

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4762 HJUD SB 243 - SB 274

334

# MEMORANDUM

State of Alaska

TO: Garrey Peska  
Chief of Staff  
Office of the Governor

DATE: December 30, 1987

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: 8 (g) 5A receipts from  
Beaufort Sale

FROM: Hugh Malone, Commissioner  
Department of Revenue



It is clear that of the estimated \$321,019,328 (27%) including interest to be received by the state from the above sale, that a minimum of \$144,661,144 is required by law to be deposited in the Alaska Permanent Fund upon receipt since all of the federal receipts are subject to the 50% permanent fund deposit.

(AS 37.13.010(a)(2)) if the land claimed by the state is determined to be federal lands, then another \$15,648,550 would be required to be deposited in the permanent fund.

One-half of one percent of the total, about \$1,586,900, is due to the public school fund.

I recommend that 50% of the total received be transferred to the Alaska Permanent Fund on receipt, with the provision that the Alaska Permanent Fund Corporation escrow the amount that may be due the general fund from the total 50% until such time that the issues are settled.

The advantage of doing that would be that the Alaska Permanent Fund Corporation can be expected to earn a higher rate of return than the general fund. If the escrow were established in the general fund, total state earnings would probably be less.

If this procedure is followed, about \$159,022,764 would be immediately available as general fund unrestricted dollars.

HM:mll



Alaska Permanent Fund Corporation

P.O. Box 4-1000 Juneau, Alaska 99802-4100

(907) 465-2047 Telex 099-46-323

DATE: December 29, 1987

TO: The Honorable Grace Schaible  
Attorney General of the State of Alaska

FROM: David A. Rose, Executive Director  
Alaska Permanent Fund Corporation

Hugh Malone, Commissioner  
Department of Revenue

SUBJECT: Allocation of 8-G Escrow Account Payment

The Alaska Permanent Fund Corporation and the Department of Revenue request your opinion regarding the allocation to the Alaska Permanent Fund of the payment to be made under recent amendments to section 8(g)5A of the Outer Continental Shelf Lands Act (adopted by Congress and signed by the President in December 1987). A copy of these amendments is attached as exhibit 1 with deleted language in brackets and new language in italics.

Bonus payments, rent and interest from three offshore lease sales - the joint State-Federal Beaufort Sea lease of 1979 and two subsequent Federal leases - have been deposited in the 8-G Escrow Account because ownership of the tracts is in dispute. The name of the account makes reference to the section of federal law which created it. In December 1987, Congress amended this section of the Outer Continental Shelf Lands Act to provide for the distribution of twenty-seven percent (27%) of the balance in that account, plus accrued interest, to the impacted state(s). This distribution represents the minimum due to the impacted state as federal mineral revenue sharing in the event that the Federal case prevails and the Court awards the ownership of all disputed tracts to the federal government.

It is important to note that this distribution is not appropriated to the State of Alaska by Congress; rather, it is made as a distribution to the State under the Outer Continental Lands Act (as amended). Section 8(g)5A of this Act makes no reference to the State of Alaska by name. It is a general section applicable to all states for which the receipt of bonus payments, rent and interest has been placed

The Honorable Grace Schaible  
December 29, 1987  
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in escrow pending the outcome of a boundary dispute. This payment represents the amount which would be due to the state impacted by the boundary dispute as federal mineral revenue sharing.

The allocation of this payment to the Permanent Fund is governed by the following section of the Alaska Statutes:

"A.S. 37.13.010(a) ALASKA PERMANENT FUND. (a) Under art IX, sec. 15 of the state constitution, there is established as a separate fund the Alaska permanent fund. The Alaska permanent fund consists of

(1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

(2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980; . . . "

According to the Department of Natural Resources, the four state leases involved in the dispute bear issue dates of January 1980; the sixteen federal leases involved in the dispute bear issue dates of July-August 1980. The balance of the 8-G Escrow Account as of November 30, 1987 is scheduled in exhibit 2, attached.

Specific questions raised by the federal payment to the state are as follows:

1. Is the allocation of distributions from the 8-G Escrow Account to the State of Alaska governed by the nature of the distribution, i.e., whether the distribution is a mineral lease rental, royalty, royalty sale proceed, net profit share, or a federal mineral revenue sharing payment?

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2. Is the distribution under section 8(g)5A of the Outer Continental Shelf Lands Act a federal mineral revenue sharing payment to the State of Alaska or something else?

