtors again addressed the commission to clarify his statements in regard to the hearing officer's appearance of impropriety. He said that he was not saying the hearing officers showed unfairness but they appeared to the public as being unfair because they actually work with the real estate commission, of which five members are real estate licensees. Mr. Mason wanted to point out that the real estate commission is the only agency through which the Administrative Procedures Act actually awards damages. Mr. Mason also wanted to say that the hearing officer procedure through the APA does not meet the standards of the court system.

Joseph Dygess

Mr. Dygess, private citizen, spoke in opposition to the surety fund legislation. The purpose of the real estate commission is to perform a service for the public as well as for the licensee. Passage of the legislation would be de facto deregulation of the industry. The real estate commission must decide if it wants to regulate the industry and perform an adjudication service. If it does not wish to do so, then what is the merit of having a commission that is not performing a public service.

Frank Austin

Frank Austin, former Public Member of the Alaska Real Estate Commission, resident of the Anchorage area for twenty-five years, spoke in opposition to HB 705 and SB 537. Mr. Austin stated that he supported the written testimony by Elizabeth Johnson, Attorney-At-Law, submitted to the House Labor and Commerce Committee. Mr. Austin is not in support of the present legislation. He wished the commission to consider the following:

1. Is the surety fund serving the purpose for which it was originally intended?
2. What problems does the surety fund now have?

Mr. Austin said that less than 20% of the claimants claims are being paid. The present hearing officers do have the necessary experience. Their findings of fact are only recommendations to the commission. It is the commission that

makes the final decision. It is a process which can be appealed back to the commission and then on to the Superior Court if necessary. There has been a statement that the real estate commission does not have the experience and background to make a decision. These are the same peers that will judge a license action. The original intent of the fund was not for it to be an insurance policy. When a loss is due to the action on the part of the licensee, the fund is the proper form of redress. Mr. Austin proposed that the commission consider the establishment of a filing fee and also a method by which claims can be recovered and repaid to the fund. He suggested a \$50 fee or 10% of claim fee, whichever is greater with a maximum \$250 fee.

Ms. Johnson's letter, referred to by Mr. Austin, is to be attached to the minutes.

Charles Bauer

Mr. Bauer does not support the present legislation. Mr. Bauer had filed a claim, went through the surety fund hearing proceedings and was awarded \$10,000. He believes the procedure is fair and just. He stated that without the fund he would have been unable to afford to sue. He would have simply lost \$10,000.

Mary Anne Kaemerer

Ms. Kaemerer was a claimant. Ms. Kaemerer is not in support of the present legislation. Before filing a claim against the surety fund, Ms. Kaemerer went through the court system. She was awarded a judgement of \$38,400.00 but as of today, she has not received any of the awarded money. Her attorney fees were \$3,000 approximately. In December of 1981, she filed her claim to the surety fund and one year later, her claim was awarded in the amount of \$10,000.00. She feels the system is fair and just.

David LeBlonde, Assistant Attorney General

David LeBlond, Assistant Attorney General for the Department of Law spoke again. He said that the procedure is unlike the typical administrative procedure. It is a unique judicial proceeding in which private individuals are assembled and an award is made. The surety fund pays a claim based on findings of fact to which the law is applied by a hearing officer. He stated that because the hearing officer procedures are not identical to the court system doesn't mean that they are unfair in any aspect. In order to receive reimbursement from the licensees whose claims have been paid to a claimant, the commission must go to court for a judgement against the licensee. The court requires additional formality. The court will not just "rubber stamp" the commission's decision. That does not mean that the commission's decision was unfair and not equitable. The court will take into consideration all the facts and then make a decision as to a judgement being awarded back to the surety fund.

Jeff Kennedy

Mr. Kennedy, a resident of the State of Alaska, spoke stating he is not in favor of the present legislation. Mr. Kennedy believes the consumer

will have more problems collecting from a real estate licensee, that it will require more procedures to go through, which would be more costly to the consumer.

The public hearing was recessed at 5 P.M. for dinner.

The public hearing was reconvened by Vice Chairman Ribacchi at 7:00 P.M. Vice Chairman Ribacchi asked the commission if they were going to consider specific action in regard to HB 705 and the SB 537. It was decided unanimously that the commission would take a position before the evening ended.

All commissioners with the exception of Chairman Hill and Commissioner Ed Anders were in attendance.

Jacqueline Stoll

Jacqueline Stoll, a real estate licensee, a real estate claimant to the surety fund, spoke against the present legislation. Ms. Stoll believes the real estate surety fund should remain as is and that it is a good avenue to settle disputes. She would have been unable to recover her money from a licensee who was convicted and jailed, if the fund had not been available.

Kenneth Brown

Kenneth Brown, a broker for nine years, spoke in favor of the present legislation. Mr. Brown said there are several vehicles for the claimant to use as opposed to the surety fund. He said that there is a Professional Standards Committee of the Board of Realtors, an individual make go to a Small Claims Court or an individual make actually take his claim through other judicial courts.

Ruth Edmondson

Ruth Edmondson, Broker spoke in favor of the present legislation. Ms. Edmondson believes that there are relatively few "black sheep" in the industry and that most of the licensees are having to pay into the surety fund for these few "black sheep". She spoke of "cronyism" by the hearing officers and stated that she believes that the hearings are held in "star chamber" conditions.

Ellen R. Malapanes

Ellen R. Malapanes, an Associate Broker, spoke in favor of HB 705 and SB 537. She believes that the present surety fund system does not give "due process" and that the court system would be more equitable.

Ted Kosack

Ted Kosack, Anchorage resident, spoke not in favor of the present legislation. Mr. Kosack is now having a personal experience in which he, as an injured party, in regards to a condominium associaton. He believes that the surety fund is both fair to the consumer and the licensee.

Glenda Straube

Glenda Straube, representing the Fairbanks Board of Realtors, spoke in support of HB 705 and SB 537. She stated two points:

1. The present surety fund system lacks due process.
2. She stated that there is a lack of concern on the part of the Attorney General's Office, Department of Law, to collect from the guilty party. She further stated it is the perception of many that the surety fund is an easy fund to collect from.

Mark Korting

Mark Korting, a Broker since 1976, spoke in support of HB 705/SB 537. Mr. Korting stated that the intent of HB 705/SB 537, is not to eliminate the Consumer Protection aspect but to put it back into the Court System, where it originally was. Mr. Korting stated that the real estate industry is concerned about the consumer and, in many instances, tries to settle out-of-court. Mr. Korting indicated that the Realtor State membership consists of 1,958 members. The commission is noted that there are over 4,000 licensees in Alaska.

DeeAnn Gleason

DeeAnn Gleason, a Broker since 1975, spoke in support of HB 705/SB 537. She believes the present claims filed against the surety fund would not hold up in court. Ms. Gleason also believes that the commission does not have the experience nor willingness to process the surety claims and that the hearing officer proceeding is unfair.

Gene Bates

Gene Bates, a licensed real estate agent since 1972, presently an Associate Broker, spoke in favor of HB 705/SB 537. Mr. Bates spoke in regard to the licensee being subjected to "double jeopardy" and not recently "due process" from their peers.

Connie Sipe, Assistant Attorney General

Connie Sipe, Assistant Attorney General, Consumer Protection Division, Department of Law spoke against HB 705/SB 537. Ms. Sipe believes the real estate commission, if they supported HB 705/SB 537 would be effectively retreating from the consumer's interest. The public has put trust in the commission and the public respects the commission's professionalism. The public believes the commission is a leader of the state. There is a trend in the industry for arbitration and the commission has gone one step beyond arbitrating to paying claims. The commission is in the forefront, one of the leaders.

Ms. Sipe suggested that there may be a problem. Many real estate licensees may take a "back lash" by the problems created by contractors. She asked the real estate industry to support legislation that would tighten the licensing requirements for contractors. Ms. Sipe also stated

that the present courts, through Common Law, recognize innocent misrepresentation. Ms. Sipe stated that there are a number of reasons why one would not want to go through the court judicial system. All lawsuits are reported to the credit bureau and would be part of one's credit rating. Also, it is not easy to go through Small Claims. She believes that the present legislation retreats beyond the original bonds and last, but not least, she believes the public would not be impressed by the real estate commission making the surety fund more remote.

She believes that the present surety fund system does provide due process and that one is allowed the opportunity to appeal the decision if they wish. In most instances, when taking a case through the court system, it is judge tried, not jury tried. Ms. Sipe explained the "double jeopardy" in the language of law means "tried for the same crime twice", it does not apply in instances of civil court action where an individual may be sued by other parties dealing with the same case. An individual may choose whatever entity is available to them to adjudicate a civil court action.

Grayce Oakley

Grayce Oakley, Broker, who has been licensed since 1971, spoke representing the Anchorage Board of Realtors in support of HB 705/SB 537. Ms. Oakley said that today that many licensees would not take listings from contractors unless they are bonded and licensed by the regulatory agency. Many licensees believe that they are in "double jeopardy" because they have to defend themselves multiple times through the surety system as well as the courts. The burden of proof, when going through the surety system, is on the claimant. Ms. Oakley does not believe the licensees are given "due process", in effect, the hearing officer is both a judge and a jury. In the court system, a jury hears evidence directly. The benefits from HB 705/SB 537 would be that a judgement would go against the offender or person who has to pay and after it is proven that the individual cannot pay or they are uncollectable, then the claimant may tap the surety fund. In the present surety fund system, the hearing officer makes a proposed decision, forwards it on to the commission and, in essence, the commission authorizes a check to be paid. This is the prevailing view of the Alaska Association of Realtors. It is the belief that the commission does not have before it all the findings of fact and therefore, at times, cannot make a proper decision.

