

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4140 SJUD HB 141 - HB 144 6026

Class A Felonies

Manslaughter	43
Assault 1°	51
Robbery 1°	101
Arson 1°	2
Escape 1°	3
Misconduct Involving Controlled Substance 2°	7

Class B Felonies

	<u>Nonpresumptive</u>	<u>Presumptive</u>
Assault 2°	23	12
Sexual Assault 2°	20	2
Sexual Abuse of Minor 2°	*	*
Unlawful Exploitation of Minor	3	0
Robbery 2°	13	5
Theft 1°	6	0
Burglary 1°	34	32
Arson 2°	5	0
Forgery 1°	2	2
Bribery	1	0
Escape 2°	5	13
Misconduct Involving Controlled Substance 3°	25	9

Class C Felonies

Criminally Negligent Homicide	5	0
Assault 3°	20	9
Sexual Abuse of Minor 3°	*	*
Incest	4	0
Joercion	1	0
Theft 2°	20	18
Burglary 2°	26	25
Criminal Mischief 2°	2	2
Forgery 2°	4	6
Escape 3°	1	0
Misconduct involving weapon 1°	2	5
Misconduct Involving Controlled Substance 4°	4	1

* Sexual Abuse of Minor in 2° and 3° was a combined statistic with:

nonpresumptive

presumptive

37

10

** Nonpresumptive offenders may be parole eligible, but statistics do not reflect further restrictions on parole eligibility which may have been imposed by sentencing court under AS 33.15.230.

Alaska State Legislature



House of Representatives House Judiciary Committee

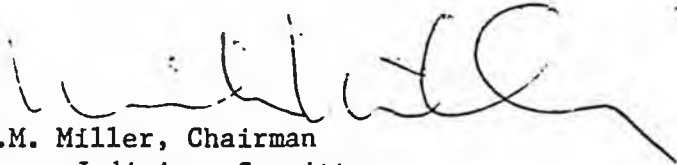
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

LETTER OF INTENT

CSHB 141(Jud)

In considering CSHB 141 (Jud), the Judiciary Committee of the House of Representatives intends the provisions of AS 33.16.010 relating to Parole to offer a system of discretionary and mandatory parole consistent with the holding in Braham v. Beirne, 675 P.2d 1297 (Alaska 1984), whereby both systems are the same except as to how the offender is placed on parole.

The Committee further intends that the provisions of AS 33.16.090 (b) is to have prospective application. Under this section prisoners sentenced to presumptive sentences are eligible for discretionary parole during any period of enhancement imposed for an aggravated offense, or during any period of a subsequent presumptive term imposed simultaneous with and consecutive to a non-eligible presumptive term. However, in that some sentencing courts believed they previously had the ability to make an offender eligible during these periods, and the courts ordered discretionary parole eligibility, the orders of the courts will be recognized. Furthermore, in those situations where the sentencing courts did not consider discretionary parole during such a period, the committee intends that an offender be allowed to petition for post conviction relief under Criminal Rule 35 so that the sentencing court may, in its discretion, order discretionary parole eligibility for that period.


M.M. Miller, Chairman
House Judiciary Committee

Delivered by Lance Ables



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 141

January 28, 1985

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 the administration of parole. The bill updates the statutory authority for parole administration, clarifying apparently conflicting dictates of court decisions, and providing a higher degree of certainty in the parole process. Under the bill, existing AS 33.15, governing parole administration is repealed; the re-organized and revised parole administration statutes are placed in new AS 33.16.

Under this bill, all prisoners sentenced to terms of imprisonment of more than 180 days are eligible for parole. Parole may be granted discretionarily by the parole board for non-presumptively sentenced prisoners, or it may be attained mandatorily through the accumulation of good time credits by the prisoner while incarcerated. The board retains custody and jurisdiction over all paroled prisoners until the expiration of the maximum terms of imprisonment to which the prisoner was sentenced, unless the parolee is discharged early under AS 33.16.210.

This bill clarifies existing law by clearly stating that prisoners with presumptive sentences, with aggravated presumptive sentences, or with consecutive presumptive sentences are not eligible for discretionary parole. Additionally, it clearly sets out that prisoners released on mandatory parole as well as on discretionary parole are subject to the custody and jurisdiction of the board. Attendant to this, the board may set conditions of release which, if violated, can result in the reincarceration of the parolee.

For those prisoners eligible for discretionary parole, the minimum amount of the sentence required to be served has

been retained for individuals convicted of first or second degree murder, or of kidnapping; it is one-third of the sentence. For the remainder of the prisoners potentially eligible for discretionary parole -- misdemeanants serving over 180 days, and first-time class B or C felons -- the minimum term before consideration has been shortened to one-quarter of the sentence. In addition, a judge at sentencing is permitted to set a longer minimum term for these prisoners before they may be considered for discretionary parole.

In setting conditions of release for both mandatory and discretionary parolees, the bill requires that the parolee not violate any laws or ordinances and permits the board to set numerous other conditions that will reasonably ensure that the parolee attains rehabilitation and reintegration into society. The board may also require that the parolee pay restitution to the victim of the crime.

Finally, the bill sets out in detail the factors that should be considered when granting discretionary parole; the procedures for granting, revoking, or rescinding parole; and the considerations that must be addressed when deciding whether an alleged parole violator is to be released pending revocation proceedings.

Drafts of the bill have been extensively discussed by members of criminal justice agencies, and this final version addresses the concerns they have regarding our current system of parole. I urge your prompt action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Sheffield". The signature is written in a cursive, flowing style with some loops and flourishes.

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

06
5/29/84

Revision Date: _____

REQUEST

Bill/Resolution No.: NA 141-11
 Title: "An Act relating to the
 parole of offenders..."
 Sponsor: By Request of the Governor
 Requestor: Governor's Ofc./OMB
 Date of Request: 12/18/84

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would amend the system of parole in Alaska by changing the statutory duties of the parole board and by clarifying the law in light of numerous court decisions on the administration and granting of parole. Because these are post-conviction activities, the bill will not have a fiscal impact on the Department of Law's operations.

Prepared By: Richard I. Pegues Director Phone: 465-3672
 Division: Administrative Services Date: 12/19/84
 Approved by Commissioner: Richard I. Pegues / for
Norman C. Gorsuch Date: 12/19/84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

7/1/84

L 061

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: HR 114 #2
 Title: "An Act relating to the parole of offenders."
 Sponsor: Governor
 Requestor: Governor
 Date of Request: 12-18-84

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation and Supervision

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

Prepared By: William W. Ladwig, Deputy Commissioner
 Division: Administration and Support

Phone: 465-3376
 Date: 12-19-84

Approved by Commissioner: [Signature]
 Agency: DEPARTMENT OF CORRECTIONS

Date: 12-19-84

Distribution (by Agency preparing fiscal note):

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

Alaska State Legislature



House of Representatives House Judiciary Committee CSHB 141(Jud)

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

The following is a commentary and sectional analysis prepared by the Department of Law for CSHB 141(Jud) "An Act relating to the parole of offenders; and amending the sunset date for the parole board; and providing for an effective date." It was used by the House Judiciary Committee in its consideration of the bill.

A large, stylized handwritten signature in black ink, appearing to read "M.M. Miller".

~~M.M. Miller, Chairman
House Judiciary Committee~~

Sectional Analysis and Commentary - CSHB 141 (Jud)

For the fourth consecutive legislature, legislation has been introduced to rewrite the Alaska Parole Administration Act. The original Parole Administration Act, AS 33.15, was adopted in 1960. In the ensuing 25 years the criminal justice system in Alaska has undergone radical change, yet the Parole Administration Act has only been amended on a piecemeal basis without the benefit of comprehensive research and careful analysis. Although the current operations of the board meet or exceed most nationally accepted correctional standards and court decisions, existing law does not reflect this. As noted in the 1984 Legislative Audit on the Parole Board, "[e]xisting statutes relating to the Parole Board are vague, lack specific direction in some areas and are inconsistent in other areas." The vagueness and ambiguities contained in existing law are leading to an ever increasing amount of litigation. CSHB 141 clarifies these ambiguities, while providing clear direction for parole administration in light of the evolutionary changes in the criminal justice system which have resulted from recent case decisions. The bill also embodies many professional standards of the corrections/parole field while setting parameters for the operation of a parole system in Alaska.

Article III, Section 21 of the Alaska Constitution requires that "A parole system shall be provided by law." As an integral part of the criminal justice system, parole can be an invaluable tool in rehabilitating offenders by ensuring that they are reintegrated back into society with assistance and direction. Parole can also enhance public protection by establishing and enforcing conditions of release designed to reduce risk to the public. Finally, parole can be a positive factor in reducing prison overcrowding by releasing low-risk offenders from incarceration under realistic conditions. The dictates of Article III, Section 21 necessitate legislative action to provide clear and predictable direction to the Parole Board in order to fulfill these rehabilitative and protective goals.

Section 1

This provision vests a sentencing court with the power to further restrict eligibility for discretionary parole beyond that which is provided by operation of law. Eligibility for discretionary parole may be restricted in this section up to the maximum term of imprisonment. Similar provisions have always existed in Alaska law, and constitute an appropriate sentencing tool in cases where parole is not foreclosed by presumptive sentencing. In that a court's sentencing authority is derived from statute, there must be affirmative authorization for such a sentencing order. Bovne v. State, 586 P.2d 1250 (Alaska 1978).

Section 2

AS 33.16.010. This section sets forth the two distinct types of parole which exist in current law -- discretionary parole and mandatory parole. Consistent with current law, all state prisoners sentenced to a term of imprisonment of at least 181 days are parole eligible. Presumptively sentenced prisoners are ineligible for discretionary parole under AS 33.16.090, however they are subject to mandatory parole under this section. Under either type of parole, the released prisoner is subject to the imposition of conditions and the supervision of the parole board. Mandatory parole is currently authorized under present AS 33.20.040. See Braham v. Beirne, 675 P.2d 1297, (Alaska 1984). This section provides for uniform supervision for all parolees, whether mandatory or discretionary.

AS 33.16.020 - .040 establishes the parole board in the department of corrections, sets out guidelines and criteria for the selection and appointment of board members, and allows the rates of compensation for board members.

AS 33.16.050 codifies existing practice by setting out requirements for the frequency of board meetings, and quorum and voting requirements necessary to take official action. This section also permits the board to conduct meetings via teleconference facilities. However, this power is limited to situations where no due process considerations, such as the right to confrontation, are in issue.

AS 33.16.060 sets out the duties of the board. The primary change in existing law is the requirement to adopt regulations under the Administrative Procedures Act, AS 44.62. Currently the Board is exempt from this Act. By requiring adherence to the Administrative Procedures Act when adopting regulations, the board will be subject to a greater degree of public scrutiny and input, and information regarding board operations will be more accessible.

AS 33.16.070 authorizes the board to issue subpoenas and specifies those subpoenas as enforceable in superior court.

AS 33.16.080 enables the board to hire an executive director and sets minimum qualifications for this position.

AS 33.16.090 establishes eligibility for discretionary parole. A state prisoner must be sentenced to a term or terms over 180 days, and may not be presumptively sentenced to be eligible. The prisoner must also have served any statutory or

judicially imposed minimum sentence.