3. Without regard to the outcome of pending litigation, is the allocation of distributions from the 8-G Escrow Account to the State of Alaska affected, changed, or in any way influenced at this time by the issue dates of the leases in dispute?

4. In the event that the State of Alaska prevails in court, would the allocation of distributions from the 8-G Escrow Account to the State of Alaska be affected, changed, or in any way influenced at that time by the issue dates of the leases in dispute?

5. In the event that the federal government prevails in court, would the allocation of distributions from the 8-G Escrow Account to the State of Alaska be affected, changed, or in any way influenced at that time by the issue dates of the leases in dispute?

6. In the event that the court upholds the current state/federal split of all disputed leases, would the allocation of distributions from the 8-G Escrow Account to the State of Alaska be affected, changed, or in any way influenced at that time by the issue dates of the leases in dispute?

7. In the event that the federal government prevails in court, would an amount allocated to the State general fund and subsequently found due and payable to the Alaska Permanent Fund be subject to the inflation impact provisions of AS 37.13.145 for the period between the date of allocation and the court decision? Would the State be required to hold the Permanent Fund harmless for the inflation impact of that period?

8. In the event that the federal government prevails in court, would an amount allocated to the State general fund and subsequently found due and payable to the Alaska Permanent Fund be subject to the net income provisions of AS 37.13.140 for the period between the date of allocation and the court decision? Would dividends be due and payable on the income which could have been generated by that amount and would the State be required to hold the Permanent Fund harmless for those dividends?

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9. In the event that the State of Alaska prevails in court, could an amount allocated to the Alaska Permanent Fund and subsequently found due and payable to the State general fund, be paid to the State general fund by means of adjustment by offset of subsequent mineral receipts?

Amendments to section 8(g)5A of the Outer Continental Shelf Lands Act is as follows:

(SXA) When there is a boundary dispute between the United States and a State which is subject to an agreement under section 1336 of this title, the Secretary shall credit to the account established pursuant to such agreement all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1) of this section), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary asserted by the State, if that money has not otherwise been deposited in such account. Proceeds of [such account] *an escrow account established pursuant to an agreement under section 7* shall be distributed as follows:

*(i) Twenty-seven percent of all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1)), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978, of any tract which lies wholly within three nautical miles of the seaward boundary asserted by the Federal government in the boundary dispute, together with all accrued interest thereon, shall be paid to the State either—*

*(I) within thirty days of December 1, 1987, or*

*(II) by the last business day of the month following the month in which those revenues are deposited in the Treasury, whichever date is later.*

*(ii) Upon the settlement of [any] a boundary dispute which is subject to a section 1336 agreement between the United States and a State, the Secretary shall pay to such State [all] any additional moneys due such State from amounts deposited in or credited to the escrow account. If there is insufficient money deposited in the escrow account, the Secretary shall transmit, from any revenues derived from any lease of Federal lands under this subchapter, the remaining balance due such State in accordance with the formula set forth in section 8004(b)(1)(B) of the Outer Continental Shelf Lands Act Amendments of 1985.*

EXHIBIT 2

ALASKA PERMANENT FUND CORPORATION

8-6 ESCROW ACCOUNT ALLOCATION

As of November 30, 1957

Total Due Permanent Fund

Lease Sale	Bonus	Rent	Interest	Subtotal	Accrued Int.	50% All Leases	25% State Leases
Beaufort Federal	477,064,586.80	1,758,304.00	461,749,796.80	940,572,687.60	10,113,303.60	128,342,608.81	128,342,608.81
Beaufort State	110,896,503.71		117,621,044.03	228,517,547.74	3,312,225.17	31,297,100.34	15,648,550.17
Beaufort State		338,751.00	359,841.70	698,592.70	10,135.03	95,678.24	95,678.24
Sale 71A	957,380.00	69,952.00	443,532.03	1,450,864.03	22,027.28	198,840.33	198,840.33
Sale 87	3,395,285.00	56,768.00	772,063.19	4,224,116.19	38,600.90	575,466.81	575,466.81
<b>Total Escrow</b>	<b>592,293,755.51</b>	<b>2,223,775.00</b>	<b>580,946,277.75</b>	<b>1,175,463,808.26</b>	<b>13,496,891.98</b>	<b>160,509,694.53</b>	<b>144,561,144.36</b>

## UNDERSTANDING THE 8-G ESCROW ACCOUNT

As of Nov. 30, 1987, the account contained \$1,175.5 million in bonus payments, rent and interest from three off-shore lease sales -- the joint State-Federal Beaufort Sea lease of 1979 and two subsequent Federal leases of much smaller dollar amounts. This total excludes approximately \$13.5 million in accrued interest to be deposited in the escrow account as treasury notes mature.