Elizabeth Johnson

Elizabeth Johnson, Attorney-At-Law, Hearing Officer, for the Alaska Real Estate Commission spoke against HB 705/SB 537. Ms. Johnson stated that there are problems with the surety fund but they can be addressed by amending the present statutes as opposed to completely "revamping" the surety fund as suggested in HB 705/SB 537. Ms. Johnson stated that the licensee, as well as the claimants, are given "due process" and that there is another example, in which claims are paid, claims which are larger than the surety fund. This is the Worker's Compensation Board, under the Administrative Procedures Act and worker compensation claims are paid, awarded to claimants. She stated that there is a problem in the backlash in regards to contractors, who are

perhaps at fault. There must be some way in which to make the contractor responsible. At the present time, there does not seem to be an effective way. She realizes the unhappiness of the industry in regard to the court's decision surety fund legislation will not eliminate the liability of the licensee for innocent misrepresentation.

Commissioner Ribacchi closed the meeting to public testimony. The meeting was recessed for five minutes.

The session reconvened. Vice Chairman Ribacchi stated that the commission, through the day, had procedurally been run informally, but now would be back in formal session, operating under its own commission procedures.

A motion was made by Commissioner Collins, and seconded by Commissioner Serrano, not to support the proposed legislation of SB 705 and SB 537.

The commission voted not to support the present legislation with one dissenting vote.

Commissioner Ribacchi	Aye
Commissioner Collins	Aye
Commissioner Serrano	Aye
Commissioner Morris	Aye
Commissioner Benson	Nay

Commissioner Collins further stated that the commission has a new direction to address after hearing the public testimony but does not believe it is now the time to change the surety fund procedures.

Commissioner Serrano stated that he believes that the industry should look out for the consumer and that it is good public relations to do so. At the moment he is opposed to the present legislation since there are no other alternatives at this time, he would like to leave the surety fund proceedings "as is".

Commissioner Benson stated that he believes the bills are a step forward and there are benefits in it for the industry.

Commissioner Morris stated that it is the leaders of the industry that support and have promoted the present legislation, that they do not necessarily speak for all the licensees. She further stated that the surety fund needs some amendments but it is doing a good job in its present position.

Commissioner Ribacchi stated as an individual, that many things are "over regulated" and that more regulation is not always in the benefit of the industry or the public. He stated that there are some conflicts and discrepancies in the real estate statute and that it can be improved but at the present time the surety fund should remain in its present form.

After listening to testimony, Commissioner Ribacchi, feels that there are many misunderstandings of the commission's functions and that the commission should take into consideration how these misunderstandings can be reversed.

Vice Chairman Ribacchi asked that letters be sent to Commissioner Lyon and the Administration informing them of the commission's decision as well as to the Alaska Association of Realtors and soliciting suggestions for amendments and ways to revise the real estate surety fund.

It was decided by the commission that the next commission meeting would be held on May 24th and 25th instead of May 17th and 18th as previously announced.

Commissioner Collins asked the Realtors to prepare a supplement to the Phase I, White Paper and forward it to the commission, for their review at the next commission meeting. She also asked if they would be willing to pursue other avenues of improvement of surety fund procedures.

It was moved by Commissioner Serrano, seconded and unanimously passed for the commission meeting to adjourn.

The meeting was ajourned.

STATE OF ALASKA

RECEIVED

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

APR 26 1984

AK REAL ESTATE COMM.

April 24, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIREANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

James L. Magowan, Executive Director
Alaska Real Estate Commission
3601 C Street Suite 722
Frontier Building
Anchorage, AK 99503

Re: Alaska Association of Realtors
"White Paper" on the surety
fund

Dear Mr. Magowan:

At your request on behalf of the Real Estate Commission, we have reviewed the White Paper dated March 5, 1984, by the Alaska Association of Realtors pertaining to the real estate surety fund. Some of the comments and concepts advanced by the Alaska Association of Realtors in the White Paper are now embodied in proposals before the 13th Legislature, specifically HB 705 and SB 537.

The current real estate surety fund claims program as outlined in AS 08.88.450 et seq. has benefited hundreds of Alaskan consumers and real estate professionals since it was enacted in 1980. The program has provided a swift, inexpensive, and fair method of resolving many real estate sales disputes. It has allowed hundreds of consumers to bring their grievances before a qualified, impartial tribunal without the frustration, delay and high cost of going to court. In our view, the program has given a measure of protection to consumers while providing real estate professionals with a full and fair opportunity to contest the merits of any claim made against the surety fund. The existing surety fund has done much to enhance the public trust and confidence in the real estate profession in general, a goal we support and encourage.

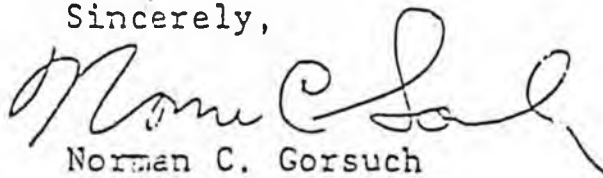
To be sure, the surety program could be improved in some respects. I agree with the point made by the Alaska Association of Realtors that some means must be found to reduce frivolous claims against the surety fund. It is my belief that frivolous claims can be essentially halted by imposing a significant

filing fee, perhaps up to \$150, to be paid by each claimant prior to processing a claim against the surety fund. If the claimant does not prevail, then the filing fee would be lost. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

I recognize that this is a policy call rather than a legal determination. I would therefore simply urge the commission to carefully weigh the effects of the approach taken in the White Paper and by the two pending bills and carefully consider their effects on both the real estate consumers and on the real estate profession. As a general rule, I am not enamoured with placing more disputes in our already overworked judicial system. Of course, any aggrieved party from a real estate surety fund proceeding does and ought to have the ability to appeal the findings and award to a superior court.

If we can be of additional assistance to the commission concerning any aspect of the surety fund, please contact us.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:eer

cc: The Honorable Dick Elaison
Senator

The Honorable Jalmar Kerttula
President of the Senate

The Honorable Joe Hayes
Speaker of the House

Ray Gillespie
Special Staff Assistant
to the Governor

The Honorable Dick Lyon, Commissioner
Department of Commerce and Economic Development

22

APRIL 5, 1984

Frank Austin
3839 Apollo Drive
Anchorage, AK 99504

MRS. BARBARA HILL, CHAIRPERSON
ALASKA REAL ESTATE COMMISSION
3601 C STREET
ANCHORAGE, ALASKA 99503

DEAR BARB,

I AM CONCERN AT THE PROCESS THAT HB-705 SEAMS TO BE FOLLOWING. THE RECENT HEARING BY THE HOUSE LABOR COMMITTEE WAS VERY DISTURBING IN THE LACK OF PUBLIC COMMENT THAT WAS OFFERED ON A BILL THAT WILL HAVE SUCH A POTENTIAL EFFECT ON THE PUBLIC. I FEEL THAT IT IS THE RESPONSIBILITY OF THE COMMISSION TO SEE THAT THIS DOES NOT SET THE TONE FOR THE FINANCE COMMITTEE HEARINGS. TO ENSURE THAT THERE IS PUBLIC COMMENT ON THIS BILL I URGE YOU TO CALL A SPECIAL SESSION OF THE COMMISSION AT WHICH PUBLIC COMMENT ON HB-705 MIGHT BE OFFERED TO THE COMMISSION. I ALSO URGE THE COMMISSION TO REVIEW HB-705 AND FORWARD A POSITION ON THIS BILL TO THE FINANCE COMMITTEE.

I AM HAND DELIVERING THIS TO THE COMMISSION OFFICE FOR EXPEDITIOUS HANDLING. THANK YOU FOR ANY CONSIDERATION GIVEN TO MY REQUEST. I HAVE ALSO ATTACHED A COPY OF A LETTER TO THE EDITOR ON THE LABOR COMMITTEE HEARINGS AND MY CONCERNS ABOUT HB-705.

SINCERELY

FRANK AUSTIN

ATTACHMENT

cc: Commission Members

APRIL 5, 1984

Frank Andin
3839 Apollo Drive
Anchorage, AK 99504

ANCHORAGE TIME
LETTERS TO THE EDITOR
P.O. BOX 40
ANCHORAGE, AK 99510-0040

DEAR EDITOR,

PLEASE INCLUDE THE FOLLOWING IN YOUR LETTERS TO THE EDITOR COLUMN.

REAL ESTATE SALES LEGISLATION

AS A FORMER PUBLIC MEMBER OF THE STATE REAL ESTATE COMMISSION (1976-82) I AM CONCERNED ABOUT CHANGES THAT ARE BEING PROPOSED TO THE LAWS GOVERNING THE REAL ESTATE SURETY FUND.