Further, this section resolves a major ambiguity present in current law. With the passage of the new criminal code in 1978 and the enactment of Alaska's presumptive sentencing scheme, offenders who were presumptively sentenced were decreed to be ineligible for discretionary parole. However, within this scheme, no statutory provision or legislative intent has defined "presumptive sentence" for the purpose of discretionary parole eligibility. A few sentencing courts have concluded that the law is ambiguous and have declared that after an offender serves one presumptive term, he is thereafter eligible for discretionary parole during subsequent consecutive presumptive terms. In addition some presumptively sentenced offenders have been made eligible for discretionary parole during the period of enhancement when the presumptive sentence was increased because the crime was an aggravated one. The same rationale employed by the courts in these instances could also be used to make a presumptively sentenced prisoner eligible for parole if the presumptive sentence was mitigated. The practice of granting discretionary parole eligibility to subsequent presumptive terms in a consecutive sentence, and to those portions of presumptive terms which are sentence enhancements because the crime was aggravated, is clearly allowed in this section. In order for an offender to be considered ineligible for discretionary parole during any term in excess of the presumptive term, the sentencing court must restrict that parole eligibility under AS 12.55.115.

Finally, this section also codifies case law to allow the board to rely on more than just the judgment of the court in determining if the prisoner is presumptively sentenced. Currently a substantial portion of the judgments entered by courts do not indicate whether a prisoner is presumptively sentenced, therefore it is necessary to review the sentencing record to determine discretionary parole eligibility.

AS 33.16.100(a) sets out the broad general standards that the board should follow when deciding on a grant of discretionary parole. These standards reflect the Chaney criteria and the purposes of sentencing in AS 12.55.005, particularly those concerned with rehabilitation, protection of the public and seriousness of the crime.

Subsection (b) authorizes the board to rescind or revise a grant of parole when new circumstances come to light. Currently the board reviews and approves parole release plans months prior to a prisoner's release date. Subsequently new

information on that prisoner may come to the board's attention. For example, a prospective employment plan may no longer be possible, or the prisoner is unable to immediately enter a residential treatment program upon release, or the prisoner is subsequently involved in a major disciplinary action. With this provision the board can change conditions or decide that the prisoner is not appropriate for discretionary parole, and rescind its previous action or merely delay the prisoner's release date. Due process safeguards are built in to protect the prisoner's liberty interest.

Subsections (c) and (d) set out the minimum amount of a sentence a prisoner must serve before being eligible for discretionary parole. For discretionary parole eligible prisoners, the minimum term is decreased from one-third of the sentence under current law to one-fourth of the sentence, except for an individual convicted of first or second degree murder, kidnapping, or misconduct involving a controlled substance in the first degree. With this latter group, the minimum term remains one-third or the mandatory minimum, whichever is greater. The sentencing court may further restrict parole eligibility under AS 12.55.115. Parole eligibility is reduced by this bill only for first-time non-presumptive Class B or C felony offenders and for misdemeanants.

AS 33.16.110 codifies existing practice by setting out the information which the board must consider when determining a prisoner's suitability for discretionary parole.

AS 33.16.120 was enacted in 1984 as a portion of the Victim's Rights Legislation and gives a victim the right to comment in writing on a pending discretionary parole decision. The board is required to consider those comments. The board also has a duty to notify a victim if a prisoner is released on either discretionary or mandatory parole.

AS 33.16.130 places the responsibility for requesting discretionary parole on the prisoner rather than making the board responsible for reviewing all potentially eligible prisoners. Working with institutional staff, the prisoner would prepare a parole release plan, including the prisoner's plans for employment, treatment, residence and other relevant material, for presentation to the board. A hearing on the granting of parole is required. If the board denies an application for discretionary parole, a written decision must be issued and provided to the prisoner. This section mirrors current practice, but the procedural safeguards are made more specific.

AS 33.16.140 requires the board to issue a written order of parole for any discretionary or mandatory parolee, setting forth all terms and conditions of release including the parole expiration date. This clarifies existing law by providing more specificity.

AS 33.16.150 codifies existing practice by setting out the terms and conditions which the board may impose on a discretionary or mandatory parolee. The prohibition against violating any law is a required condition for all parolees. Subsection (b) lists numerous other conditions that the board may impose in order to fashion an appropriate rehabilitative release plan and supervision for the parolee. Subparagraph (b)(7) would apply only to misdemeanants, because a convicted felon is already precluded from possessing or controlling a firearm under both state and federal law. Conditions may also be imposed by parole officers, except for certain very restrictive conditions listed in subparagraph (c), which may only be imposed by the board.

The board is also empowered under subsection (d) to set a specific time limit on any discretionary condition it imposes.

AS 33.16.160 sets out the mechanism whereby changes in a condition of parole may be accomplished. This provision sets out due process safeguards for the parolee when the condition is more restrictive, and also delineates the methods by which a condition may be changed or imposed in an emergency situation.

AS 33.16.170(a) makes records and information obtained or used by the board confidential under state law. Subsection (b) allows the board to withhold certain potentially harmful information from the parolee. When this type of information is withheld, subsection (c) requires the board to provide to the prisoner or parolee a summary of the material withheld.

AS 33.16.180 sets out the duties of the commissioner of corrections in assisting the parole board.

AS 33.16.190 reflects current law, under which the positions of parole officer and probation officer are interchangeable.

AS 33.16.200 clearly sets out that the board retains jurisdiction over a parolee until the end of the parolee's sentence and results in all parolees being equally treated. This section consolidates current law which sets out three different schemes for determining the board's jurisdiction over a parolee.

AS 33.16.210 allows the board to unconditionally discharge a parolee from parole after two years. The discharge authority would be employed when a parolee has demonstrated rehabilitation and there is no further need for supervision. There is no similar provision currently in law. Alaska is believed to be the only state where the parole board does not possess this authority.

AS 33.16.220 sets out the mechanism for revoking parole. Subsection (a) gives the board the authority to revoke parole if the parolee violates a condition of release. This mirrors current law.

Subsection (b) sets out minimal due process requirements for holding a preliminary revocation hearing. In order to avoid duplicitious proceedings, the board may rely on a judicial determination of probable cause rather than hold a separate preliminary hearing.

In subsection (c), after finding probable cause of a violation, the board then must conduct the dispositive phase, i.e., deciding whether the parolee is to be incarcerated or released pending a final revocation proceeding. If the board decides to release the parolee, additional conditions may be imposed under subsection (d).

Subsections (e) and (f) set out time frames for holding final revocation proceedings. These provisions codify case law to ensure speedy disposition of parole revocation proceedings.

Subsection (g) addresses the situation where a parolee's alleged violation is also a pending criminal charge. Before deciding to proceed to a final revocation proceeding, the board must consider any prejudice that may result to either the parolee or the state. If a decision to hold the revocation proceeding is made, the board then must consult with the Attorney General's office so that immunity issues may be resolved. This provision attempts to balance seemingly inconsistent court decisions.

Subsection (h) establishes the burden of proof necessary to show a violation. This is a codification of case law.

Subsection (i) vests the board with broad discretionary power to fashion a remedy appropriate to the violator and the violation. Numerous options are made available under this subsection. The board may revoke all of the violator's parole, returning the parolee to jail for the full term of the parole; the

board may revoke a part of the violator's parole, returning the parolee to jail for a part of the parole term and extending the period the parolee is under the jurisdiction of the board a commensurate amount. The board may return the parolee to jail for part of the parole term and not extend the parole term. The board may also change a condition of parole to ensure that the rehabilitative goals are met. The board currently holds this power; this subsection merely restates and clarifies this power.

AS 33.16.230 allows a parolee to waive any hearing which is required under due process standards.

AS 33.16.240 sets out the procedure for arresting a parole violator. Subsection (e) precludes bail for a person arrested as a parole violator. The dispositive phase of a preliminary revocation proceeding, under AS 33.16.220(c), addresses a parole violator's release.

Subsection (f) gives credit to a parolee for time in custody toward the unexpired term of the sentence, but denies a parolee credit for street time. This provision is in current law.

AS 33.16.250 sets out how an arrest warrant for a parole violator is executed.

Section 3 amends existing good time release provisions to conform with the concept of a mandatory parole.

Section 4 provides for those situations when a mandatory parolee has a residual period of probation.

Section 5 is a technical, conforming amendment.

Section 6 provides a new sunset date for the parole board.

Section 7 repeals the existing Parole Administration Act.

Section 8 addresses the reappointment of current board members and allows for readjustment of their terms of appointment to achieve staggered terms.

Section 9 is a special application section for AS 33.16.090(b), discretionary parole eligibility during the period of an enhanced or consecutive presumptive sentence. In that some prisoners have previously been ordered to be

discretionary parole eligible during these periods, these court orders are approved in this section. For other prisoners sentenced before the effective date of this Act who have enhanced or consecutive presumptive sentences, and where the court has not made a determination on discretionary parole eligibility, it is intended that those prisoners may petition the court under Criminal Rule 35 for this determination. Absent such a determination, AS 33.16.090(b) is to be applied prospectively.

Section 10 provides for an effective date.

Due Process Considerations

Generally, in determining the procedural safeguards that due process requires in parole proceedings, it is first necessary to distinguish the type of proceeding involved. The decision making functions in parole can be broadly designated as either granting parole or revoking parole, each of which necessitates differing level of safeguards. The question of the necessary levels of safeguards that must be provided is correlative to the liberty interest being considered or acted upon. The greater the liberty interest involved, the higher the level of safeguards mandated. In Alaska, which employs a scheme of both discretionary and mandatory parole, further distinguishment in the safeguards results from the type of parole under consideration.

Clearly, if the procedures under consideration pertain to a revocation function, safeguards are universally applicable, whether parole is mandatory or discretionary. For although parolees have forfeited their right to the full liberty enjoyed by ordinary citizens by virtue of a criminal conviction, they do possess greater freedom than persons incarcerated. This conditional liberty interest possessed by both mandatory and discretionary parolees has been recognized by the United States Supreme Court:

We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a "grievous loss" on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a "right" or a "privilege." By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment.

Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

On the other hand, the procedures which apply during the granting phase are not applicable to both classes of parolees, because mandatory parolees are released by operation of law while discretionary parolees are subject to the discretionary decision making function of the parole board. The procedures required under the parole granting function likewise differ from those required in the revocation function, as there is no recognized liberty interest, conditional or otherwise, in discretionary parole. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979).

A. Parole Granting Function

Due process safeguards in the parole granting function are only required if there is a deprivation of a protected interest held by the prospective parolee. Under the United States Constitution, states do not have a legal obligation to establish a parole system, and there is no federal constitutional or inherent right to parole. However, Greenholtz does recognize that a state may, by constitution or by statute, create such a right, and if the right is created, certain due process safeguards must be afforded the prospective parolee.

Procedural safeguards in the discretionary parole granting process would be required if the Alaska Constitution or statutes created a sufficient expectation of parole to constitute a protected liberty interest, as the establishment of a liberty interest is a condition precedent to the applicability of due process. Sharp v. Leonard, 611 F.2d 136 (6th Cir. 1979).

Article III, Section 21 of the Alaska Constitution provides

Section 21. Executive Clemency. Subject to procedures prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

This section directs the creation of a parole system by the legislature; it does not constitutionally guarantee parole, nor does it mandate the type of system of parole that could be created. Rather, it leaves to the discretion of the legislature the type of parole system, and that discretion necessarily includes determining the types of individuals eligible for parole.