Ownership of many of these tracts is in dispute. In a worst-case scenario (from the standpoint of state revenue), the courts could award all tracts to the federal government. In this case, Alaska would receive 27% of the total in federal revenue-sharing payments, or \$321.0 million, including accrued interest. (This amount is increasing monthly.)

Congress is reported likely to release that 27% this year.

The portion of this \$321.0 million that would flow to the General Fund is the total amount less contributions to the Permanent Fund (per Constitution and AS 37.13.010) and the Public School Fund (per AS 37.14.150). Depending on the outcome of litigation over disputed tracts, the General Fund portion of the \$321.0 million Nov. 30, 1987 escrow total could range from a low of \$158.9 million to a high of \$174.6 million. Worksheets and documentation are attached.

AS 37.13.010(1) states that for mineral leases issued on or before December 1, 1979, 25% of all rentals, royalties, royalty sales and federal revenue sharing sales shall go to the Permanent Fund. Under this subsection, 25% of bonuses on all leases issued on or before February 15, 1980 goes to the Permanent Fund.

AS 37.13.010(2), increases the Permanent Fund share to 50% after December 1, 1979 for rentals, royalties, royalty sales and federal revenue sharing; similarly, under subsection (2), the Permanent Fund receives 50% of bonuses for leases issued after February 15, 1980.

AS 37.14.150 directs 0.5% of mineral lease payments to the Public School Fund; effective dates are not at issue for this portion of the 8-g revenue.

The Department of Natural Resources has been informed by the federal MMS that none of the federal leases were issued on or before Feb. 15, 1980. Therefore, these leases fall under as 37.13.010(2), which deposits 50% to the Permanent Fund. This group of leases, with the associated interest, accounts for more than 80% of the dollar total in the 8-g escrow account.

The general fund portion of the revenues within the remaining 20% (\$229 million in state-issued Beaufort lease bonuses plus interest) will depend on whether these leases are determined by subsequent court decision to be State or Federal property.

Understanding the 8-g Escrow Account  
Draft, 12/17/87  
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This analysis assumes that interest payments follow the payments to which that interest accrues, per Attorney General's Opinion #663-86-0378 (Dec. 18, 1986) regarding interest on refunds from the TAPS tariff case.

The Departments of Revenue and Law have advised that the split between the General Fund and the Permanent Fund may require subsequent legal analysis and policy decisions.

8-g Escrow as of 11/30/87

**AMOUNT IN 8-G ESCROW ACCOUNT, 11/30/87**

Lease Sale:	Bonus	+	Rent	+	Interest	=	Subtotal In Escrow	+	Accrued Int.	=	Total In Escrow Plus Accrued Int.
Beaufort Federal	\$ 477,064,586.80		\$ 1,758,304.00		\$ 461,749,796.80		\$ 940,572,687.60		\$ 10,113,303.60		\$ 950,685,991.20
Beaufort State	110,896,503.71		338,751.00		117,980,885.73		229,216,140.44		3,322,960.20		232,539,100.64
Sale 71A	937,380.00		69,952.00		443,532.03		1,450,864.03		22,027.28		1,472,891.31
Sale 87	3,395,285.00		56,768.00		772,063.19		4,224,116.19		38,600.90		4,262,717.09
Total Escrow Acct.	\$ 592,293,755.51		\$ 2,223,775.00		\$ 580,946,277.75		\$ 1,175,463,808.26		\$ 13,496,891.98		\$ 1,188,960,700.24
27% of Total							<u>\$ 317,375,228.23</u>				<u>\$ 321,019,389.06</u>

Source: Joe Romero, Funds Administration & Investment Section, MMS, Denver (303/231-3123; 12/16/87)