ON TUESDAY APRIL 3RD THE HOUSE LABOR COMMITTEE HELD A TELECONFERENCE HEARING ON HB-705 "AN ACT RELATING TO THE REAL ESTATE SURETY FUND". THIS BILL WILL MAKE SUBSTANTIAL CHANGES TO THE PROCESS USED TO REIMBURSE INDIVIDUALS WHO ARE DAMAGE MONETARILY IN A REAL ESTATE SALES TRANSACTION WHEN A LICENSEE IS INVOLVED. THE BILL WILL ALSO CHANGES THE LAW SO THAT AN INDIVIDUAL WILL ONLY BE ABLE TO CLAIM DAMAGES IF THE LOSS IS DUE TO INTENTIONAL MISREPRESENTATION. AT PRESENT THE LICENSEE IS HELD RESPONSIBLE EVEN IF THE MISREPRESENTATION IS UNINTENTIONAL. ALSO, AN INDIVIDUAL WILL HAVE TO GET A JUDGEMENT IN COURT BEFORE A CLAIM AGAINST THE SURETY FUND CAN BE FILED. AT PRESENT AN ADMINISTRATIVE HEARING IS REQUIRED. THESE ARE MAJOR CHANGES TO THE LAW THAT SHOULD HAVE A GREAT DEAL OF PUBLIC DISCUSSION BEFORE THEY ARE ENACTED.

SPEAKING OF PUBLIC DISCUSSION. I WAS SUPRISED AND THEN SHOCKED BY THE ACTION OF THE HOUSE LABOR COMMITTEE ON THIS BILL. IT WAS INTRODUCED BY THE LABOR COMMITTEE ON MARCH 26TH. EIGHT DAYS LATER THEY HELD A TELECONFERENCE HEARING (APRIL 3ND) AND AT THE END OF THE HEARING PASSED THE BILL FROM THE COMMITTEE. I UNDERSTAND THAT IT WAS A UNANIMOUS DO PASS BY THE MEMBERS OF THE COMMITTEE PRESENT. OTHER THAN THE TESTIMONY BY MS. ELIZABETH JOHNSON, AN ATTORNY WHO HAS CONDUCTED MANY OF THE ADMINISTRATIVE HEARINGS ON SURETY FUND CLAIMS, THE MOST DISTINGUISHING FEATURE OF THE HEARING WAS WHAT I WOULD DESCRIBE AS THE COMMITTEES LACK OF UNDERSTANDING OF THE BILL. I THINK THIS WILL BE SUPPORTED BY THE REPORT OF THE HEARING IF ONE IS PREPARED. DURING THE HEARING SEVERAL OF THE COMMITTEE MEMBERS ASKED THAT THOSE TESTIFYING PROVIDE THEM WITH WRITTEN COMMENTS SO THAT THEY COULD BETTER UNDERSTAND THE RELATIONS BETWEEN THE COMMENTS AND THE BILL. THEIR ACTION IN PASSING THE BILL OUT OF THE COMMITTEE WITH A DO PASS RECOMMENDATION MAKES THESE REQUEST LUDICROUS.

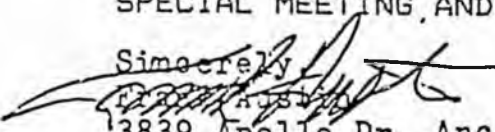
WHY WAS THE BILL MOVED SO FAST? THE FOLLOWING IS MY GUESS. THE LANGUAGE IN THE BILL WAS DEVELOPED BY THE ALASKA ASSOCIATION OF REALTORS. I UNDERSTAND THAT IT WAS FIRST PRESENTED TO THE STATE REAL ESTATE COMMISSION FOR THEIR CONSIDERATION AT THEIR LAST MEETING. I WAS ALSO TOLD BY A CURRENT PUBLIC MEMBER ON THE COMMISSION THAT THE COMMISSION DECIDED TO STUDY THE PROPOSAL AND DETERMINE WHAT ACTION IT WOULD TAKE ON THE PROPOSAL AT THEIR NEXT MEETING. THIS IS NOT AN UNUSAL ACTION FOR THE COMMISSION. THE PROPOSAL NEXT SURFACED AS HB-705 AND A COMPANION BILL IN THE SENATE. HOWEVER BEFORE THIS HAPPENED THE STATE REALTORS ASSOCIATION HELD ITS ANNUAL COCKTAIL PARTY FOR LEGISLATORS IN JUNEAU.

I HAVE SEE NO PROBLEM WITH THE LABOR COMMITTEE'S INTRODUCTION OF HB-705. I ALSO SEE NO PROBLEM WITH THE LEGISLATORS ATTENDING THE REALTORS ANNUAL COCKTAIL PARTY. REALTORS ARE CONSTITUENTS AND DESERVE NO LESS. HOWEVER, I AM SHOCKED THAT A BILL WITH SUCH POTENTIAL IMPACT ON THE PUBLIC WOULD BE MOVED FROM THE COMMITTEE WITH SO LITTLE REGARD FOR PUBLIC INPUT. IF THE RECORD IS CHECKED YOU WILL FIND THAT OF THE PERSONS IN ATTENDANCE AT THE TELECONFERENCE HEARING (PERSONS ATTENDED AT FAIRBANKS, HOMER AND ANCHORAGE) YOU WILL FIND THAT LESS THAN TEN PERCENT WERE PERSONS, WERE NOT REAL ESTATE LICENSEES. THE HEARING WAS SCHEDULED SO FAST THAT IT WAS NOT EVEN LISTED ON THE WEEKLY LIST OF HEARINGS MAILED OUT BY THE LEGISLATIVE AFFAIRS OFFICE.

WHY IS THE ASSOCIATION SO INTERESTED IN GETTING HB-705 PASSED? TESTIMONY AT THE HEARING INDICATED THAT THEY THINK THAT THE SURETY FUND IS PAYING OUT TO MANY CLAIMS UNDER THE PRESENT SYSTEM. A COMPARISON WAS MADE BETWEEN THE CLAIMS PAID BY THE CALIFORNIA FUND AND OUR FUND TO EMPHASIS THIS. THEY FEEL THAT THE HEARING OFFICE IS RESPONSIBLE FOR THIS. THIS IS ALSO LUDICROUS SINCE THE HEARING OFFICE PRESENTS FINDINGS TO THE COMMISSION (FIVE REAL ESTATE BROKERS AND TWO PUBLIC MEMBERS) WHO CAN ADOPT, CHANGE OR REJECT THE FINDINGS. ALSO, SO FAR LESS THAN 30 PERCENT OF THE CLAIMS FILED AGAINST THE FUND HAVE BEEN PAID. THE PRESENT PROCESS GETS THE JOB DONE IN LESS THAN SIX MONTHS. IF HB-705 PASSES THE PROCESS WILL GO BACK TO THE CIVIL COURTS AND HAVE TO COMPETE WITH OTHER MATTERS ON THE COURT CALENDER.

THESE PROPOSED CHANGES HAVE THE POTENTIAL OF AFFECTING EVERY PERSON WHO BUYS OR SELL REAL ESTATE IN ALASKA. IT SHOULD HAVE MUCH MORE PUBLIC DISCUSSION. I WOULD ALSO SUGGEST THAT IT IS IMPORTANT ENOUGH FOR THE STATE REAL ESTATE COMMISSION TO HOLD A SPECIAL MEETING TO HOLD A PUBLIC HEARING ON THE CHANGES. I HAVE REQUESTED THAT THE CHAIRPERSON OF THE COMMISSION CALL A SPECIAL MEETING AND HOLD PUBLIC HEARINGS ON THIS MATTER.

Sincerely,

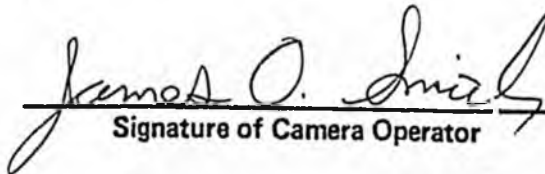

3839 Apollo Dr, Anc. 99504
(W) 264-4424

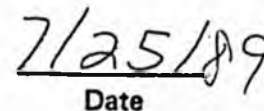


RECORDS CERTIFICATION



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.


Signature of Camera Operator


Date

H B

2 3 7

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

H. Judiciary	4/10/85	1:30 pm
" "	4/12/85	1:30 pm

Alaska State Legislature



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

April 10, 1985

The Honorable Victor D. Carlson
Superior Court Judge, Third District
303 K Street
Anchorage, Alaska 99501

Dear Vic:

I am writing you on behalf of the House Judiciary Committee. In a committee hearing held April 20, on HB 237, a copy of which is enclosed, Representative Max Gruenberg requested, with the assent of the committee, that I send a copy of the bill to you for your comments.

Although the committee passed the bill out, Representative Gruenberg felt that perhaps the bill created problems with regard to property dispositions under divorce or dissolution judgments.

Do you see any problems with this bill along those lines? The committee would very much appreciate hearing your comments on the bill.

Sincerely,

A handwritten signature in cursive script that reads "Hayden".

Hayden Kaden

P.S. Its been a long time. Hope all is well with you. I'm committee counsel for this session. Its kind of fun to be back in the traces after a 18 year hiatus.

*Best regards,
H.*

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to pension reform. This bill amends statutes pertaining to the state's retirement systems to include provisions similar to those enacted by the U.S. Congress in the Retirement Equity Act of 1984 (P.L. 98-397).