Within the context of finding a liberty interest created by statute, courts will focus on the certainty of parole release. If the board has unlimited discretion to grant or deny parole, no liberty interest is present. Conversely, if the statute requires the board to parole a particular person at a certain time, that person has an expectation of release which is a protected liberty interest. As a general rule, the more the board's discretion is limited, the more likely it is that a liberty interest will be found. If there is a presumption that a prisoner will be paroled, courts will tend to find a liberty interest. U.S. ex rel Scott v. Illinois Parole and Pardon board, 669 F.2d 1186 (7th Cir. 1982). This distinction is apparent in comparing AS 33.16.010(b) with AS 33.16.010(c), in that the certainty of parole release under the latter statute is limited only by the amount of good time the prisoner has accumulated under AS 33.-20.030, while the board's discretion governs parole under the former.

Careful analysis of discretionary parole under AS 33.16 is necessary to determine whether there is a sufficient expectation of parole to find a liberty interest. AS 33.16.090(a), which discusses the eligibility of a prisoner for discretionary parole vests the board with wide discretion ("... may, in the discretion of the board, be released on discretionary parole ..."). Less certitude in a prisoner's release on discretionary parole is found in AS 33.16.100(a) ("The board may authorize the release of a prisoner on discretionary parole if ..."). This statutory language is intentionally discretionary, and does not create a liberty interest in the Alaska statutory scheme of discretionary parole.

The incertitude of a grant of discretionary parole has also been recognized by the Alaska Supreme Court, albeit in dicta. For although a prisoner must serve a minimum period before becoming eligible for discretionary parole "... it does not follow from this that there is any certainty that a prisoner ... would actually be paroled at that time." 1/

Only in those situations where state legislatures have limited the parole authority's release discretion have courts found any liberty interest. This was the case in Greenholtz where the Nebraska statutes declared that the parole board

1/ Huff v. State, 568 P.2d 1014, 1019 (Alaska 1977). See also Hansen v. State, 582 P.2d 1041, 1047 n. 12 (Alaska 1978).

"shall" grant release "unless" one of four designated reasons for not doing so existed. ^{2/} See also, Williams v. Missouri board of Probation and Parole, 661 F.2d 697 (8th Cir. 1981). However, such mandatory language is a rarity among states, and doesn't exist in Alaska law.

A liberty interest in the parole granting process may also be found in the practices of the board or in administrative rule or regulation adopted under the statute. For example, if the board adopts standards which include guidelines specifying an approximate parole release date for prisoners whose crimes and personal histories fit predetermined categories then a conditional liberty interest might be found to exist. This predictive judgment process will then require procedural safeguards to reduce the risk of error in determining the factual elements and making the subject appraisals. This is the situation intended for the Alaska parole system.

By requiring the adoption of regulations which "establish standards under which the suitability of discretionary parole is determined," a minimal liberty interest is created in the parole granting process. The Parole Administration Act, AS 33.16, therefore grants certain procedural safeguards to prisoners eligible for discretionary parole. This statutory grant of procedural safeguards is intended to give prisoners the assurance of a fair proceeding.

Procedural Safeguards

After applying for parole, the eligible prisoner is entitled to notice and a hearing on the parole application. The prisoner is given access to most material which the board will consider in reaching its decision, and the prisoner is granted the opportunity to respond in writing to the material and present evidence to the board. AS 33.16.130(b). Absent exigent circumstances, the evidence presented by the prisoner should not include the testimonial evidence of third parties, as such evidence can be submitted by means of an affidavit.

Only if the board denies the application for discretionary parole must the basis for the decision be put in writing. A copy of this writing is provided to the prisoner AS 33.16.-130(c). If the denial of the application is a "set off",

^{2/} Neb. Rev. Stat. § 83-1, 114

allowing for reconsideration of parole at some future date, the written basis for denial may indicate those areas in the prisoner's proposed release plans which need to be addressed, giving the prisoner adequate notice and direction for the subsequent reconsideration.

Although a prisoner is provided the basis for a denial of parole, this action of the board is not reviewable unless there is a denial of a constitutional right. The judicial review procedures of the Administrative Procedures Act, AS 44.62.330, 560 and 570, do not apply to parole board actions.

When the board has granted an application for parole and set a release date for the prisoner, it may rescind that action before the release date, or even revise the release date. This would occur if a change in circumstances in the prisoner's parole release plan occurred or if new information concerning the prisoner came to light. AS 33.16.100(b).

Having granted a future parole release date, the expectation of parole is sufficient to find a conditional liberty interest. Therefore, certain minimal procedural safeguards are warranted. The same statutorily mandated procedures employed at the parole granting phase are required to rescind parole, as they are sufficient to satisfy constitutional due process requirements.

B. Imposing Conditions of Parole

When imposing conditions of release on a parolee, whether the parole is discretionary or mandatory, the board is limited to imposing conditions which are both consistent with the goals of rehabilitation and protection of the public, and necessary for the proper functioning of the parole system. Morrissev, at 483; Roman v. State, 570 P.2d 1235, 1242 (Alaska 1977). To this end, all prisoners released on parole are required to lead law abiding lives as a condition of release. AS 33.16.-150(a). Additionally, the board is empowered to impose special conditions designed for the individual rehabilitative program of each paroled offender. AS 33.16.150(b). Because some of these special conditions are severe limitations on the parolee's conditional liberty interest, imposition must be rationally related to the underlying offense or the parolee's history. Roman, at 1242. Specifically, special conditions that are in the nature of a search, AS 33.16.150(b)(9) & (11), may only be imposed if warranted by the nature or the circumstances surrounding the parolee's crime or social history. For this reason, these conditions may only be imposed by the board. AS 33.16.150(c).

Imposition of two additional conditions are likewise limited, not because they impinge upon the conditional liberty interest, but rather due to the nature of the condition. Precluding a parolee from possessing or controlling a firearms is limited to misdemeanor offenders, as felons are precluded by state law (AS 11.61.200) as well as federal law (Pub. L. 90-618 § 922(h)) from doing so. Imposing this condition upon a parolee would also necessitate a relationship to the crime, e.g. assault or extreme game violations. Finally, restitution as a condition of parole may only occur if restitution was ordered by the sentencing court. Brezenoff v. State, 658 P.2d 1359 (Alaska App. 1983).

After the initial imposition of the conditions of release upon the parolee, a need may arise to change or impose additional conditions, procedural safeguards may then be required. If the parolee is determined to be at liberty on a certain conditional level, a more restrictive level of conditional liberty may be a deprivation of the current conditional liberty status; thus imposition of new conditions may only be accomplished if the parolee is provided notice of the proposed change and the opportunity to be heard on it. Whether procedural safeguards need to be employed when there is a new or changed condition depends on an analysis of whether the new or changed condition is a further infringement of the liberty interest and also whether the change is significant or insignificant. Clearly, if the new condition required the parolee to enroll in a residential treatment program for substance abuse, the current level of conditional liberty enjoyed by the parolee is being curtailed; thus procedural safeguards are warranted. Conversely, if the new condition was a requirement of the parolee to pay child support or not to open a charge account, there is no further curtailment of the current conditional liberty interest, and procedural safeguards are not necessary. Moreover, if the parole officer required the parolee to report twice a month, rather than once a month, such a change is so insignificant as to not require any due process protections.

Situations may also occur which require the immediate imposition of a new or changed condition. Specific procedures are set out which balance the state's interests in rehabilitation and protection of the public with the parolee's conditional liberty interest. AS 33.16.160(c) & (d).

C. Parole Revocation

In Morrissey, after recognizing the conditional liberty interest possessed by parolees, the United States Supreme Court

mandated the employment of procedural guarantees in parole revocation proceedings.

The procedures required could be informal in nature, but must include as a minimum

- 1) a preliminary revocation hearing at or reasonably near the place of the alleged violation and as promptly as convenient after the arrest;
- 2) a final revocation hearing with
 - a) written notice of the claimed violation;
 - b) disclosure of evidence to be used against the violator;
 - c) opportunity to be heard in person and to present witnesses and documentary evidence;
 - d) a limited right to confront and cross-examine adverse witnesses;
 - e) a neutral and detached hearing body; and
 - f) a written statement by the fact finders as to the evidence relied on and the reasons for revocation.

Morrissey, at 486, 489.

In essence, Morrissey requires "an informal hearing structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be by an accurate knowledge of the parolee's behavior." Morrissey, at 485.

Clearly, the court did not require the full range of rights normally accorded in a criminal proceeding. Subsequent decisions have held that the revocation proceeding is not part of a criminal proceeding, Martin v. State, 517 P.2d 1389 (Alaska 1974), therefore those guarantees normally applicable in the criminal proceeding do not apply in a revocation. State v. Sears, 553 P.2d 907 (Alaska 1976) (exclusionary rule for illegally seized evidence does not apply); Martin v. State, 517 P.2d 1389 (Alaska 1974) (right to bail under Alaska Constitution does not apply); Paul v. State, 560 P.2d 754 (Alaska 1977) (Alaska speedy trial rule does not apply); Roman v. State, 570 P.2d 1235 (Alaska 1977) (warrantless searches are permissible); Davenport v. State, 568 P.2d 939 (Alaska 1977) (different requirements for parole violation arrest warrant); Avery v. State, 616 P.2d 872 (Alaska 1980) (preponderance of evidence standard of proof sufficient for revocation).

1. Preliminary Revocation Hearing

The Morrissey case set the broad standards for the

preliminary revocation hearing in order "to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole." ^{3/} The hearing needs to be conducted by an independent decision maker, i.e., some person other than one initially dealing with the case.

The finding of probable cause or reasonable grounds may be based on a finding in another forum, as the parolee would be collaterally estopped from relitigating issues previously determined. A criminal conviction, ^{4/} with the higher "beyond a reasonable doubt" standard of proof, or a finding of probable cause after a preliminary hearing in a pending criminal case, would both constitute conclusive proof of a parole violation. AS 33.16.220 (b).

Although there is case law intimating a grand jury indictment may be used in a like manner, ^{5/} the due process requirement of Morrissey, which grants the parolee the opportunity to refute or explain the alleged violation, would tend to negate use in this way. However, given the standard for a grand jury indictment in Alaska (the evidence presented, if unexplained or uncontradicted, would warrant a trier of fact to find beyond a reasonable doubt that the accused committed the crime charged), the requirements of the prosecutor to disclose exculpatory evidence to the grand jury, ^{6/} and safeguards of Criminal Rule 6(q), a grand jury indictment does constitute prima facie evidence of a violation. In this situation, the burden is shifted to the alleged violator to disprove the charges in the indictment.

When probable cause or reasonable grounds for a violation are found, the preliminary revocation hearing becomes a

^{3/} Morrissey, at 486.

^{4/} Moody v. Daggett, 429 U.S. 78, 86 n.7 (1976)

^{5/} See Inmates Councilmatic Voice v. Rogers, 541 F.2d 633 (6th Cir. 1976); Hall v. State, 535 F.Supp. 1121 (S.D. Ohio 1982).