**CASE #1: COURT AWARDS ALL LEASES TO FEDERAL GOVERNMENT**

Lease Sale:	Subtotal in Escrow (From page 1)	- 0.5% Public (AS 37.14.150)	- Permanent Fund (AS 37.13.010)	= General Fund Portion +	Gen. Fund Portion = of Accrued Int. (d)	Gen. Fund Escrow Plus Accrued Int.
Beaufort Federal	\$ 940,572,687.60	\$ 4,702,863.44	\$ 470,286,343.80 (c)	\$ 465,583,480.36	\$ 5,006,085.28	\$ 470,589,565.64
Beaufort State	229,216,140.44 (b)	1,146,080.70	114,608,070.22 (c)	113,461,989.52	1,644,865.30	115,106,854.82
Sale 71A (a)	1,450,864.03	7,254.32	725,432.02	718,177.69	10,903.50	729,081.19
Sale 87 (a)	4,224,116.19	21,120.58	2,112,058.10	2,090,937.51	19,107.45	2,110,044.96
<b>Total Escrow Acct.</b>	<b>\$ 1,175,463,808.26</b>	<b>\$ 5,877,319.04</b>	<b>\$ 587,731,904.13</b>	<b>\$ 581,854,585.09</b>	<b>\$ 6,680,961.53</b>	<b>\$ 588,535,546.62</b>
<b>27% of Total</b>	<b>\$ 317,375,228.23</b>	<b>1,586,876.14</b>	<b>158,687,614.12</b>	<b>\$ 157,100,737.97</b>	<b>1,803,859.61</b>	<b>\$ 158,904,597.59</b>

**Assumptions:**

- (a) All leases from sales 71A and 87 issued subsequent to 2/15/80 and therefore 50% goes to Permanent Fund.
- (b) Includes bonuses, short-term lease bonus interest payments, rent and subsequent escrow account investment interest
- (c) 50% of Beaufort State and Federal lease Federal Revenue Sharing to Permanent Fund under AS 37.13.010(1) because all were issued after 12/1/79.
- (d) Interest and accrued interest pro-rated per Attorney General Opinion 663-86-0378 (12/18/86).

**CASE #2 COURT AWARDS ALL LEASES TO STATE**

Lease Sale:	Subtotal In Escrow (From page 1)	-	0.5% Public (AS 37.14.150)	-	Permanent Fund (AS 37.13.010)	=	General Fund Portion +	Gen. Fund Portion = of Accrued Int. (e)	Gen. Fund Escrow Plus Accrued Int.
Beaufort Federal	\$ 940,572,687.60	\$	4,702,863.44	\$	470,286,343.80 (c)	\$	465,583,480.36	\$ 5,006,085.28	\$ 470,589,565.64
Beaufort State									0.00
Bonus + Interest (a)	228,877,389.44		1,144,386.95		57,219,347.36 (d)		170,513,655.13	2,473,173.25	
Rent	338,751.00		1,693.76		169,375.50 (e)		167,681.75	1,615.96	
Sale 71A (b)	1,450,864.03		7,254.32		725,432.02		718,177.69	10,903.50	729,081.20
Sale 87 (b)	4,224,116.19		21,120.58		2,112,058.10		2,090,937.51	19,107.45	2,110,044.96
Total Escrow Acct.	\$ 1,175,463,808.26	\$	5,877,319.04	\$	530,512,556.77	\$	639,073,932.45	\$ 7,510,885.44	\$ 646,584,817.89
27% of Total	\$ 317,375,228.23		1,586,876.14		143,238,390.33	\$	172,549,961.76	2,027,939.07	\$ 174,577,900.83

**Assumptions:**

- (a) Includes short-term lease bonus interest payments plus subsequent escrow account investment interest  
(b) All leases from sales 71A and 87 issued subsequent to 2/15/80 and therefore 50% goes to Permanent Fund.  
(c) 50% of bonus, rents and interest from all federally managed leases to Permanent Fund under AS 37.13.010(2) because all were issued after 2/15/80.  
(d) 25% bonus + bonus interest to the Permanent Fund under AS 37.13.010(1) because all leases were issued on or before 2/15/80.  
(e) 50% lease rental to Permanent Fund under AS 37.13.010(2) because all leases were issued after 12/1/79.  
(f) Interest and accrued interest pro-rated per Attorney General Opinion 663-86-0378 (12/18/86).