The bill amends a number of sections of the public employees' retirement system and teachers' retirement system statutes to require consent of an employee's spouse before the employee may waive a joint and survivor benefit, obtain a refund of contributions if the employee has a vested interest in benefits, or revoke a designation of the spouse as the employee's beneficiary for various death benefits. Consent of the spouse is also required by this bill for revocation of a designation of the spouse as beneficiary for death benefits under AS 26.05.224. Until consent is obtained, the joint and survivor benefit and designation of the spouse as beneficiary are required. The judicial retirement system statute is amended to allow the spouse of a justice or judge to receive survivors' benefits if the spouse was married to the justice or judge for one year before death, instead of the current two years.

The bill allows former spouses to share in survivor's benefits, to the extent provided in a "qualified domestic relations order," as defined in secs. 16, 18, 23, and 39 of the bill.

Prohibitions against assignment of retirement benefits are removed with respect to assignments of those benefits made to satisfy marital property rights, spousal support, and child support under a qualified domestic relations order.

**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

Page 1 of 2

Revision Date: _____

Page 1 of 2

REQUEST

Bill/Resolution No.: 237

Title: An Act Relating to Pension Reform

Sponsor: _____

Requestor: _____

Date of Request: _____

FISCAL DETAIL

Agency Affected: All State Agencies

Program Category Affected: Elementary & Secondary Education, Labor Services

BRU, Program or Subprogram(s) Affected: _____

PERS, JRS, TRS

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
Operating						
100 Personal Svcs		10.0				
100 Remnt & Bnfts						
200 Travel						
300 Contractual						
400 Supplies		5.0				
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
TOTAL OPERATING	-0-	15.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND		15.0				
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	15.0	-0-	-0-	-0-	-0-

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY		2.0				

ANALYSIS: (Attach a separate page if necessary)

Prepared By: J.K. Humphreys, Director
Division: Recruitment & Benefits

Phone: 465-4470
Date: 2/20/85

Approved by Commissioner: Lisa Rudd
Agency: Department of Administration

Date: 2-21-85

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

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to pension reform. This bill amends statutes pertaining to the state's retirement systems to include provisions similar to those enacted by the U.S. Congress in the Retirement Equity Act of 1984 (P.L. 98-397).

The bill amends a number of sections of the public employees' retirement system and teachers' retirement system statutes to require consent of an employee's spouse before the employee may waive a joint and survivor benefit, obtain a refund of contributions if the employee has a vested interest in benefits, or revoke a designation of the spouse as the employee's beneficiary for various death benefits. Consent of the spouse is also required by this bill for revocation of a designation of the spouse as beneficiary for death benefits under AS 26.05.224. Until consent is obtained, the joint and survivor benefit and designation of the spouse as beneficiary are required. The judicial retirement system statute is amended to allow the spouse of a justice or judge to receive survivors' benefits if the spouse was married to the justice or judge for one year before death, instead of the current two years.

The bill allows former spouses to share in survivor's benefits, to the extent provided in a "qualified domestic relations order," as defined in secs. 16, 18, 23, and 39 of the bill.

Prohibitions against assignment of retirement benefits are removed with respect to assignments of those benefits made to satisfy marital property rights, spousal support, and child support under a qualified domestic relations order.

The commissioner of administration is required to inform retirement system participants and their spouses of the changes accomplished by this bill, and effective dates are established to assure an orderly transition to the provisions of this pension reform bill.

This bill recognizes, as does the federal Retirement Equity Act of 1984, that rights to benefits accrued during a marriage are property rights in which both partners to the marriage have an interest. The bill has been drafted to require the joint and survivor option, and spousal consent for revocation of designation of the spouse as beneficiary for benefits, only if the spouse was married to the employee during a period when rights to those benefits were being accrued.

I note that the state's Supplemental Benefits System (SBS) plan has already been amended to comply with the Retirement Equity Act requirements that the plan require a joint and survivor benefit unless the spouse waives that form of benefit, and that the plan require payment of a preretirement survivor benefit to the spouse unless the spouse waives that form of benefit. These amendments to the SBS were necessary to maintain the plan's tax-deferred status under the Internal Revenue Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Sheffield", written in a cursive style.

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Page 1 of 2

Revision Date: _____

Page 1 of 2

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Operating	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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200 Travel						
300 Contractual						
400 Supplies		5.0				
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
TOTAL OPERATING	-0-	15.0	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		15.0				
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	15.0	-0-	-0-	-0-	-0-

POSITIONS:

	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME						
PART-TIME						
TEMPORARY		2.0				

ANALYSIS: (Attach a separate page if necessary)

Prepared By: J.K. Humphreys, Director
Division: Retirement & Benefits

Phone: 465-4470
Date: 2/20/85

Approved by Commissioner: Lisa Rudd
Agency: Department of Administration

Date: 2-21-85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HB 237

Fiscal Note Analysis

Prepared by Division of Retirement & Benefits

Department of Administration

February 20, 1985

IV Analysis:

Passage of this bill will; 1) require a married member of the Public Employees' (PERS), Teachers' (TRS) and Judicial (JRS) Retirement Systems to select one of the joint and survivor options upon retirement unless the requirement is waived by the spouse and would require that the spouse be the primary beneficiary of death benefits, and 2) would allow any benefit payable from the PERS, TRS and JRS to be subject to attachment to satisfy orders by divorce or dissolution of marriage orders.

The fiscal impact of this will be due to the research and notification efforts by the Division to inform effected members of the legislation.

ANALYSIS OF HB 237
"An act relating to pension reform."
March 1985

I. Sections 1-16 relate to changes in the Teachers' Retirement System.

Sections 1-3 amend the eligibility requirements for normal and early retirement of the TRS system to stipulate that members must designate their spouse* (which could include former spouses) the contingent beneficiary and select a joint and survivor benefit plan. The member must chose among three options that currently exist in the retirement plan.

Exceptions to these requirements are:

1. if the spouse has signed a consent form waiving the right as the contingent beneficiary;
2. if the spouse was not married to the member during any period of the member's employment covered by the retirement system;
3. if there is no spouse or that the spouse cannot be located or other circumstances described by the administrator by regulation

*Under sections 1-3, "spouse" means the person to whom the member is married at the time of appointment to retirement except to the extent that a qualified domestic relations order, orders otherwise.

Section 5 amends vested members' right to refund upon termination by requiring vested members to obtain their spouse's* (which could include former spouses) consent to a refund, in writing.

Exceptions to this requirement are:

1. the member is not vested;
2. the spouse was not married to the member during any period of the member's employment;
3. there is no spouse;
4. consent cannot be obtained because the spouse cannot be located.

*Under this section "spouse" means the person to whom the member is married at the time of application for the refund, except to the extent that a qualified domestic relations order, orders otherwise.

Sections 6 and 7 amend the designation of beneficiary for non-occupational and occupational death benefits by clarifying the definition of spouse* to include former spouses to the extent that a qualified domestic relations order so orders.

*Under these sections "spouse" means the person to whom the member was married during the member's employment and is married to at the time of the member's death, except to the extent that a qualified domestic relations order, orders otherwise.

Sections 8-10 amend the designation of beneficiary for death benefits from the member's designated choice to the member's spouse if the member is married, becomes married or remarries. Revocation of the designation of the member's spouse can only be accomplished by the spouse signing a consent form waiving the right as beneficiary.

The definition of spouse is clarified to mean the person to whom the member was married during the member's employment and is married to at the time of the member's death, except to the extent that a qualified domestic relations order, orders otherwise. A qualified domestic relations order can establish a former spouse as the designated beneficiary.

Procedures for the claiming of spousal entitlement to death benefits is outlined. A ten day time period, following the member's death, is established for all entitlement claims to be filed with the administrator. If a claim is not received within the ten day period, the person claiming entitlement is not entitled to receive any benefit already paid by the administrator.

Sections 11-13 amend the joint and survivor option of retirement plans by changing the designation of contingent beneficiary to require that a member's spouse (which could include former spouses) must be the contingent beneficiary. The member, however, maintains the choice of which joint and survivor option plan to select. The member must choose among three options currently existing in the retirement plan.

Exceptions to this requirement are:

1. if the spouse signs a consent form waiving the right as contingent beneficiary;
2. if the spouse was not married to the member during any period of the members employment covered by this retirement plan;

3. if there is no spouse or that the spouse cannot be located or other circumstances described by the administrator.

In the case where there is 'no spouse', a member may designate a dependent as a contingent beneficiary or may take normal or early retirement.

Spouse is defined as the person to whom the member is married at the time of appointment to retirement, except to the extent that a qualified domestic relations order, orders otherwise. A qualified domestic relations order can establish a former spouse as the contingent beneficiary.

Procedures for claiming to be a contingent beneficiary is outlined. A 60 day time period, following a member's application for retirement, is established for filing of all claims as contingent beneficiary. No claim, following the 60 day period, may be paid if the payment would result in an increase in the actuarial cost to the retirement system.

Sections 14-15 and the TRS exemption status from assignments to provide for assignments resulting from qualified domestic relations orders.

Section 16 defines a domestic relations order. Which means a divorce or dissolution judgement, including an order approving a property settlement, provision of child support and spousal support. It also defines surviving spouse as the spouse of a member at the time of a member's death except to the extent that a qualified domestic relations order, orders otherwise.