^{6/} See Tookak v. State, 648 P.2d 1018 (Alaska App. 1982); Frink v. State, 597 P.2d 154 (Alaska 1979).

bifurcated process. Just as in the final revocation process there is an adjudicatory phase (to determine probable cause) and a dispositive phase (where the hearing officer must then determine whether the violator should be released pending a final revocation hearing). The hearing officer is required to consider four factors in making this determination. AS 33.16.220(c). As there is no constitutional right to bail in a parole revocation proceeding, Martin v. State, 517 P.2d 1389 (Alaska 1974), release pending the final revocation hearing may only occur under this subsection. (Bail release is also statutorily denied. AS 33.-16.240(e)). The hearing officer, in determining that release is appropriate, may also impose additional conditions on the violator. AS 33.16.220(d). Necessary procedural safeguards, if the additional conditions are more restrictive of the parolee's liberty, are satisfied in the two phases of the bifurcated preliminary revocation hearing process.

2. Final Revocation Hearing

As previously noted, Morrissey set out six specific requirements for a final revocation hearing necessary to meet minimal due process safeguards. These minimal procedures have not been significantly expanded, either in subsequent case law, or by statute. The burden on whether to have a final revocation hearing has been shifted from the parolee: Morrissey implies the parolee must request a final revocation hearing (although the parolee must be notified of the right to such a hearing); by statute, a final revocation will be held unless specifically waived in writing by the parolee. AS 33.16.230. Additionally, the "within a reasonable time" requirement for holding a final revocation proceeding has been established by statute -- within 20 working days after a parolee's arrest and incarceration if no preliminary revocation hearing is held, 7/ or within 120 days after the arrest if a preliminary revocation hearing has been held. 8/ Special safeguards for both the parolee and the state are available in the event the alleged violation is based on a pending criminal charge. AS 33.16.220(g).

If a violation is found, the board is granted significant discretion in fashioning an appropriate remedy. Additional conditions of parole may be imposed upon the violator, who is

7/ AS 33.16.220(e)

8/ AS 33.16.220(f)

then re-released on parole; the violator may also have the parole revoked in full, or in part, AS 33.16.20(i). A parolee is not given credit towards the original sentence, for time spent on parole, AS 33.16.240(f), so that a revocation may result in reincarceration for the amount of the prisoner's original term not previously served in jail. A partial revocation would result when the board decided the seriousness of the violation did not warrant reincarceration for the remainder of the term, but that some reincarceration was necessary.

Other Considerations

A. Arrest of Parole Violators

Alleged parole violators may be arrested with or without a warrant. A warrant may be issued by the board or a member of the board based upon a probable cause standard. Unlike the standards applicable to arrest warrants in criminal cases, a parole violator warrant does not need to be supported by a written affidavit or complaint. Davenport v. State, 568 P.2d 939 (Alaska 1977). However, to avoid unnecessary litigation on the issue of whether the warrant is supported by probable cause, the warrant is intended to be supported either by a written or recorded statement of the parole officer. Davenport, at 948, n.21.

Likewise, exigent circumstances may exist requiring the immediate arrest of a parolee. However, rather than leaving these exigent circumstances to subsequent court interpretation, the circumstances are enumerated in statute AS 33.16.240(c). If a warrantless arrest occurs, strict reporting requirements on the circumstances of the arrest are mandated. AS 33.16.240(d).

B. Confidential Information

1. Public Disclosure

During the decision making aspects of its duties, the board will be relying upon information derived from a variety of sources. Although some of this information may be public information if it is derived from the original source under AS 09.25.110, other portions of this information are confidential, e.g., presentence reports. In order to relieve the board of the responsibility to determine whether this information is otherwise confidential under law, all the information compiled by the board is made confidential. AS 33.16.170(a). This provision therefore exempts that information from the provisions of AS 09.25.110 and AS 09.25.120; however, if the information is otherwise public information, this section does not preclude public inspection and

copying of that material at its original source.

2. Disclosure to the Parolee

In the main, information which is used by the board must be disclosed to the parolee. The due process requirements which attach to the liberty interests held by parolees or potential parolees, dictate that the parolee be given not only notice of a proposed action, but also the opportunity to be heard. To be meaningful, the opportunity to be heard requirement should afford the parolee or prisoner the ability to refute or explain adverse information as well as to ensure that the board considers information which the parolee or prisoner believes is relevant to the decision making function under consideration by the board. As succinctly stated in Morrissey, at 485, the procedural safeguards should be designed to ensure "that the exercise of discretion will be by an accurate knowledge of the parolee's behavior." There are, however, instances and situations wherein full disclosure of all information under consideration is neither appropriate nor required.

The first type of information where disclosure is neither appropriate nor required is the address of a victim who has commented upon a pending discretionary parole under AS 33.16.120. In this instance, the state has undertaken a duty to protect the victim from harm or harassment. AS 12.61.010(a)(3). By not disclosing the victim's residence or location, the state is taking one small measure to protect that victim in the event the prisoner, or any of the prisoner's relatives or associates decides to act in vengeance if the victim has commented adversely on a prospective parole. Furthermore, there is no reason, under due process requirements or otherwise, for the prisoner to have access to that piece of information. Therefore, this information is not disclosed to the parolee. AS 33.16.120(b).

The second type of information that is not appropriate to disclose is previously undisclosed diagnostic reports, confidential informant reports and any other information which, if disclosed, may result in harm to any person. AS 33.16.170(b). The state's interest in the rehabilitation of the prisoner, whether discretionary parole is granted or not, is of paramount importance. In some instances a psychiatric evaluation of the prisoner, if it has not been previously disclosed, may severely undermine the institutional therapy program in which the prisoner is currently enrolled. Although it is rare that such a diagnosis has occurred and has not been subsequently disclosed to the prisoner, a few instances of subsequent disclosure by the board and an attendant disruption of the prisoner's therapeutic program

would lead to the board either not being given access to that information, or to that type of information not being generated. Either alternative would negatively impact the rehabilitative goals of the state.

Furthermore, disclosure of confidential information or any other information which may result in harm to any other person is contrary to the state's duties to properly administer prisons and to protect society.

Although non-disclosure of these types of information, is permitted, due process does mandate the opportunity for the prisoner or parolee to contradict or explain adverse information. In balancing this interest with the state's interest in protecting other members of society from harm and ensuring rehabilitation, the board is therefore required to summarize the information which it does not disclose. This summary will vary with the types of information being considered by the board, but it nonetheless must be capable of conveying to the prisoner or parolee, as completely and as accurately as possible, the content of the information. This will enable the prisoner or parolee to adequately respond. AS 33.16.170(c).

C. Remedial Actions

Numerous duties are required of the board during the parole process. The Parole Administration Act does not set out specific remedies that may result if the board fails to discharge those duties.

1. Parole/Prisoner Remedies

Absent the denial of a constitutional right, the actions of the parole board when it is exercising its discretionary functions are not reviewable in court. Therefore, when in its predictive judgment, the board decides a prisoner is not suitable for discretionary parole, an aggrieved prisoner may not have that decision reviewed. However, in that the Parole Administration Act, and its requirement for the adoption of regulations establishing standards for the determination of the suitability for discretionary parole, grant a perspective parolee a limited liberty interest, review of the board's action for a denial of due process safeguards is more readily available than is apparent. Similarly, revocation of parole which is a recognized liberty interest may give rise to judicial review of the procedures employed to ensure the necessary level of due process procedural safeguards.

If a prisoner or parolee challenges the procedure of the board as a violation of due process safeguards (usually through an action under Criminal Rule 35) the remedy that is nearly universally applied is for the board to redo the proceeding, ensuring that the parolee's or prisoner's due process rights are recognized. Newell v. State, 620 P.2d 680 (Alaska 1980). The courts have recognized that they possess "only limited power to review Parole Board decisions, and cannot usurp the authority of the Board." 9/ This remedy is generally appropriate if the board has violated one of the procedural guarantees set out in Morrissev, at 486, 489, whether it occurs at the preliminary or final revocation stage. See Ford v. Wainwright, F.2d 981 (5th Cir. 1977); Hahn v. Burke, 430 F.2d 100 (7th Cir. 198-70); Petition of Haverty, 618 P.2d 1011 (Wash. 1980). Similarly, a denial of procedural safeguards during the parole granting phase should be entitled to no more severe remedy than an order to redo the faulty hearing.

If the procedural safeguard denied a parolee in a revocation proceeding is the untimeliness of the hearing, the exceptional remedy applied is the reinstatement of the parolee to parole. See State v. Chavez, 607 P.2d 640 (N. Mex. App. Ct. 1979). By statute, Alaska has set specific time limits in which to hold a preliminary revocation hearing, within 15 working days after a parolee's arrest and incarceration for the violation; 10/ in which to hold a final revocation hearing, 20 days if the parolee is arrested, incarcerated and no preliminary revocation hearing on the violation is held; 11/ and in which to hold a final revocation proceeding, 120 days after the parolee's arrest, subject to recognized exceptions. 12/

If the board was to deny a timely hearing under the statute, the resultant remedy should be proportionate to the violation. The purpose underlying the requirement for a timely

9/ Newell, at 683.

10/ AS 33.16.220(b). A preliminary revocation hearing is not necessary for a parolee charged with a violation who is not arrested and incarcerated if there is no additional deprivation of the parolee's conditional liberty interest.

11/ AS 33.16.220(e).

12/ AS 33.16.220(f).

hearing is to enable the alleged violator to respond to the alleged violation while contrary evidence may still be available and the issue is fresh in everyone's mind. A short delay in the revocation proceeding would result in little prejudice to the parolee, so release from incarceration pending the hearing is an appropriate remedy. However, where the delay is significant and prejudice to the parolee is shown, reinstatement to parole status may be appropriate. This is the exceptional situation. Naturally, in that the prejudice to the parolee is the availability of evidence and the freshness of the incident, even a significant delay of a final revocation hearing pending resolution of pending criminal charges is not prejudicial.

The extraordinary remedy of unconditional release would only result if there was a due process violation and the term of the parolee's sentence would have expired had not the due process violations occurred. See U.S. ex rel. Hahn v. Review, 520 F.2d 632 (7th Cir. 1975); Lawrence v. Smith, 451 F. Supp. 1979 (W.D.N.Y. 1978).

2. Third Party Remedies

If the board fails to notify a victim of its consideration of discretionary parole and the right of the victim to comment on the proceeding under AS 33.16.120(a) this does not invalidate any parole decision. The purpose of this section is to give victims a voice in (as opposed to a veto power over) the parole process, and to provide the board with additional information in considering discretionary parole and special conditions if parole is granted. Therefore any remedy for the victim would have to lie in a tort action.

PWC:eja:Sectional

Incorporated in C.S.

DRAFT
Law

1 Page 1, line 26 renumber existing "(c)" to "(d)" and add:

2 (c) A prisoner eligible for discretionary parole during a period
3 of sentence enhancement imposed under AS 12.55.155(a) or during the
4 subsequent term of a consecutive or partially consecutive presumptive
5 sentence imposed under AS 12.55.025(e) or (g) must serve the unen-
6 hanced portion of the term or the initial presumptive term before
7 being otherwise eligible for discretionary parole under AS 33.16.-
8 100(c) or (d). For purposes of this subsection, the most serious
9 offense in the case of consecutive or partially consecutive presump-
10 tive sentences, will be considered the initial presumptive term. The
11 unenhanced term or the initial presumptive term is considered served
12 for purposes of discretionary parole on the date the unenhanced or
13 initial presumptive sentence is due to expire [excluding any/less]
14 good time earned under AS 33.20.010.
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May 5, 1985

Senator Patrick Roddy
Alaska State Legislature
Pouch V (M+3100)
Juneau, Alaska 99811

Re: CSHB 141

Dear Senator:

While this Bill contains elements that may be good, there are two items which cause me some concern.