**CASE #3: COURT UPHOLDS PRESENT STATE/FEDERAL SPLIT**

Lease Sale:	Subtotal in Escrow (From page 1)	- 0.5% Public (AS 37.14.150)	- Permanent Fund (AS 37.13.010)	= General Fund Portion	+ Gen. Fund Portion of Accrued Int. (f)	= Gen. Fund Escrow Plus Accrued Int.
Beaufort Federal	\$ 940,572,687.60	\$ 4,702,863.44	\$ 470,286,343.80 (c)	\$ 465,583,480.36	\$ 5,006,085.28	\$ 470,589,565.64
Beaufort State						0.00
Bonus + Interest (a)	228,877,389.44	1,144,386.95	57,219,347.36 (d)	170,513,655.13	2,473,173.25	
Rent	338,751.00	1,693.76	169,375.50 (e)	167,681.75	1,615.96	
Sale 71A (b)	1,450,864.03	7,254.32	725,432.02	718,177.69	10,903.50	729,081.20
Sale 87 (b)	4,224,116.19	21,120.58	2,112,058.10	2,090,937.51	19,107.45	2,110,044.96
Total Escrow Acct.	\$ 1,175,463,808.26	\$ 5,877,319.04	\$ 530,512,556.77	\$ 639,073,932.45	\$ 7,510,885.44	\$ 646,584,817.89
27% of Total	\$ 317,375,228.23	1,586,876.14	143,238,390.33	\$ 172,549,961.76	2,027,939.07	\$ 174,577,900.83

**Assumptions:**

- (a) Includes short-term lease bonus interest payments plus subsequent escrow account investment interest.  
(b) All leases from sales 71A and 87 issued subsequent to 2/15/80 and therefore 50% goes to Permanent Fund.  
(c) 50% of bonus, rents and interest from all federally managed leases to Permanent Fund under AS 37.13.010(2) because all were issued after 2/15/80.  
(d) 25% bonus + bonus interest to the Permanent Fund under AS 37.13.010(1) because all leases were issued on or before 2/15/80.  
(e) 50% lease rental to Permanent Fund under AS 37.13.010(2) because all leases were issued after 12/1/79.  
(f) Interest and accrued interest pro-rated per Attorney General Opinion 663-86-0378 (12/18/86).

(1) "applicant" means a person making application to the corporation for financial assistance;

(2) "board" means the Board of Directors of the Alaska Resources Corporation;

(3) "corporation" means the Alaska Resources Corporation;

(4) "project" means products, markets, innovation, or technological developments for the rehabilitation, enhancement, or development of resources and includes applied research for those products, markets, or technological developments;

(5) "rehabilitation, enhancement and development" means an activity that leads to an increase in the quality or productivity of a resource, and to an increase in the benefits derived from the resource for citizens of the state;

(6) "resource" includes but is not limited to fisheries, agriculture, forest products, renewable energy, tourism, mining, basic manufacturing, and other industrial development; "resource" does not include real estate development or retail sales or services;

(7) "small enterprise" means a business enterprise with gross sales revenue of \$10,000,000 or less for its annual reporting period ending immediately before an application to the corporation for financial assistance; a new business enterprise that has not completed an annual reporting period before an application but that anticipates sales revenue of \$10,000,000 or less in its first annual reporting period is a "small enterprise." (§ 3 ch 179 SLA 1978; am §§ 23 — 28 ch 142 SLA 1982)

*Effect of amendments.* — The 1982 amendment substituted "Directors" for "Trustees" and deleted "Renewable" preceding "Resources Corporation" in paragraph (2), deleted "Renewable"

preceding "Resources Corporation" in paragraph (3), deleted "renewable" preceding "resources" in paragraph (4), and rewrote paragraphs (5) and (6), and added paragraph (7).

### Chapter 13. Alaska Permanent Fund.

Section	Section
10. Alaska permanent fund	120. Investment responsibilities of the board
20. Findings	140. Income
30. Purpose	145. Disposition of income
40. Alaska Permanent Fund Corporation	150. Corporation budget
50. Composition and qualifications of board of trustees	160. Audits
60. Term of office	170. Reports and publications
70. Removal and vacancies	180. Tax exemption
80. Quorum	190. Political activities
90. Compensation of board members	200. Public access to information
100. Corporation staff	205. Regulations
110. Conflicts of interest	210. Definitions

**Sec. 37.13.010. Alaska permanent fund.** (a) Under art. IX, § 15 of the state constitution, there is established as a separate fund the Alaska permanent fund. The Alaska permanent fund consists of

(1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

(2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980;

(3) any other money appropriated to or otherwise allocated by law to the Alaska permanent fund.