II. Sections 17 and 18 relate to changes in the Judicial Retirement System.

Section 17 amends survivor benefits by reducing the requirement from two years to one year that a spouse be married prior to the death of the justice or judge in order to be eligible for survivor benefits. This change conforms to PERS definition and ERISA's requirements for eligibility of survivor benefits.

It also allows former spouses who were married for at least one year and who have not remarried to share in survivors' benefits to the extent provided in a qualified domestic relations order.

Section 18 defines a qualified domestic relations order. The definition is the same as described in Section 16 under the TRS plan.

- III. Sections 19 and 20 relate to changes in the Marital and Domestic Relations statute. The amendments require that if a divorce or dissolution judgement distributes benefits from PERS, TRS, NGRS to an alternate payee (former spouse), the judgement must be a qualified domestic relations order.
- IV. Sections 21-23 relate to changes in the Alaska National Guard Retirement System.

Sections 21 and 22 amend retirement benefits for vested members by changing the designation of beneficiary for death benefits from the vested member's designated choice to the member's spouse if the member is married, becomes married or remarries while employed under this retirement plan. It also allows former spouses who were married to the member while employed under this retirement plan to share in survivors' benefits to the extent provided in a qualified domestic relations order.

Requirements and procedures for revocation of consent of the spouse, proof of a claim to entitlement and a 10 day notification of claim period are the same as for the death benefits under TRS (referred to in Sections 8-10).

Section 23 defines a qualified domestic relations order. It is identical to all other references in TRS, JRS (Sections 16 and 18).

- V. Sections 27-39 relate to changes in the Public Employees' Retirement System.

Section 24 amends a vested member's right to refund upon termination by requiring vested members to obtain their spouse's consent to the refund in writing. Definition of spouse and exceptions to this requirement are the same as in TRS (Section 5).

Sections 26-29 amend the eligibility requirements for normal and early retirement under PERS to stipulate that members must designate their spouses as the contingent beneficiary and select a joint and survivor benefit plan. The member must choose among three options which currently exist in the retirement plan. The exceptions to this requirement and definition of spouse are the same as in TRS (Sections 1-3).

Sections 30-32 amend the designation of beneficiary for non-occupational and occupational death benefits by clarifying the definition of spouse which could include former spouses to the extent that a qualified domestic relations order so orders. The change in definition of spouse is the same as in TRS (Sections 6-7).

Sections 33-35 amend the joint and survivor option of retirement plan by changing the designation of contingent beneficiary to require that a member's spouse (which could include former spouses) must be the contingent beneficiary. The member, however, maintains the choice of which joint and survivor option plan to select. The member must choose among three options that currently exist in the retirement plan. Revocation of this requirement, spousal waiver, right to designate a dependent as beneficiary or take normal retirement, definition of spouse, procedures for spousal claim to right of contingent beneficiary and time period allotted for claim is the same as in TRS (Sections 11-13).

Section 36 amends the designation of beneficiary for death benefits from the member's designated choice to the member's spouse if the member is married, becomes married or remarries. Revocation of designation, spousal waiver of the right to beneficiary, the definition of spouse, procedures for spousal claim to right of beneficiary and time period allotted for claim is the same as in TRS (Sections 8-10).

Section 37 amends the PERS exemption status from assignments to provide for assignments resulting from qualified domestic relations orders. This is the same in TRS (Sections 14-15).

Section 38 amends the definition of surviving spouse in the PERS plan to include former spouses to the extent that a qualified domestic relations order, orders.

Section 39 defines a domestic relations order. This is the same definition used in TRS, JRS, NGRS (Sections 16, 18, 23).

Section 40 charges the Department of Administration with the duty to notify members of the state's retirement plans of the changes previously outlined within 90 days following enactment of the legislation. Notification will be provided through the division of retirement's newsletter and publication in newspapers in each judicial district of the state. They will also provide all necessary forms to implement the Act.

Sections 41-42 set out the effective dates of the Act. Notification of the changes to the state's retirement plans will take effect immediately. Sections 1-39 take effect January 1, 1986.

BILL SHEFFIELD
GOVERNOR



PHONE
(907) 561-4227

STATE OF ALASKA

OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION

3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503

March 1, 1985

Representative Katie Hurley
Pouch V
Juneau, AK 99811

Dear Representative Hurley:

The Alaska Women's Commission urges your support for HB 237, an act relating to pension reform. This bill insures that public employees (in PERS, TRS, JRS and the Department of Military and Veterans Affairs) will share similar rights and protections in their retirement systems as do members of private retirement plans.

HB 237 recognizes, as does the federal law (Retirement Equity Act of 1984) that guides private retirement plans, that rights to benefits accrued during a marriage are property rights in which both partners to the marriage have an interest. Presently, retirement age represents a time of economic uncertainty for many women. At age 65, most people experience a reduction in their income by 44 percent. As a group, older women's incomes are yet smaller. Older women have the highest incidence of poverty in the state as well as in the nation. The median annual income for older women in Alaska is \$4,700 which is about one-half that for older Alaskan men.

Under current state law a married public employee is not required to select survivor benefits for a spouse or to inform the spouse that survivor benefits were or were not selected. Thus, many spouses are left unknowingly financially unprepared to face their retirement years. Among those married members currently enrolled in the PERS and TRS systems, only 20 percent and 37 percent respectively have chosen survivor benefits for their spouses and it is unknown how many have informed their spouses about this decision that ultimately affects both of their financial futures. HB 237 corrects this problem by making spouses the automatic beneficiary unless the spouse signs a waiver consenting to a change in beneficiary. It further provides that a vested member who terminates prior to retirement must also receive consent of the spouse before "cashing out" of the retirement system.



STATE OF ALASKA

OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
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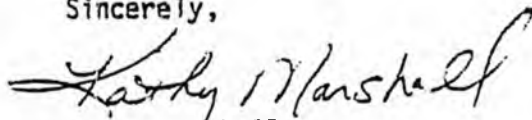
March 1, 1985
Page Two

HB 237 also addresses the rights of former spouses to retirement benefits. Under current state law, the court determines whether retirement benefits will be considered as a marital asset and very often it may be the most valuable asset attained during marriage. Since the TRS and PERS systems are protected by statute from assignment, the courts can do nothing more than establish a value to the benefits and adjust for its value from other assets if they exist. HB 237 waives this prohibition of assignment of the PERS and TRS system for purposes of satisfying marital property rights, spousal support and child support when a qualified domestic relations order is issued by the courts. It also extends to former spouses of members of all state retirement systems the right to share in survivor benefits to the extent outlined in a domestic relations order. This provision does not require an increase in benefits to the member in order to satisfy the domestic relations order, however.

In summary, HB 237 establishes equity and provides the same "right to know" and protections for spouses of public employees that is now provided to members and their spouses of private retirement systems under the federal Retirement Equity Act of 1984. Further, the state's Supplemental Benefits System (SBS) plan is regulated by this federal act and has been amended to comply with it. Thus, HB 237 will provide consistency in the regulation and treatment of the state's retirement and annuity plans.

If you have any questions or would like to discuss this bill in greater depth, please contact me at your convenience.

Sincerely,



Kathy Marshall
Executive Director



Alaska Women:

A N D P E N S I O N S

Background

Until recently, pension laws have failed to consider the needs of working women, the work patterns of most females or marriage as an economic partnership.

According to the Institute of Gerontology at the University of Michigan, 60 percent of workers vested in pension plans have selected options that will provide nothing for a surviving spouse, the net result being that older women reach the end of their resources long before they reach the end of their lives.

A recent study done at the federal level found that while 50 percent of all male workers were covered by a pension plan, only 31 percent of female workers were covered.

And in 1981, the U.S. Census Bureau estimated that the average private pension received by a man was \$4,152 a year as compared to \$2,427 received by a woman. The Census Bureau also reported:

- 60 percent of the U.S. population over 65 years are women.
- 72 percent of aged poor households consist of single women.
- 85 percent of single persons over 65 years who live below the poverty line are women.

Private Pensions and Spouses

However, on August 9, 1984, Congress adopted amendments to the Employee Retirement Income Security Act (ERISA), ending a ten-year struggle for pension equity for women. The amendments affect all women who work in the private sector. Major provisions include:

- Requiring a spouse's written permission before an employee can waive survivor benefits;
- Payment of benefits to the spouse of a worker fully vested but who dies before reaching retirement age;
- Requiring that employees be allowed to participate in pension plans when they turn 21, lowered from age 25;
- Forbidding pension plans from counting a one-year maternity or paternity leave as a break in service when adding up the years needed to earn a pension;
- Specifying that state courts may divide up pension benefits in divorce proceedings;

- Limiting a company's freedom to change a pension plan so that employees are better protected from losing benefits they have accrued; and
- Allowing companies to give cash in lieu of pension to an employee who leaves before retirement, if the benefit is worth less than \$3,500.

In Alaska

Amendments to ERISA could affect the 62 percent of women who work in the private sector. Since the balance of workers represented by local, state or federal pension plans are not affected by ERISA, those women may still face certain inequities. Although marriage should be recognized as an economic partnership, only 20 percent and 37 percent of those couples enrolled in the Public Employees Retirement System and the Teachers Retirement System respectively, have selected options that will provide benefits for a surviving spouse.

Legislation, supported by the Alaska Women's Commission, has been introduced to update the various public employees retirement systems. The proposed legislation would ensure that state and many municipal employees and their spouses are afforded similar benefits and protections as members of private pension plans receive. This legislation would have its biggest impact on women reaching retirement age.