1) Page 3, line 26, # 8, upon request of the governor,

views and recommendations applicants for executive clemency.

Allegation:

The ability of Board members to again vote on a case upon which they have already voted and make a

decision detracts the element of impartiality that is required in these decisions. Clemency should be a step

above all previous decisions. No party or persons

judgment on voting should be a matter of the

Clemency process. This action should either be

deleted or re-written to deny membership of any

party board member to participate in the

Clemency process.

2) Page 6, line 3, # 1, the presentence report made to the sentencing court. This line should be deleted.

At present and under current practice, the lack of impartiality and relevancy involved in the writing of these reports brings into question the reliability and honesty of some. Clients have little chance in reality to contest matter found therein.

I can add ~~of~~ a word of commendation for the matter of conduct and interest of the present Legislature. "Capital 85" has helped to bring this spirit through to the people.

Respectfully,

Harry Depp

Box 919

Palmer, Alaska 99645



RECORDS CERTIFICATION



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

James O. Smith
Signature of Camera Operator

11/7/89
Date

H B

1 4 4

ANALYSIS OF HB144

"An act relating to political campaign contributions."

By Martin and Marrou

HB 144 changes the requirement for the release of the names of political groups or candidates that have been claimed under AS 43.20.013(a).

AS 43.20.013(a) is the statute that allows residents to be reimbursed up to \$100 for political contributions. This bill does not address who made the contribution, only the names of groups and candidates that have been claimed as creditable under AS 43.20.013(a). Under present law the names of campaigns that have been claimed for a refund cannot be released except upon order of the Alaska supreme court.

From a historical perspective the reason for the present statute is clear. When the program began it offered an income tax credit. If a resident made a contribution to a political group or candidate, the amount of that contribution (up to \$50) could be credited against the amount of personal income tax they owed to the state. One concern at that time was the release of information regarding the personal business of the taxpayer. In response to this concern, the legislature decided to keep private all information regarding the political tax credit.

In the second special session of 1980, the legislature repealed the state personal income tax. Because the tax credit program was directly related to the income tax, it was rendered moot. In its place the legislature adopted 43.20.013(a) which is not a tax credit, but a contribution credit. In reality, a direct payment.

Whereas the original program (the tax credit) simply deferred income the state would have received, the new program (the contribution credit) actually paid out state, and thus, public funds. Because private taxpayer information is no longer a concern, and because the monies being expended are public funds, the sponsors believe the names of groups and candidates being claimed for the credit should be made public.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: HB 144
Title: An act relating to political
campaign contributions
Sponsor: Martin and Marrou
Requestor: House State Affairs
Date of Request: 2/1/85

FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: General
Government
BRU, Program of Subprogram(s) Affected:
Administration and Support -
Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: See attached.

Prepared By: Ervin B. Jones, Director
Division: Administrative Services

Phone: 465-2813
Date: 2/19/85

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 2/20/85

Distribution (by Agency preparing fiscal note):

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

Department of Revenue
HB 144 Analysis

Assumptions:

- 1) The inserted information on line 15-17 refers to the Refundable Credit Claims received by the Department.
- 2) Public disclosure under AS 47.03.085, as amended, would be limited to the list as prepared for the Alaska Public Offices Commission, and would not extend to custom-programmed computer runs by election district, party affiliation, etc. If the Department of Revenue is required by this change to compete with commercial data processing service bureaus, there will be fiscal impact.

Program Summary:

1. Positions: None.
2. Other expenditures: None.
3. Funding: None required.
4. Section cost analysis: N/A.

Computations: N/A.

Economic Impact: N/A.

Impact on local government: N/A.

Attachments: See attached recommended amendment.

Department of Revenue
HB 144
Amendments Proposed

Replace the bill's substitution language at line 15-17 with the following:
This list, once prepared and furnished to the Alaska Public Offices
Commission, shall become public information under AS 09.25.110 - 09.25.120.

REP. TERRY MARTIN

ELECTIVE DISTRICT 13
MOUNTAIN VIEW
RUSSIAN JACK SPRINGS
NUNAKA VALLEY
ELMENDORF AFB
CREEKSIDE
EAST ANCHORAGE

HOME
3960 REKA DRIVE B6
ANCHORAGE, AK 99508
PHONE 333 6990

DURING SESSION
POUCH
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465 3783

Alaska House of Representatives

January 28, 1986

Chief Justice Jay Rabinowitz
Alaska Supreme Court
303 "K" Street
Anchorage, Alaska 99501

Dear Mr. Chief Justice,

As was the case last year, I am forced to write and request your assistance in a matter of legislative business. Again, I formally request an Order from the Court ordering the state Department of Revenue to release the names of all candidates and groups to which contributions were made and for which the Political Contribution Credit was claimed under AS 43.20.013, and the amount the State has paid out in the name of each candidate or group. I would like this information for claims filed in 1983, 1984 and 1985.

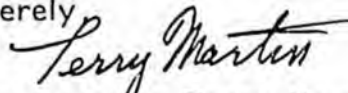
Unfortunately, under AS 43.20.013 this information can only be made public upon order of the Alaska Supreme Court. In a letter to you dated January 29, 1985 I related the history behind the Political Contribution Credit program, why this problem exists and my efforts to amend the statute to make the requested information accessible to the public.

Last year I made virtually the same request I am making in this letter. However, I was not given the amount of money the state paid out in the name of each candidate or group. I believe I have a compelling interest, in the course of my legislative duties, to know the amount of money the state has paid out in the name of each candidate or group.

Attached please find a copy of the Order issued last year by the Court, and a copy of a statement of non-opposition issued last year by the State.

Thank you for your attention to this matter.

Sincerely,



Representative Terry Martin
House Minority Leader

encl.

ccs: The Honorable Hal Brown
Mr. Ervin Jones, Director,
Administrative Services, Department of Revenue
Senator Mitch Abood, Chairman,
Senate State Affairs Committee



Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN

DISTRICT 8
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 468-3573



3960 REKA DRIVE—36
ANCHORAGE, AK 99504
PHONE 303 6990

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

1982 POLITICAL CONTRIBUTION REFUND CLAIMS

Political Contribution Claims
 Individuals With More Than \$ 2500
CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
669	Goll, Peter	2,530.00
710	Mystrom, Rick	2,550.00
299	Gilman, Don	2,640.00
431	Duncan, Jim	2,648.00
664	Tischer, Mae	2,705.00
369	Benshoof, Geraldine	2,797.00
421	Garrigues, James	2,850.00
859	Knowles, Tony	2,870.00
706	Metcalf, Ray	2,925.00
423	Angvik, Jane	2,965.00
459	Lindauer, John	3,024.00
452	Dapceovich, John	3,050.00
450	Carlson, John	3,149.00
463	Sackett, J	3,150.00
512	Gorsuch	3,183.00
882	Collins, Virginia	3,210.00
81	Adams, Al	3,350.00
306	Schmedlen, Doug	3,406.00
787	Sandvick, E	3,431.00
236	Schultz, D	3,435.00
622	Woods, Noel	3,466.00
490	Farming, K	3,493.00
890	Furnace, W	3,506.00
620	Koponen, N	3,524.00
654	Carney, Pat	3,726.00
828	Janson, Sue	3,793.00
759	Bettisworth R	3,855.00
297	Clocksinn, Don	3,929.00
350	Murkowski, F	4,025.00
883	Dal Piaz, V	4,128.00
880	Fischer, V	4,330.00
672	Smith, Phillip	4,711.00
557	Holloway, M	4,715.00
119	Sturgulewski	4,755.00
507	Albertson, Lamont	4,832.00
429	Ayers, Jim	4,862.00
140	Fahrenkamp, B	4,987.00
563	Szymanski, M	5,040.00
462	Ringstad, John	5,151.00
541	Carpenter, M	5,236.00
845	Bucholdt, Thelma	5,298.00
641	Freeman, O	5,551.00
670	Pettyjohn, F	5,660.00
186	Bussell, C	6,060.00
712	Malone, Hugh	6,060.00

Information By:
 Rep. Terry Martin

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
911	Brown, Fred	6,417.00
468	Faiks, J	6,781.00
552	Sikorski, M	6,910.00
296	Bennett, Don	7,358.00
192	O'Connell, C	7,432.00
444	Hayes, Joe	7,787.00
773	Rose, Dave	8,175.00
386	Boucher, Red	8,485.00
142	Allen, Bill	9,809.00
536	Colletta, M	9,865.00
143	Hudson, Bill	13,575.00
302	Young, Don	14,235.00
539	Roberts, Malcolm	22,440.00
230	Cowper	29,963.00
746	Randolph, D	33,162.00
831	Miller, Terry	78,177.00
004	Sheffield/McAlpine	175,157.00
008	Fink/Colletta	189,396.00

TOTAL CONTRIBUTIONS: \$809,685.00

Information By:
Rep. Terry Martin
8/84

Political Contribution Claims
Groups With More Than \$2500

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
901	Womens Political Caucus	2,515.00
649	PACE NEA PAC	2,892.00
910	AGC PAC	3,050.00
627	National Rifle Assoc	3,566.00
88	Alive Teamsters	3,992.00
683	Pol Action Comm	4,389.00
346	Fish PAC	4,775.00
22	Builders PAC	4,932.00
189	Choice for Alaskans	5,238.00
005	Democrats	7,191.00
234	Positive Action, Citizens for	6,363.00
49	Laborers Political Education Committee	8,902.00
320	Employees Political Inf Comm	9,671.00
617	NEA Ak Pace	11,519.00
39	Environmental Committee	19,878.00
007	Libertarians	22,820.00
694	Personal Liberties Comm	25,635.00
174	Capital Access Committee	35,591.00
396	Equal Hunting and Fishing	38,527.00
843	Alaska Committee	57,144.00
003	Republicans	63,516.00

TOTAL CONTRIBUTIONS: \$342,851.00

Information By:
Rep. Terry Martin
8/84

UNIONS

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
17	AFGE PAC	365.00
18	AFL-CIO COPE	1,945.00
49	Laborers Political Education Committee	8,902.00
59	Public Employees Assn	300.00
67	Laboters	100.00
88	Alive Teamsters	3,992.00
93	Postal Workers Union	12.00
95	Union Control	25.00
112	APEA	430.00
168	C O R E	100.00
397	IBEW Vol Pol Fund	34.00
407	Intl Union	10.00
410	IUOE Local 302	50.00
466	Journeyman	100.00
471	Central Labor, Juneau	100.00
475	Labor Couns, Juneau	50.00
523	Local 302 PAC	134.00
524	Local 341 Education	100.00
525	Local 375	300.00
526	Local 71 PAC	33.00
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576	Master Mates and Pilots	100.00
636	Operations Pol	36.00
637	Opty Eng 302 Fbks	50.00
677	Pol and Education Comm	200.00
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679	Pol Education Comm	300.00
683	Pol Action Comm	4,389.00
836	Teamsters	225.00
864	Plumbers and Pipefitters	346.00
865	Oper Engineers, Union of	100.00
867	Union PAC Local 302	100.00
868	Union Pol Awareness	100.00
TOTAL CONTRIBUTIONS:		\$23,338.00