(b) Payments due the Alaska permanent fund under (a) of this section shall be made to the fund once each month.

(c) The Alaska permanent fund shall be managed by the Alaska Permanent Fund Corporation established in this chapter. (§ 5 ch 18 SLA 1980)

*Legislative history reports.* — For the House Journal, Supplement No. 7, April 2, Free Conference Committee Report on ch. 1980, 18, SLA 1980 (FCCSR 181), see 1980

**Sec. 37.13.020. Findings.** The people of the state, by constitutional amendment, have required the placement of at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the state into a permanent fund. The legislature finds with respect to the Alaska Permanent Fund Corporation that

(1) the corporation should provide a means of conserving a portion of the state's revenues from mineral resources to benefit all generations of Alaskans;

(2) the corporation's goal should be to maintain safety of principal while maximizing total return;

(3) the corporation should be used as a savings device managed to allow the maximum use of disposable income from the corporation for purposes designated by law. (§ 5 ch 18 SLA 1980)

**Sec. 37.13.030. Purpose.** It is the purpose of this chapter to provide a mechanism for the management and investment of those permanent fund assets allocated to the Alaska Permanent Fund Corporation in a manner consistent with the findings in AS 37.13.020. (§ 5 ch 13 SLA 1980)

**Sec. 37.13.040. Alaska Permanent Fund Corporation.** There is established the Alaska Permanent Fund Corporation. The corporation is a public corporation and government instrumentality in the Depart-

(2) to have prepared an annual accounting of the principal and income of the fund established in AS 37.14.110; and

(3) to prepare long-range investment plans for the fund established in AS 37.14.110. (§ 4 ch 182 SLA 1978)

**Sec. 37.14.140. Fund utilization.** The principal of the fund established in AS 37.14.110 shall be retained in the fund for investment as specified in AS 37.14.170. The income of the fund may not be appropriated for a purpose other than for the support of public education programs. (§ 4 ch 182 SLA 1978)

**Sec. 37.14.150. Contributions.** During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund created in AS 37.14.110 a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses. (§ 4 ch 182 SLA 1978)

### Article 3. Custody and Investment of Trust Funds.

#### Section

- 160. Duties of commissioner of revenue
- 170. Investments

**Sec. 37.14.160. Duties of commissioner of revenue.** The commissioner of revenue is the treasurer of the funds created in AS 37.14.010 and 37.14.110 and shall

(1) act as official custodian of the cash and securities belonging to those funds and provide adequate safe deposit facilities for each of them;

(2) receive cash belonging to those funds;

(3) collect the principal on securities acquired for each fund established under AS 37.14.010 and 37.14.110 and credit each fund accordingly;

(4) collect interest and dividends earned on investments of the funds established under AS 37.14.010 and 37.14.110 and credit the income reserve account of each fund accordingly;

(5) invest and reinvest the principal of each fund in accordance with AS 37.14.170. (§ 4 ch 182 SLA 1978)

**Sec. 37.14.170. Investments.** (a) The commissioner of revenue, with the approval of each advisory board created in AS 37.14.020 and 37.14.120, may invest the principal of the funds created in AS 37.14.010 and 37.14.110 in the same manner as specified for the investment of surplus pension funds under AS 39.35.110.

(b) The commissioner of  
(1) invest and reinvest t  
(2) sell, exchange, conve  
ments of the funds by priv.

(3) vote upon a stock, b  
special proxy or power of a  
tion; exercise a conversion  
and make payments incid  
corporate reorganization or  
delegate discretionary pow  
nection with the delegation  
of an owner with respect t  
ments held in the funds;

(4) make, execute, ackno  
and conveyance and instru  
the powers granted;

(5) register investments  
having the power to appro

(6) do all acts whether  
sidered proper for the prot  
(§ 4 ch 182 SLA 1978)

### Chapter

#### Article

- 1. General Obligation Bonds (§§
- 2. Bond Anticipation Notes (§§
- 3. International Airports Reven