According to the Older Alaskans Commission, in 1981 there were 3,793 women approaching retirement age. Now state officials believe a trend towards a growing elderly population is developing. The Older Alaskans Commission statistics also show that women tend to outlive their male counterparts. At age 70 and older, women outlive men, 45 percent to 55 percent. It is evident, by the growing older population and the longer life expectancy of women, that pension reform is of great importance. Here are some statistics.

- Women, 60 years and older, comprised 5 percent of the state's population and 34 percent of those people 60 years and older in 1980.
- The proportion of women over age 65 who head households has increased from 34 to 36 percent between 1960 and 1980.
- The median income for women age 65 years or older was \$4,702 in 1980 compared to \$7,741, the median income for men of the same age group.
- Of those women 65 years or older in 1980, approximately 13.4 percent lived in poverty.

Sources:

A New Beginning for Older Alaskans: A Three-Year Statewide Plan, Older Alaskans Commission, July 1983

Alaska Women: A Databook, Alaska Women's Commission, July 1984

"Retirement and Pension Reform Research Report," Barbara Baker, Alaska Women's Commission, August 15, 1984

The President's Commission on Pension Policy, Washington, D.C.

Women's Pension Project, Pension Rights Center, Washington, D.C.

Older Women's League, Washington, D.C.

Alaska Women's Commission
3501 C Street, Suite 742
Anchorage, Alaska 99503
(907) 561-4227

State Legislatures
Feb 1985

Pension inequities plague women who work for states

More women are part of the work force today than at any other time in our nation's history. Yet pension systems affect women not only as workers but also as wives, divorced spouses, and widows. In an effort to equalize some of the inequities and close the "gender gap" in private pension plans, Congress last year passed a pension reform bill.

But discrepancies still exist for state and local employees who are not regulated by federal law. For instance, in the past, women employees sometimes paid higher premiums and received lower monthly benefits than male employees, but two U.S. Supreme Court cases (*Los Angeles vs. Manhart*, 1978; and *Norris vs. State of Arizona*, 1983) struck down these practices.

Another problem concerns the survivor's annuity that is paid to the surviving spouse upon the death of a vested employee. Fewer than 40 percent of married pension participants choose joint and survivor annuity plans. Why? Because their monthly retirement benefits are reduced in order to allow benefits for the surviving spouse, but no one wants to live on reduced benefits. A "pop up" provision, which allows benefits to pop back up to the full amount if the protected spouse dies first, would resolve this problem. In addition, the spouse should be included in the decision to waive survivor's annuities. Requiring written consent of both partici-

pant and spouse to waive these benefits allows both parties to be aware of the options available to them.

Part-time workers are frequently in jobs traditionally lacking high pay, job security, advancement opportunities, and fringe benefits. In particular, most of them lack a pension plan. Women specifically, since they compose 61 percent of non-agricultural, part-time workers, are likely to experience the negative effects of part-time work. Prorating retirement and other fringe benefits would avert the penalties of a reduced workweek.

Women can be affected adversely by vesting requirements and breaks in service. The Bureau of Labor Statistics estimates that women leave and re-enter the work force more often than men. While men average 12.6 years of labor force involvement for every entry, women average only 6.1 years. These figures indicate that women are not likely to vest with a pension system that requires more than eight years to vest. Retirement credit is generally granted for continuous, uninterrupted service with an employer, and a break in service, for maternity leave, for example, prevents a woman from achieving her full entitlement of retirement benefits. An equitable plan would allow for authorized breaks such as illness, maternity leave, paternity leave, or military service.

Portability, which enables workers to transfer pension credits from job to job, is available in several state systems already, particularly for employees with teaching or military experience. Hawaii is one state with a system for all public workers. Social Security, of course, is the only universally portable pension system in the United States. Women, and others who move in and out of the labor force frequently, could benefit by portable pension plans that would protect them in the future.

In divorce actions, the state must first recognize pensions as a legitimate property right in order for a divorced spouse to be entitled to a pro rata share of the other spouse's pension. In all states, most divorce settlements are worked out between

the parties without court intervention. State laws are needed, though, for those instances when parties cannot reach agreement and the courts must decide.

In a related issue, the garnishment of pensions for alimony and child support, the courts have been divided — a good reason to have a strong state statute. Some courts, while ruling that pensions are exempt from garnishment by creditors, acknowledge that support of dependents is a somewhat different category from claims by ordinary creditors. Yet the same courts have ruled that legislation prohibiting garnishment by creditors is not arbitrary. Therefore, legislation is needed to address the specific issue of garnishment of pensions for alimony and child support.

Some state systems now coordinate Social Security benefits with the benefits provided by the pension plan so that the worker's total pension does not exceed the pre-retirement income. Because low wage earners receive proportionately higher benefits from Social Security, integrated plans provide proportionately higher benefits for higher earners. Integration can mean all workers retire with about the same percentage of their salaries as retirement income, but it can also mean that pension plan money has been redistributed away from lower paid workers, who are generally women. As pension costs become more of a legislative concern, integration of some type may become more prevalent in public plans.

Finally, the composition of the board of trustees controlling pension plan assets needs to change. Questions of conflict of interest arise when bankers and brokers, whose institutions handle the funds, sit on the boards. It is better to have a representative board that includes members from the sponsoring agency and the taxpayers. — *Mary Jane Galer and Mary E. Stakes*



Steven Gold is a senior fellow in NCSL's Fiscal Affairs Program; Jane Carroll is an assistant editor of *State Legislatures*; Mary Jane Galer, a Georgia state representative, and Mary E. Stakes, legislative research associate at the University of Georgia, are co-authors of a recently published study of women and state pensions. It explores in greater detail the issues outlined in this article.

Congresswoman
Geraldine
FERRARO
NEWS

Ninth Congressional District

108-18 Queens Blvd.
Forest Hills, N.Y. 11375
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312 Cannon Bldg.
Washington, D.C. 20515
(202) 225-3965



THE RETIREMENT EQUITY ACT OF 1984 H.R. 4280

INTRODUCTION: On August 23, 1984, the President signed into law Rep. Geraldine A. Ferraro's private pension reform legislation. The Ferraro pension bill amends the Employee Retirement Income Security Act (ERISA). The pension changes will apply to both men and women, but they were crafted with an eye to modifying aspects of the private pension system which make it particularly difficult for women to qualify for retirement benefits.

RECEIVED
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ALABAMA MEMBERS
COMMISSION

PROVISIONS OF H.R. 4280:

WOMEN AS WIVES AND WIDOWS

I. The Retirement Equity Act requires written consent of both participant and spouse to waive survivor annuity option. (Currently, survivors' benefits are optional for the employee alone.)

** For Example: In order for your husband to waive survivor benefits he needs your permission in writing.

II. The Retirement Equity Act specifies that decisions to waive pre-retirement survivor benefits be made after workers turn 35, and that decisions to forgo post-retirement survivor benefits be made within 90 days before pension payments begin.

** For Example: Your husband must be 35 and have your permission in order to waive his pre-retirement survivor benefits. Your husband must make his decision to waive post-retirement survivor benefits with your permission during the three months before he retires.

III. The Retirement Equity Act requires payment of benefits to the spouse of a worker who was fully vested, even if that worker dies before the early retirement age, age 55, under ERISA. (Vested means that the employee has worked for the minimum years necessary to be eligible for a pension at retirement.)

** For Example: If your husband dies at age 40 after working for 11 years, (and vesting occurs at 10 years) you are entitled to survivor benefits, which you would receive at the date he would have reached early retirement age.

IV. The Retirement Equity Act abolishes the ERISA provision allowing plans to deny widow's/widower's benefits if an otherwise qualified spouse dies within two years of choosing survivor benefits (if death is from natural causes).

** For Example: If you and your husband opt for survivor benefits and he informs his employer, even if he dies a week afterward you are still eligible for survivor benefits.

V. The Retirement Equity Act permits assignment of pension benefits by state divorce courts in cases related to alimony, child support and marital property.

** For Example: A court can award a woman the right to part of her ex-husband's pension in a divorce settlement.

WOMEN AS MOTHERS

VI. The Retirement Equity Act allows employees to take a year off for maternity or paternity leave, including leave to take care of an adopted child, without suffering a break in service for pension purposes.

** For Example: If you had worked for five years, you could take a year off to have a baby, and then take an additional five years off. When you

returned, your first five years of work would count toward your vesting and pension benefits.

WOMEN AS WORKERS

VII. The Retirement Equity Act lowers the minimum participation age for private pension plans from age 25 to age 21. It also requires pension plans to count the years of employees' service from the time they turn 18, in calculating when they have worked long enough to be vested.

** For Example: If you begin a job at 18, at 21 you are eligible to join the pension plan and are credited with three years towards vesting. But if you begin work at 18 and leave the company at 20, your two years do not count towards vesting even if you return to the company at a later date.

WHO IS AFFECTED BY THIS ACT?

VIII. The Retirement Equity Act applies to all plans not yet in existence. Beginning after December 31, 1984 the Act will apply to all plans already in existence. Where collective-bargaining agreements are involved the Act takes effect when the last collective-bargaining agreement pertaining to pensions terminates. This Act is not retroactive.