Information By:
Rep. Terry Martin
8/84

Education PACs

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
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104	Education Association Pace Anchorage	5.00
313	Education Comm	105.00
332	Education Assoc PAC, Fbks	390.00
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480	Education, PACE Juneau	50.00
486	KBEA PACE	275.00
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644	PAC	100.00
645	PACE	100.00
646	PAC fnd	200.00
649	PACE NEA PAC	2,892.00
878	VEA PACE	50.00
TOTAL CONTRIBUTIONS:		\$19,437.00

Information By:
Rep. Terry Martin
8/84

Questionable Donations

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
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37	Alaska Credit Union	370.00
44	Fur Trappers	20.00
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259	Demo Natl Comm	95.00
263	Democratic Congress Camp	100.00
265	Democratic National comm	125.00
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Information By:
Rep. Terry Martin

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632	Organization of Women, National	305.00
638	Oral Max Fac Surg	45.00
640	Hatch, Orrin	60.00
652	Political Action Fund	253.00
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871	US Defence Comm	130.00
884	Voice of the People	100.00
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898	Wilson for Utah	50.00
907	World Affair Council	120.00
913	Rep Comm, National	2,806.00

TOTAL CONTRIBUTIONS: \$63,106.00

Information By:
Rep. Terry Martin
8/84

REP. TERRY MARTIN

ELECTIVE DISTRICT 13
MOUNTAIN VIEW
RUSSIAN JACK SPRINGS
MUNAKA VALLEY
ELMENDORF AFB.
CREEKSIDE
EAST ANCHORAGE

HOME
3960 REKA DRIVE 86
ANCHORAGE AK 99508
PHONE 333 6990

DURING SESSION
POUCH V
STATE CAPITOL BUILDING
JUNEAU AK 99811
PHONE 465-3783

Alaska House of Representatives

January 28, 1986

Chief Justice Jay Rabinowitz
Alaska Supreme Court
303 "K" Street
Anchorage, Alaska 99501

Dear Mr. Chief Justice,

As was the case last year, I am forced to write and request your assistance in a matter of legislative business. Again, I formally request an Order from the Court ordering the state Department of Revenue to release the names of all candidates and groups to which contributions were made and for which the Political Contribution Credit was claimed under AS 43.20.013, and the amount the State has paid out in the name of each candidate or group. I would like this information for claims filed in 1983, 1984 and 1985.

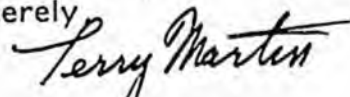
Unfortunately, under AS 43.20.013 this information can only be made public upon order of the Alaska Supreme Court. In a letter to you dated January 29, 1985 I related the history behind the Political Contribution Credit program, why this problem exists and my efforts to amend the statute to make the requested information accessible to the public.

Last year I made virtually the same request I am making in this letter. However, I was not given the amount of money the state paid out in the name of each candidate or group. I believe I have a compelling interest, in the course of my legislative duties, to know the amount of money the state has paid out in the name of each candidate or group.

Attached please find a copy of the Order issued last year by the Court, and a copy of a statement of non-opposition issued last year by the State.

Thank you for your attention to this matter.

Sincerely



Representative Terry Martin
House Minority Leader

encl.

ccs: The Honorable Hal Brown
Mr. Ervin Jones, Director,
Administrative Services, Department of Revenue
Senator Mitch Abood, Chairman,
Senate State Affairs Committee



Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN
DISTRICT 8
CHAIRMAN - LABOR AND COMMERCE COMMITTEE
PHONE 465 0573



JOSEPH A. ...
...
PHONE 465 0573

...
...
PHONE 465 0573

1982 POLITICAL CONTRIBUTION REFUND CLAIMS

Political Contribution Claims
 Individuals With More Than \$ 2500
CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
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710	Mystrom, Rick	2,550.00
299	Gilman, Don	2,640.00
431	Duncan, Jim	2,648.00
664	Tischer, Mae	2,705.00
369	Benshoof, Geraldine	2,797.00
421	Garrigues, James	2,850.00
859	Knowles, Tony	2,870.00
706	Metcalf, Ray	2,925.00
423	Angvik, Jane	2,965.00
459	Lindauer, John	3,024.00
452	Dapcevich, John	3,050.00
450	Carlson, John	3,149.00
463	Sackett, J	3,150.00
512	Gorsuch	3,183.00
882	Collins, Virginia	3,210.00
81	Adams, Al	3,350.00
306	Schmedlen, Doug	3,406.00
787	Sandvick, E	3,431.00
236	Schultz, D	3,435.00
622	Woods, Noel	3,466.00
490	Farming, K	3,493.00
890	Furnace, W	3,506.00
620	Koponen, N	3,524.00
654	Carney, Pat	3,726.00
828	Janson, Sue	3,793.00
759	Bettisworth R	3,855.00
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Information By:
 Rep. Terry Martin

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TOTAL CONTRIBUTIONS: \$809,685.00

Information By:
Rep. Terry Martin
8/84

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Groups With More Than \$2500

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Information By:
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Information By:
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 8/84

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Information By:
Rep. Terry Martin

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Information By:
Rep. Terry Martin
8/84

REP. TERRY MARTIN

ELECTIVE DISTRICT 13
MOUNTAIN VIEW
RUSSIAN JACK SPRINGS
NUNAKA VALLEY
ELMENDORF A.F.B.
CREEKSIDE
EAST ANCHORAGE

HOME
3960 REKA DRIVE B6
ANCHORAGE, AK 99508
PHONE 333-6990

DURING SESSION
POUCH V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3783

Alaska House of Representatives

January 28, 1986

Chief Justice Jay Rabinowitz
Alaska Supreme Court
303 "K" Street
Anchorage, Alaska 99501

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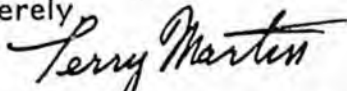
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Sincerely,



Representative Terry Martin
House Minority Leader

encl.

ccs: The Honorable Hal Brown
Mr. Ervin Jones, Director,
Administrative Services, Department of Revenue
Senator Mitch Abood, Chairman,
Senate State Affairs Committee



Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN

DISTRICT 8
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 465-3573



LEGISLATIVE BUILDING
ANCHORAGE, ALASKA 99504
PHONE 465-6690

DURING LEGISLATURE
FOUCHY
STATE CAPITOL
SITKA, ALASKA 99801
PHONE 465-3754

1982 POLITICAL CONTRIBUTION REFUND CLAIMS

Political Contribution Claims
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512	Gorsuch	3,183.00
882	Collins, Virginia	3,210.00
81	Adams, Al	3,350.00
306	Schmedlen, Doug	3,406.00
787	Sandvick, E	3,431.00
236	Schultz, D	3,435.00
622	Woods, Noel	3,466.00
490	Fanning, K	3,493.00
890	Furnace, W	3,506.00
620	Koponen, N	3,524.00
654	Carney, Pat	3,726.00
828	Janson, Sue	3,793.00
759	Bettisworth R	3,855.00
297	Clocksinn, Don	3,929.00
350	Murkowski, F	4,025.00
883	Dal Piaz, V	4,128.00
880	Fischer, V	4,330.00
672	Smith, Phillip	4,711.00
557	Holloway, M	4,715.00
119	Sturgulewski	4,755.00
507	Albertson, Lamont	4,832.00
429	Ayers, Jim	4,862.00
140	Fahrenkamp, B	4,987.00
563	Szymanski, M	5,040.00
462	Ringstad, John	5,151.00
541	Carpenter, M	5,236.00
845	Bucholdt, Thelma	5,298.00
641	Freeman, O	5,551.00
670	Pettyjohn, F	5,660.00
186	Bussell, C	6,060.00
712	Malone, Hugh	6,060.00

Information By:
 Rep. Terry Martin
 8/84

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
911	Brown, Fred	6,417.00
468	Faiks, J	6,781.00
552	Sikorski, M	6,910.00
296	Bennett, Don	7,358.00
192	O'Connell, C	7,432.00
444	Hayes, Joe	7,787.00
773	Rose, Dave	8,175.00
386	Boucher, Red	8,485.00
142	Allen, Bill	9,809.00
536	Colletta, M	9,865.00
143	Hudson, Bill	13,575.00
302	Young, Don	14,235.00
539	Roberts, Malcolm	22,440.00
230	Cowper	29,963.00
746	Randolph, D	33,162.00
831	Miller, Terry	78,177.00
004	Sheffield/McAlpine	175,157.00
008	Fink/Colletta	189,396.00

TOTAL CONTRIBUTIONS: \$809,685.00

Information By:
Rep. Terry Martin
8/84

Political Contribution Claims
Groups With More Than \$2500

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
901	Womens Political Caucus	2,515.00
649	PACE NEA PAC	2,892.00
910	AGC PAC	3,050.00
627	National Rifle Assoc	3,566.00
88	Alive Teamsters	3,992.00
683	Pol Action Comm	4,389.00
346	Fish PAC	4,775.00
22	Builders PAC	4,932.00
189	Choice for Alaskans	5,238.00
005	Democrats	7,191.00
234	Positive Action, Citizens for	6,363.00
49	Laborers Political Education Committee	8,902.00
320	Employees Political Inf Comm	9,671.00
617	NEA Ak Pace	11,519.00
39	Environmental Committee	19,878.00
007	Libertarians	22,820.00
694	Personal Liberties Comm	25,685.00
174	Capital Access Committee	35,591.00
396	Equal Hunting and Fishing	38,527.00
843	Alaska Committee	57,144.00
003	Republicans	63,516.00

TOTAL CONTRIBUTIONS: \$342,851.00

Information By:
Rep. Terry Martin

8/84

UNIONS

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
17	AFGE PAC	365.00
18	AFL-CIO COPE	1,945.00
49	Laborers Political Education Committee	8,902.00
59	Public Employees Assn	300.00
67	Laboters	100.00
88	Alive Teamsters	3,992.00
93	Postal Workers Union	12.00
95	Union Control	25.00
112	APEA	430.00
168	C O R E	100.00
397	IBEW Vol Pol Fund	34.00
407	Intl Union	10.00
410	IUOE Local 302	50.00
466	Journeyman	100.00
471	Central Labor, Juneau	100.00
475	Labor Couns, Juneau	50.00
523	Local 302 PAC	134.00
524	Local 341 Education	100.00
525	Local 375	300.00
526	Local 71 PAC	33.00
527	Local United Assoc	100.00
531	LUPAC	100.00
576	Master Rates and Pilots	100.00
636	Operations Pol	36.00
637	Opty Eng 302 Fbks	50.00
677	Pol and Education Comm	200.00
678	Pol Arm	110.00
679	Pol Education Comm	300.00
683	Pol Action Comm	4,389.00
836	Teamsters	225.00
864	Plumbers and Pipefitters	346.00
865	Oper Engineers, Union of	100.00
867	Union PAC Local 302	100.00
868	Union Pol Awareness	100.00
TOTAL CONTRIBUTIONS:		\$23,338.00

Information By:
Rep. Terry Martin
8/84

Education PACs

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
15	AEA Pace	775.00
84	Education (AK)	100.00
104	Education Association Pace Anchorage	5.00
313	Education Comm	105.00
332	Education Assoc PAC, Fbks	390.00
337	FEA PACE	1,748.00
424	JEA PACE	103.00
473	Education Assoc, Juneau Pace	25.00
480	Education, PACE Juneau	50.00
486	KBEA PACE	275.00
500	Education Assoc, Kodiak Bor	400.00
592	Education Assoc, National	100.00
595	Education Assoc, National	300.00
598	Education Assoc, National	200.00
617	NEA Ak Pace	11,519.00
644	PAC	100.00
645	PACE	100.00
646	PAC frnd	200.00
649	PACE NEA PAC	2,892.00
878	VEA PACE	50.00
TOTAL CONTRIBUTIONS:		\$19,437.00

Information By:
Rep. Terry Martin
8/84

Questionable Donations

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
25	Cabaret Hotels	200.00
37	Alaska Credit Union	370.00
44	Fur Trappers	20.00
50	Legis (Ak)	100.00
71	Real Estate	20.00
86	Alcohol and Drug Abuse	150.00
90	Cranston, Allen	250.00
92	Alyeska Airways	45.00
100	American Security	35.00
118	Arts for Anchorage	10.00
123	Audobon Society	50.00
155	Bond Issue	55.00
170	Campaigner Pub	750.00
172	Candidates Raffle	250.00
188	Cheyenne ARFA Combin	100.00
213	Combined Fed Campaign	414.00
227	Conserv Caucus	365.00
253	Democratic Congressional Campaign	75.00
254	Democratic congressional Campaign	25.00
259	Demo Natl Comm	95.00
263	Democratic Congress Camp	100.00
265	Democratic National comm	125.00
266	Democratic National Party	25.00
270	Democratic Congress	30.00
308	E Systems Citizens	50.00
315	Roosevelt, Eleanor	125.00
330	Farthest North Club	60.00
340	Federal Campaign	48.00
357	Fusion Energy Found	350.00
363	Bush, George	50.00
373	Rep Victory Fund	4,528.00
380	Gun owners of Am	130.00
384	Handgun Control	45.00
401	Inaugural Ball	490.00
403	Institute for Leg Action	150.00
408	Isaac Walton	200.00
428	Helms, Jesse	25.00
487	KCHS Auditorium	10.00
502	Kodiak Times	72.00
503	KOTV	156.00
506	L-P Corp	20.00
513	Legislative Comm	35.00
546	Natl Tax Limitation	30.00
553	Metzenbaum	25.00
570	MNPL	200.00
574	Udall, Morris	178.00
579	North Pole H-S Fund	50.00

Information By:
Rep. Terry Martin

Questionable Donations

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
591	Congress Club, National	540.00
592	Education Assoc, National	100.00
595	Education Assoc, National	300.00
596	Conservative Comm, Nat	205.00
597	Demo, National	250.00
598	Education Assoc, National	200.00
604	Rep Fund, National	890.00
609	Rep Cong Comm, National	2,652.00
613	National Unity Comm	50.00
614	NCPAC Heritage Found	50.00
625	NOW ERA PAC	1,040.00
626	NR Congressional	20.00
627	National Rifle Assoc	3,566.00
629	NRCC	295.00
630	National Comm Effective Cong	105.00
632	Organization of Women, National	305.00
638	Oral Max Fac Surg	45.00
640	Hatch, Orrin	60.00
652	Political Action Fund	253.00
681	Pol Victory Fund	125.00
684	Political Liberties	100.00
685	Politician Caucus	100.00
718	Rep Natl Comm	14,357.00
728	Rep Natl Task Force	320.00
731	Rep Pres Task Force	3,110.00
732	Rep Sustaining Fund	763.00
793	Sea Turtle Rescue FN	57.00
810	Spenard Lions Club	50.00
816	Employer Rights	25.00
817	State Senate	200.00
833	Task Force	240.00
844	Connally Comm	25.00
870	Rep	18,186.00
871	US Defence Comm	130.00
884	Voice of the People	100.00
885	Vol Pol Fund	580.00
893	Wilderness Society	50.00
898	Wilson for Utah	50.00
907	World Affair Council	120.00
913	Rep Comm, National	2,806.00

TOTAL CONTRIBUTIONS: \$63,106.00

Information By:
Rep. Terry Martin
8/84

MEMORANDUM

State of Alaska

TO: Honorable Mary A. Nordale
Commissioner
Department of Revenue

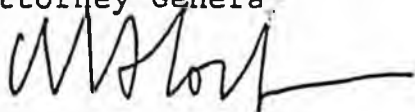
DATE: January 28, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: Release of list of
political
contribution tax
credit recipients



By: Richard D. Monkman
Assistant Attorney General

At your request, this office has examined the question of whether the Department of Revenue can release the 1985 list of "all persons claiming a political contribution tax credit under AS 43.20.13(a), including the dates, if available, and candidates or groups to which the contribution was made." As you note in your letter of January 27, 1986 to Senator Abood, "these lists or parts of them may not be made public except on order of the supreme court of the state." AS 43.20.013(a).

Having examined the statute, discussed the question with the Alaska Public Offices Commission (which keeps the list confidential, in accord with the statute), and reviewed the Supreme Court's Order of March 21, 1985, we conclude that the Department may not release the 1985 lists without an order of the Supreme Court. The statute is clear, and appears intended to protect the privacy interests of those who contribute small amounts to political causes. */

*/ In this light, we note that the Supreme Court's Order allowing partial release of the lists to Representative Martin did not allow release of the names of the contributors who received the tax credit. Rather, it limits disclosure to "a list of all candidates or groups to which contributions were made and for which the tax credit ... was claimed during calendar years 1983 and 1984." Order, March 21, 1985 (emphasis supplied). The Campaign Disclosure Act does not require disclosure of the names of those who contribute \$100 or less to a campaign or political group. AS 15.13.040. Thus, an individual contributing \$100 or less would expect that his or her contribution would not be made public, either by the A.P.O.C. or by your Department. Our understanding is that the legislators are not seeking the names of contributors, just the names of the groups and candidates to which contributions were made.

Honorable Mary A. Nordale
Commissioner
Department of Revenue

January 28, 1986
Page 2

The lists of groups and candidates who received contributions reimbursed by the tax credit in 1983 and 1984 has already been "made public" by disclosure to Representative Martin. The Supreme Court's Order does not restrict Representative Martin from releasing the lists to others. Thus, we conclude that those lists have become public information. There is no reason to withhold them from Senator Abood or any other interested party.

The proper procedure for the interested legislators to follow to obtain the 1985 lists, or to obtain more information regarding the 1983 and 1984 lists, is to apply to the Supreme Court. We note that the application should be very specific as to what information the legislators wish to obtain.

Please let me know if we can be of any further assistance in this matter.

HMB:RDM:cck

cc: Honorable Mitch Abood
Alaska State Senate
Alaska State Legislature

Honorable Terry Martin
Alaska House of Representatives
Alaska State Legislature

Theda S. Pittman, Executive Director
Alaska Public Offices Commission
Anchorage

A SPECIAL REPORT ON THE
DEPARTMENT OF REVENUE
POLITICAL CONTRIBUTION CREDIT PROGRAM
Claim Years 1981-1983

February 15, 1985

Audit Control Number

04-4210-85-S

Commissioner, Department of Revenue

Mary A. Nordale

Deputy Commissioners, Department
of Revenue

Taxation
Treasury

Bruce M. Botelho
Milt B. Barker

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

February 25, 1985

Members of the Legislative Budget
and Audit Committee:

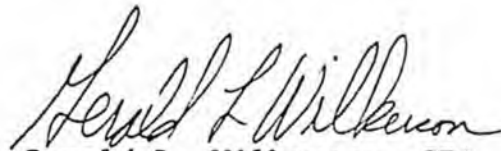
In accordance with the provisions of Title 24 of the Alaska
Statutes, the attached report is submitted for your review.

A REPORT ON THE
DEPARTMENT OF REVENUE
POLITICAL CONTRIBUTION CREDIT PROGRAM
Claim Years 1981-1983

February 15, 1985

Audit Control Number

04-4210-85-S



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, this report was prepared:

1. To determine the source of funds used to pay political contribution credits established and allowed under AS 43.20.013(a) since July 1980.
2. To review paid political contribution credit claims to determine if expenditures have been made in accordance with statute.

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ORGANIZATION AND FUNCTION

The political contribution credit program is administered by the Department of Revenue (DOR), Division of Administrative Services. The credits were continued after the Alaska State income tax was repealed by the 1980 Special Legislative Session. Rather than allowing political contributions to be taken as a credit against State income taxes, DOR pays residents up to \$100 per tax year for contributions made to eligible political candidates and organizations.

To receive reimbursement for contributions a resident must file a claim with DOR and supply supporting documentation of the contribution. DOR also reimburses residents for child care expenses in conjunction with the child care credits available on Federal income taxes. For further explanation of how the two tax credits are computed and how the State and Federal credits compare, see the Auditor's Comments section of this report.

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FUNDING HISTORY OF THE POLITICAL CONTRIBUTION CREDIT PROGRAM

On two occasions since the Alaska income tax was abolished, legislators have attempted to abolish the political contribution credit (PCC) program by not appropriating funds for claim payments. Both times the program was continued on the advice of the Department of Law because of defects in the way in which legislation was drafted. Following is a summary of the funding history of the program and the impact that various Attorney General interpretations have had on the administration of the program.

The Original Appropriation

When the 1980 Special Legislative Session repealed the State of Alaska income tax they appropriated \$112,042,000 to refund individuals and fiduciaries for taxes which had been paid after December 31, 1978, and for the payment of 1979 and 1980 tax credits payable by the State (Chapter 3, SSSLA 1930). Of this \$112,042,000 appropriation, \$1,542,000 was allocated to pay both anticipated PCC and child care credits (CCC) to be claimed by residents for 1979 and 1980. The following legislative session in turn appropriated \$1,632,000 from the General Fund to pay 1981 PCC and CCC claimed during FY 82.

FY 83 Appropriation - Legislature Attempts to Defund Program

In 1982, the Legislature made its first attempt to discontinue the PCC program. In its FY 83 budget request, DOR asked for a total of \$2,791,000 to fund both the PCC and CCC programs. The budget request indicated that the total was calculated from allocating \$1,758,000 for PCC claims and \$1,033,000 for CCC claims. The Legislature approved the requested \$1,033,000, designating the appropriation for "refundable credits." In the 1982 Free Conference Committee (FCC) minutes for the FY 83 budget, both the House and Senate Analysis note that the request for the PCC program was deleted from the final budget appropriation act.

DOR sought advice from the Department of Law regarding how they should respond to the apparent defunding of the PCC program. The Attorney General advised DOR that they should continue the program using the \$1,033,000 appropriation to fund both PCC and CCC claims. The Attorney General based the advice on his analysis of the budgetary language in the appropriation, and his view that the legislative intent regarding the program's future was unclear. The Attorney General felt that analysis statements in the FCC minutes did not conclusively state intent, and if the Legislature did not want to fund the PCC program it would have included, and should have used, a statement of legislative intent in the

body of the appropriation act itself (see Appendix A for full text of the July 15, 1982, memorandum).