** For Example: If you begin a job the day after the Act is enacted your pension plan must comply with the Act. If you are currently employed, have a pension plan, and are not yet collecting a pension your pension plan will have to comply with the Act beginning January 1, 1985. If your union has a contract with your employer which includes pension benefits, the Act will apply when the portion of the contract affecting pension benefits expires. The Act does not apply if you are already collecting a pension or if your husband waived survivor benefits and has died.

WORKING / 237

PROPOSED PENSION LEGISLATION

1. Current state law:

Sec. 39.35.330. Leave of absence. (a) A leave of absence with pay authorized by an employer will not be considered as interrupting employment. If the employee is a permanent part-time employee, credited service will be granted on a basis proportionate to that which would have been earned as a permanent full-time employee. (b) A leave of absence without pay which exceeds 10 working days in any calendar year or layoff status authorized by an employer will be considered as an interruption of employment and no credited service will be granted.

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Intent of proposed change:

Add section on exceptions to credited service that would treat a leave of absence not to exceed 501 hours due to pregnancy, birth, adoption or certain child care as credited service whether the absence was in payed or unpaid status. Such a leave of absence should not be applied to the 10 day rule of leave without pay.

2. Current state laws:

Sec. 39.35.450. Joint and survivor option. (a) Benefits payable under this section are in place of benefits payable under AS 39.35.370. Upon filing an application with the administrator, an employee may designate his or her spouse or a dependent approved by the administrator as the contingent beneficiary. The benefit shall be determined in accordance with one of the following options elected:

(c) An employee may elect, change, or revoke an option without the approval of the administrator if his election, change, or revocation is filed in writing with the administrator before the effective date of his retirement.

(d) A member, including a deferred vested member, may, regardless of his age, elect a joint and survivor option any time before appointment to receive a retirement benefit.

Sec. 39.35.490. Designation of beneficiary. (a) Each employee shall designate the beneficiary or beneficiaries to whom benefits payable under this chapter as a consequence of the employee's death shall be distributed.

(b) The designation may be changed or revoked by the employee without notice to the beneficiary or beneficiaries at any time. If an employee designates more than one beneficiary, each shall share equally unless the employee specifies a different allocation or preference. The designation of a beneficiary and a change or revocation of a beneficiary shall be made on a form provided by the administrator and is not effective until filed with the administrator.

(c) If an employee fails to designate a beneficiary, or if no designated beneficiary survives the employee, the death benefit shall be paid (1) to his surviving spouse, or, if there is none surviving, (2) to his surviving children in equal parts or, if there is none surviving, (3) to his surviving parents in equal parts or, if there is none surviving, (4) to his estate.

Intent of proposed change:

Make survivor benefits for spouses automatic unless both the participant and the spouse consent in writing to waive it.

3. Current state law:

Sec. 39.35.500. Safeguard of employee funds held by the system. Employee contributions and other amounts held in the pension fund are exempt from Alaska state and local taxes. Amounts held on behalf of, or payable to, any employee or other person who is or may become eligible for benefits under the system are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being received by the person entitled to the amount under the terms of the system. An attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a right to amounts held under the system is void.

Intent of proposed change:

Indicate that the assignment of retirement benefits to satisfy judgements in divorce actions, child support or alimony payments does not result in prohibited assignment under the terms of the system.

4. Current state law:

Sec. 25.24.160. Judgement. In a judgement in an action for divorce or action declaring a marriage void or at any time after judgement, the court may provide:

(6) for the division between the parties of their property, whether joint or separate, acquired only during coverture, in the manner as may be just, and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it; and to accomplish this end the judgement may require that one or both of the parties assign, deliver, or convey any of their real property to the other party.

Intent of proposed change:

Specify that pension and retirement benefits constitute property not otherwise encumbered by law.



STATE OF ALASKA

OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION

3601 C STREET - SUITE 742

ANCHORAGE, ALASKA 99503

RETIREMENT AND PENSION REFORM RESEARCH REPORT

(revised) March 1985

Background

Retirement age represents a time of economic uncertainty for most women whether they have worked outside the home or have spent most of their lives as homemakers. At age 65 most people experience a reduction in their income by 44 percent. As a group, older women's incomes are yet smaller since most exist only on Social Security benefits. Older women have the highest incidence of poverty in the state as well as in the nation. The median annual income for older women in Alaska is \$4,700 which is about one-half that for older Alaskan men.

Today more women work outside the home than ever before. In Alaska, 60 percent of all women aged sixteen and older are in the labor force. Sixty-two percent of those women work in the private sector with most of the remaining working in federal, state or local governments. Yet, according to a national survey covering private industry employment in 1979, only 31 percent of all women workers (including part-time workers) were covered by private retirement plans. (Alaskan data are not currently available.) Public sector employment covered by the state of Alaska's retirement plans (PERS, TRS, JRS, NGRS) provides coverage for all permanent employees of the state, participating local governments and the legislature. These systems include approximately 80 to 85 percent of the employment in state and local governments. The balance of local government employment is covered by private retirement plans if any is offered to an employee. Federal workers are covered by their own plan through the federal government. However, no data are currently available on federal retirement programs and participant characteristics for Alaska.

The number of employers offering retirement programs has continued to grow. However, coverage and vestment of women in these programs have not kept pace with men. Many factors contribute to the situation. Women are clustered in industries that are low paying and that offer few benefit programs for their employees. In Alaska, over 62 percent of working women are concentrated in low paying jobs such as clerical, sales and service. Women are also more likely to work part-time or on a temporary basis than men, consequently making vestment difficult to obtain. Sixty-two percent of all part-time work performed in Alaska is done by women.

Private and public retirement plans reward long term, steady employment and generally do not consider the working patterns of women. While women carry the responsibility of child bearing, they are often penalized by retirement plans when they take a leave of absence or break their service in order to provide necessary care for their families. For example, the state of Alaska allows nine weeks leave without pay for purposes of pregnancy or adoption. However, retirement credit stops after an employee exceeds 10 days of leave without pay, thus penalizing an employee who takes the necessary leave.

Rules guiding vestment in retirement plans have also limited many women's abilities to qualify for retirement benefits. In some cases, an employee who returns to work after a break in service may lose retirement credit for pre-break service. This is not a problem in the state's retirement plans, however. No service is lost unless an employee "cashes out" the benefit upon termination and does not repay it when the employee returns to work for the state.

The term of employment required in order to be eligible for vestment is often times extraordinarily long. National statistics indicate that men spend an average of 5.1 years with the current employer while women had spent only 3.3 years. Yet many private plans require 10 years of service before vestment and the state of Alaska's retirement plans require a minimum of 5 years.

Marriage is an economic partnership and the pension of the working partner is often one of the most valuable assets of a marriage. Yet, spouses who are homemakers or who have worked outside the home but never vested are not always entitled to an equitable share of retirement income based on their partner's careers. Survivor benefits are not automatic in either private or public retirement systems. A joint and survivor option must be selected in order for the spouse to be covered. According to a national survey, over 60 percent of all married private plan participants who retired in 1978 did not elect a joint and survivor option. In the state's retirement plans, PERS and TRS, only 20% and 37% respectively choose joint and survivor options. Since there is no requirement to inform a spouse of the retirement option chosen by the plan participant, many spouses are left unknowingly financially unprepared to face their retirement years. Nationally, only 10 percent of women aged 65 and older received income from private pensions or annuities in 1980.

Retirement and pension benefits are not always considered or included in the determination of marital assets during a divorce or dissolution action, although it may be the most valuable asset attained during a marriage. Recognizing that marriage is an economic partnership, pension benefits accrued during a marriage should be considered as joint property. Alaska statutes, however, contain no specific criteria for property settlements other than the requirement that they be "just and necessary."

Private pension plans and the state's retirement plans, PERS and TRS, have been protected by law from any type of assignment including the satisfying of marital property rights, spousal support and child support. Consequently, when marital property is divided during divorce, the courts can do nothing more than establish a value to retirement benefits and adjust for its value from others assets if they exist.

Changes in Federal Retirement and Pension Laws

On August 9, 1984 Congress passed amendments (H.R. 4280) to the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1954. Known as the Retirement Equity Act of 1984, the purpose of the amendments is to improve the delivery of retirement benefits and provide for greater equity under private pension plans for workers and their spouses and dependents. The amendments took into account changes in work patterns, the status of marriage as an economic partnership, and the substantial contribution to that partnership of spouses who work both in and outside the home. Although the amendments are not as complete as the original package first sent to the House of Representatives, its impact can potentially affect 62 percent of the women who work in Alaska (private sector employment) and serve as a model to the state in examining its own retirement laws.

The Retirement Equity Act detailed seven significant areas of change to the federal law which affects private pensions. However, only two of these areas are of importance to the report since the state's retirement plans incorporate many of these changes in their current plan.

1. The Act requires pension plans to provide automatic survivor benefits and pre-retirement survivor benefits. A participant is given the right to waive survivor benefits only if consent is given in writing and is signed by the participant and the participant's spouse. Additionally, the bill established that a spouse who had been married for one year or more qualified under joint and survivor benefits.
2. The Act permits assignment of retirement benefits to satisfy marital property rights, child support or alimony payments pursuant to a state domestic relations law. The bill clarifies that such an order does not result in prohibited assignment under the spendthrift provisions of the Code or ERISA.

Proposed Changes to Alaska's Retirement Law

Acknowledgement by Congress of the need to provide greater equity under pension plans for workers, their spouses and dependents signals the need to review and improve State statutes affecting pensions. While the Retirement Equity Act covers all private retirement and pension

plans, state and local governments are not covered unless they purchase private plans. In Alaska, the state's retirement plans cover the majority of state and local government employment. These plans are considered to be very fair to the employee, however, with the passage of the Retirement Equity Act participants of the state's plans do not share the same protections and rights afforded under private sector pension plans. Inequities exist in two areas:

1. Joint and survivor benefits.

Current state law does not require a married participant to select survivor benefits nor is the participant required to inform the spouse that survivor benefits were selected.

Proposed change - Amend all appropriate sections in TRS, JRS, PERS to indicate that survivor benefits for spouses are automatic unless both the participant and spouse consent in writing to waive it.

2. Assignment of retirement benefits in domestic relations cases.

Current state law protects the Public Employees Retirement System (PERS) and the Teachers Retirement System (TRS) from assignment for any purpose including the satisfying of marital property rights, child support or spousal support.

Proposed change - Amend sections of PERS and TRS to remove the prohibition of assignment only for the purposes of satisfying marital property rights, child support or spousal support.

A third shortcoming in the state's retirement plans relate to the loss of retirement credit due to pregnancy or adoption. Although this was not addressed in the final version of the Retirement Equity Act, the discriminatory situation created by the state's current leave without pay policy is obvious. While the state recognizes and supports the working parent by funding child care programs and providing up to nine weeks of leave without pay for the purposes of pregnancy or adoption, it penalizes any employee who takes over ten days of leave without pay by stopping the accrual of retirement credit. Working women are the primary group affected by this. They must choose between taking the necessary time off to care for their families and lose valuable retirement credit or risk neglect of their families in order to insure no loss to their retirement benefits.

Proposed change - Amend the leave without pay policies to allow an employee to purchase back up to nine weeks of retirement credit when the absence is due to pregnancy, birth, adoption or certain child care responsibilities.

ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

March 13, 1985

The Alaska Women's Lobby would like to express it's support for HB 237. Pension systems affect women not only as workers but also as wives, divorced spouses and widows.

Marriage is an economic partnership and there is a substantial contribution to that partnership of both spouses who work inside and outside of the home. Yet, spouses who are homemakers or who have worked outside the home but never vested in a retirement system due to breaks in service during their child bearing years, are not always entitled to an equitable share of retirement income based on their partners careers.

Only 20% of the married participants of the Public Employees Retirement System have chosen survivor benefits for their spouses. We do not know how many of these married participants have informed their spouses about this decision which affects their financial futures.

Many older persons face economic uncertainty and older women have the highest incidence of poverty in Alaska and in the nation. Older women in Alaska have only half the median annual income of older men.

We firmly believe that the spouse should be included in the decision to waive survivor's benefits. Requiring written consent of both the participant and the spouse to waive these benefits allows both parties to be aware of the options available to them.

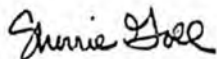
We are very supportive also of the protection afforded the rights of former spouses to retirement benefits in this proposed legislation. Pension benefits are sometimes the most valuable asset accrued during a marriage and should be considered as joint property to which both parties have an interest.

By waiving the prohibition of assignment for purposes of satisfying

marital property rights, spousal and child support we are recognizing that the support of dependents is a somewhat different category from claims by ordinary creditors.

The amendments to ERISA (Employee Retirement Income Security Act) are an acknowledgement by Congress of the need to provide greater equity under pension plans for workers, their spouses and dependents. These amendments affect all private sector pension plans.

HB 237 would ensure that state and many municipal employees and their spouses are afforded similar benefits and protections and we urge support of it's passage.



Sherrie Goll
for the Alaska Women's Lobby

MAR 23 1985

Box 1031
Petersburg, AK 99833
March 20, 1985

M. Mike Miller, Chairman Judiciary Comm.
Alaska State Legislature
Pouch V (MS3100)
Juneau, AK 99811

Dear Mike:

I understand that HB 237 is now in the judicial committee. I want to further clarify what I would like to see added to it.

The State of Alaska has no provision covering a change in Marital Status after retirement. The Federal Civil Service Commission covers this eventuality very well, and I would like to see their wording included in this bill.

I am enclosing a copy from the Federal.

Sincerely,

Marjorie E. George

A REMINDER FOR RETIRED EMPLOYEES ABOUT SURVIVOR BENEFITS FOR SPOUSES & RELATED HEALTH BENEFITS CHANGES

*If you were married when you retired and elected an annuity with ^{OUT} survivor benefits, you cannot change that election.

This is the part that Alaska does not have, and I propose that it be added:

*If you were married at the time of your retirement, elected a survivor benefit, and that marriage ended by death, divorce, or annulment, you may, if you remarry, provide a survivor benefit for that subsequent spouse. To do this, you must notify us in writing within one year from the date of your remarriage. The reduction in your annuity to cover the cost of this survivor benefit will take effect on the first day of the first month beginning one year after the date of your remarriage.

*If you were not married at the time of your retirement, but later marry, you may be able to provide a survivor benefit for your spouse. To do this, you must notify us in writing within one year from the date of your marriage. Your annuity will be reduced to provide this benefit. The reduction will take effect the first day of the first month beginning one year after the date of your marriage.

*If your annuity is being reduced to provide a survivor benefit, the reduction can be eliminated when your marriage ends through death, divorce or annulment. To have the reduction eliminated, you have to notify us in writing and send us proof (death certificate, divorce decree, etc.)

*If you were not married at the time of your retirement and you provided a survivor benefit for someone who had an "insurable interest" in your continued well being, and that person should die, notify us in writing and send us proof of death. We will then eliminate the reduction in your annuity.

*If you were not married at the time of your retirement and you elected to provide a survivor benefit for someone who had an "insurable interest" in your continued well being, but you later marry, you can eliminate the "insurable interest" survivor benefit and instead provide a survivor benefit for your spouse. To do this, you must notify us in writing within one year from the date of your marriage. The survivor benefit for your spouse and the appropriate adjustment of your annuity will be effective the first day of the first month beginning one year after the date of your marriage.

*Health Benefits changes--If you want to change your health benefits coverage because of a change in your marital status, you must notify us in writing from 31 days to 60 days after the change in your marital status.

This is U.S. Office of Personnel Management form dated Jan. 1984.

Questions in another Federal booklet: What requirements must be met for the widow or widower of a deceased annuitant to receive a survivor annuity benefit?

Situation c: The annuitant was not married when retired, but married at some time after retirement. Requirements: 1. The annuitant must have elected, by written request, a reduced annuity with survivor benefit to spouse, and the request must have been received in the Commission within 1 year after marriage, and 2. the spouse must have been married to the annuitant for at least 1 year before death, or, if married less than 1 year, be the parent of a child of the marriage.

May the survivor annuity of a spouse, whose annuity was terminated because of remarriage before age 60, be restored if the remarriage is terminated by death, annulment, or divorce? Yes, however, before the original survivor annuity can be restored, the widow or widower must pay back any lump-sum benefit that was paid when the annuity terminated. Restoration becomes effective Oct. 1, 1978, or the first day of the month after the date the marriage was dissolved, whichever occurs later.

ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

April 10, 1985

The Alaska Women's Lobby would like to express it's support for the pension reform bills, HB 237 and HB 238. Pension systems affect women not only as workers but also as wives, divorced spouses and widows.

Marriage is an economic partnership and there is a substantial contribution to that partnership of both spouses who work inside and outside the home. Yet, spouses who are homemakers or who have worked outside the home but never vested in a retirement system due to breaks in service during their child bearing years, are not always entitled to an equitable share of retirement income based on their partners careers.

Only 20% of the married participants of the Public Employees Retirement System have chosen survivor benefits for their spouses. We do not know how many of these married participants have informed their spouses about this decision which affects their financial futures.

Many older persons face economic uncertainty and older women have the highest incidence of poverty in Alaska and in the nation. Older women in Alaska have only half the median income of older men.

We firmly believe that the spouse should be included in the decision to waive survivor benefits. Requiring written consent of both the participant and the spouse to waive these benefits allows both parties to be aware of the options available to them.

We are very supportive also of the protection afforded the rights of former spouses to retirement benefits in the proposed legislation. Pension benefits are sometimes the most valuable asset accrued during a marriage and should be considered as joint property to which both parties have an interest.

By waiving the prohibition of assignment for purposes of satisfying marital property rights, spousal and child support we are recognizing that the support of dependants is a somewhat different category from claims by ordinary creditors.

The amendments to ERISA (Employee Retirement Income Security Act) are an acknowledgement by Congress of the need to provide greater equity under pension plans for workers, their spouses and dependants. These amendments affect all private sector pension plans.

HB 237 would ensure that state and many municipal employees and their spouses are afforded similar benefits and protections.

The State of Alaska has recognized the needs of new parents by allowing maternity leave without pay for up to nine weeks.

Yet, women can be adversely effected by breaks in service for maternity leave because the state's retirement systems allow only 10 days of leave without pay before retirement credit stops accruing. Breaks in service can sometimes prevent a women from achieving her full entitlement of retirement benefits.

Allowing members to pay for the credited service lost as provided for in HB 238, is an equitable plan and would be consistent with state policy.

We urge the passage of both HB 237 and HB 238.