In a February 8, 1983, letter to Representative Ward the Attorney General further explained the reasoning of his advice to DOR. In the letter, the Attorney General stated that his "... conclusion was also compelled by the fact that [the PCC law is] a mandatory law, one which requires the Department of Revenue to perform a certain duty." This certain duty is brought on by use of such phrases in the PCC statute as: "A resident individual is entitled to a tax credit..." and "A credit...shall be paid in the manner provided...." The Attorney General advised that due to such language, the Legislature is required to be more specific by either repealing the PCC portion of the tax credit statutes, or by making the appropriation itself more specific by expressly limiting its wording.

Supplemental Appropriation and FY 84 Funding

Due to the "shortfunding" of the credit programs by the 1982 Legislature, DOR sought and received a \$3,000,000 supplemental appropriation from the 1983 Legislature to further fund 1982 PCC claims. After receiving the supplemental appropriation, DOR used the remaining balance of the original 1982 refundable credit appropriation of \$1,033,000 to pay CCC claims. In addition to the supplemental appropriation, the 1983 Legislature appropriated \$500,000 for 1983 claims, to be paid during FY 84.

FY 85 Funding - Legislature Attempts Abolishment Again

When considering its FY 85 budget request for PCC and CCC claim funds, DOR decided rather than requesting new general fund appropriations, they would request legislative approval to "roll over" funds previously appropriated for claims. That is, they requested that the Legislature extend the lapse date of the original \$112,042,000 appropriation, in order that the balance could be used to fund 1984 PCC and CCC claims in FY 85. The Legislature responded to DOR's request by amending the language of the original appropriation.

In section 140, Chapter 171, SLA 1984 the Legislature deleted the original appropriation's reference to 1979 and 1980 payable tax credits and substituted a reference to child care tax credits. The Legislature attempted to accomplish two things with this amendment. First, they wanted to make the unobligated balance available for at least another claim year, and secondly, they wanted to restrict its use to payment of only CCC claims. By confining the appropriation's reference to child care credits only, the Legislature implicitly defunded the PCC program.

Once again, DOR sought advice from the Department of Law regarding the legal status of the program and the obligation of the State to continue paying PCC claims. The Attorney General advised DOR to continue paying both PCC and CCC claims with the balance of the extended appropriation. The Attorney General primarily based his reasoning on a separation of powers issue, stating in his memorandum to DOR's commissioner that:

We believe the extension of a lapse date is without question within the Legislature's power to appropriate. However, the attempt to radically restrict the objects of expenditure under an existing appropriation is an abuse of the Legislature's power because it constitutes an attempt to retroactively amend or repeal the [program's statutes].

The Attorney General concluded by arguing that the Legislature cannot indirectly repeal the PCC program's statutes. He states that "the constitution requires the Legislature to place such a measure before the Governor in a separate bill," and advises DOR to "...ignore the purported amendment which limits the purposes for which the appropriation may be spent." (See Appendix B for full text of the August 1, 1984, memorandum.)

The following table summarizes the history of the funding for the PCC program since the repeal of the State income tax:

<u>Claim Year</u>	<u>Amount Appropriated</u>	<u>Legislative Citation of Appropriation</u>
79 - 80	\$1,542,000 (1)	Chapter 3, SSSLA 1980
81	1,632,000 (2)	Chapter 82, SLA 1981
82	1,033,000 (3)	Chapter 101, SLA 1982
82	3,000,000	Chapter 34, SLA 1983
83	500,000	Chapter 107, SLA 1983
84	5,750,100 (4)	Chapter 171, SLA 1984

- (1) Amount represents allocated portion of \$112,042,000 appropriation made to repay withheld income taxes and payable tax credits when the State Income Tax was repealed. Allocation includes funds for paying child care credit claims.

- (2) Appropriation made for total refundable credit program, includes funding for both political contribution and child care credit claims.
- (3) According to House and Senate analysis included in 1982 Free Conference Committee minutes, this appropriation represents funding for child care credit claims only, but DOR also used it for political contribution credits upon advice from the Department of Law.
- (4) Represents the remaining balance of the \$112,042,000 appropriation made in Chapter 3, SSSLA 1980 to fund both withheld income taxes and refundable credits. [See Footnote (1)].

The table below summarizes expenditures made each fiscal year for political contribution credits by claim year:

Claim Year	Expenditures					Total
	FY 81	FY 82	FY 83	FY 84	FY 85*	
79 - 80	\$ 826,800	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$826,800
81	-0-	545,900	348,400	13,800	3,400	911,500
82	-0-	-0-	577,600	435,100	34,000	1,046,700
83	-0-	-0-	-0-	456,600	114,500	571,000

* Claims processed through November 30, 1984.

Source: Department of Revenue reports and subsidiary payment system. Expenditure totals are presented as reported and are unaudited.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Revenue (DOR) should develop and implement better review procedures for political contribution credit claims to prevent payment of credits for contributions made to ineligible recipients.

The governing statute [AS 43.20.013(a)] for the State's political contribution credit program entitles Alaskan residents to a tax credit reimbursement up to \$100 annually for political contributions. These political contributions can be made to individuals or organizations falling into three broad categories:

1. Candidates - Contributions can be made to candidates for: President or Vice President of the United States, U.S. Congressional Seats from Alaska, Governor or Lieutenant Governor of Alaska, the State Legislature, delegate to an Alaska constitutional convention, a municipal office, and/or a judge seeking retention.
2. Ballot proposition groups - Contributions can be made to groups seeking to influence the outcome of a ballot proposition or question in Alaska. DOR regulations [15 AAC 20.042(e)] further provide that "a contribution to a group seeking to influence the outcome of a ballot proposition or question in Alaska is allowable...only if the contribution is required to be reported to the Alaska Public Offices Commission (APOC) by that group."
3. Political action committee or group - Alaskans are also entitled to credit payments for "dues paid in a calendar year to a non-profit organization, organized primarily for the purpose of influencing elections in Alaska" (emphasis added).

We reviewed over 400 randomly selected political contribution credit claims filed with DOR in the past three years. Of those claims reviewed we found 64, or 16 percent, of the claim forms listed contributions made to one or more recipients that did not meet the statutory eligibility requirements. After calculating the dollar effect of payments made for these contributions, we project that for the three years reviewed, DOR has made payments of between \$170,400 and \$374,400 for contributions made to ineligible recipients.

The primary reason for this material error rate was the unclear status of contributions made to national political parties for what appears to be for use outside of Alaska for purposes other than supporting candidates eligible under the program's statutes. DOR has allowed and paid claims for

contributions made to the Republican National Committee, the Democratic Party and many of their affiliated organizations.

We asked the Department of Law if such contributions met any of the eligibility criteria set out in the program's governing statute (AS 43.20.013). The Attorney General responded that contributions made to organizations "...not exclusively organized for one of the purposes listed in AS 43.20.013(a)(1)(A)(i) through (viii)" would not qualify for credit payment. (See Appendix D for the full text of the February 5, 1985, memorandum.) We excluded contributions made to the Libertarian party from our projection of ineligible payments because upon closer examination of those particular claims we found most of these contributions were made to either the Alaskan Libertarian Party or otherwise appeared to be used exclusively in Alaska to support candidates or positions on various ballot propositions. Accordingly, contributions made to State and local Democratic and Republican party organizations and committees were also excluded from our ineligible payment projections.

Credit payments made for contributions to national special interest groups also contributed to our projected total of ineligible payments. In our test we found that DOR reimbursed claimants for contributions made to the National Rifle Association, the Audubon Society, the National Wildlife Federation, and the 2nd Amendment Foundation. These types of contributions violate not only the program's statutory criteria but also the regulatory requirement that the recipient organization must file with and report to APOC.

Currently, DOR is making only a cursory review of political contribution credit claims. We feel that the amount of credit payments for contributions to ineligible recipients is significant enough to warrant more scrutiny of the claims. A notice in a prominent location on the claim form that contributions to national political parties and organizations are not eligible for reimbursement should serve fair notice to affected claimants and serve to reduce most of the ineligible claim problems.

Because of the amount and number of payments involved, DOR should determine if it would be cost-effective to recover tax credits paid for ineligible contributions, and proceed accordingly.

Recommendation No. 2

DOR should improve its data processing edit functions to eliminate duplicate payments for political contribution credits.

We identified 125 instances during the period of our review where DOR made two payments that were both charged to the same credit claim year, and paid to the same claimant social security number. A little less than two-thirds of these apparent duplicates had reasonable explanations, such as spouses using the same social security number, the subsequent cancellation of one of the warrants, or one individual filing two different claims for different contributions while remaining under the \$100 annual limit. However, we identified 45 instances where credit payments were made twice to the same claimant for either the same claim or for different claims in excess of the annual \$100 limit. These duplicate and/or overpayment warrants totaled just over \$4,000.

Although small, given the \$2,427,840 in payments on the DOR files for the 1981-1983 period, the existence of these duplicates suggest a significant weakness in the edit and review process of PCC claim forms. We recommend that DOR consider developing an edit routine in their claim processing cycle that would "flag" multiple payments made to the same claimant social security number and provide a listing for manual follow-up and review.

(Intentionally left blank)

AUDITOR'S COMMENTS

When the Legislature repealed the State income tax in 1980, they retained two State tax credits - the political contribution credit (PCC) and child care credit (CCC) programs. These State income tax credits were modeled after tax credits available to Federal taxpayers.

The Internal Revenue Service (IRS) allows Federal income taxpayers a tax credit equal to 50 percent of total political contributions up to an annual maximum of \$50 (\$100 on joint returns). As a result, political contributors in Alaska can actually realize a profit on their contributions. For example, for a contribution of \$100 they are entirely reimbursed by the State and receive a \$50 credit from the IRS.

The IRS allows Federal taxpayers a nonrefundable credit for a portion of qualifying child or dependent care expenses paid for the purpose of being gainfully employed. The amount of the credit ranges from between 30 percent and 20 percent (depending on the taxpayer's adjusted gross income) of employment-related child care expenses up to a limit of \$2,400 (for one child) or \$4,800 (for two or more children). Under terms of the Alaska CCC program, individuals are entitled to a tax credit equal to 16 percent of the credit claimed on their Federal income tax return. For the 1983 claim year, the average CCC paid by DOR was \$64.69.

Both the PCC and CCC programs are costly and difficult to administer. Administration of the programs involve the processing of many claims for relatively small payment amounts. Costs involved in screening claims for compliance with eligibility criteria quickly can exceed the costs of paying ineligible claims.

Legislative Policy Options

According to DOR records, payments for PCCs for claim years 1981-1983 averaged just over \$790,000 annually, while expenditures for CCCs averaged about \$346,000 annually for the same period. As of January 31, 1985, the balance of the appropriations remaining for payment of both PCC and CCC claims was just over \$5.8 million.

Due to the difficulty and expense of administering the program, and because the Federal government provides Alaskan taxpayers with similar credits, and in light of the current prospects of significant decline in future State revenues, the Legislature may wish to consider abolishing either or both the PCC and CCC programs and lapsing the remaining appropriation for the payment of claims back to the General Fund.