### Article 1.

#### Section

- 10. Full faith and credit for ger  
gation bonds
- 12. Continuing debt service e  
tion
- 15. Committee shall publish  
existing state indebtedne  
election
- 20. Manner and amounts of sa
- 30. Interest rate and maturity
- 40. Sale of bonds
- 50. Redemption
- 60. Form and registration of b
- 70. Place of payment
- 80. Signatures and seal
- 90. Terms and conditions
- 100. Trustee
- 110. Creation and membershi  
bond committee

# MEMORANDUM

# State of Alaska

TO: Milt Barker  
Deputy Commissioner  
Department of Revenue

DATE: March 12, 1987

FILE NO.: 223-78-0155

THRU: TELEPHONE NO.: 465-3600

SUBJECT: Disposition of TAPS  
settlement proceeds

FROM: Grace Berg Schaible  
Attorney General

By: Robert M. Maynard *RMM*  
Assistant Attorney General  
Department of Law

You have asked about the disposition of interest earned on TAPS settlement proceeds to the appropriate fund. Pending a prior opinion of the attorney general, the interest on those funds was held in abeyance. On December 18, 1986, we opined that the interest should have gone to the rainy day fund. Unfortunately, between the time of the receipt of the interest and the time of our opinion, the balance of the rainy day fund was transferred to the budget reserve fund by secs. 301 and 538 of ch. 130, SLA 1986. The question you have asked is whether that latter appropriation of the "balance" of the rainy day fund included the interest funds held in abeyance, and not yet physically credited to the rainy day fund. Since the rainy day fund was eliminated effective July 1, 1986 (sec. 2, ch. 58, SLA 1986), the choice is now between sending that money to the budget reserve fund or returning that money to the general fund.

It is our understanding that standard accounting practice under the state's cash accrual system would usually provide for the retroactive adjustment of fund balances as more recent information becomes available. Based on that understanding, it is our opinion that that general practice should be followed, and the interest that was held in abeyance pending the attorney general opinion should be retroactively credited to the rainy day fund, and thus transferred to the budget reserve fund.

If you have any questions, please do not hesitate to call.

RMM:jf

# MEMORANDUM

# State of Alaska

TO: Milt Parker, Deputy Commissioner  
Department of Revenue

DATE: December 18, 1986

FILE NO: 663-86-0378

TELEPHONE NO: 465-3600

FROM: Ronald W. Lorensen  
Acting Attorney General

SUBJECT: Interest on royalties under TAPS settlement

By: Jonathan B. Rubini *JR*  
Assistant Attorney General  
Governmental Affairs-Juneau

You have asked that we supplement our opinion of April 30, 1986 to address whether interest on royalties received by the state under the TAPS settlement should be apportioned between the rainy day fund, the permanent fund and the public school fund. We believe the appropriate interpretation of sec. 762, ch. 105, SLA 1985 is that interest payments should be allocated among the three funds in proportion to the direct allocation of royalty payments. In the immediate context, the interest payments are plainly designed to compensate the state for the deprivation of such receipts during the course of the tariff disputes and should therefore be deposited in the fund which, presumably, was deprived of the underlying royalty payment.

JBR/pjg

DEC 18 1986

OFFICE OF THE COMMISSIONER

*Richard Fineberg*

# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL AND GAS

## State of Alaska

TO: *Richard A. Fineberg*  
Policy Analyst  
Office of Management and Budget

DATE: December 16, 1987

FILE NO: 762-2581

TELEPHONE NO:

SUBJECT: Oil and Gas Leases  
Disputed Acreage

FROM: *Carol D. Wilkinson*  
Lease Enforcement Supervisor

I have compiled the following information on the Joint State/Federal Beaufort Sea Sale disputed acreage. The sale was held December 11, 1979.

### State Managed Leases:

FILE #	ISSUE DATE	EFFECTIVE DATE	Bonus DOLLARS	Rent RENT	INTEREST **
ADL 312816	1/24/80	2/1/80	\$10,005,230.92	\$ 89,851.00	\$ 26,022.49
ADL 312823	1/24/80	2/1/80	18,380,457.69	\$1,884.00	47,805.53
ADL 312822	1/23/80	2/1/80	53,900,406.00	100,947.00	178,422.22
ADL 312868	1/23/80	2/1/80	28,610,409.00	56,068.00	94,706.81
TOTAL			\$110,896,503.50	\$338,750.00	\$346,957.05

\* Total cash bonus amount.

\*\* Annual Rental payments through 1987.

\*\*\* Interest at the rate of 10.64% was paid from the time the bidders received their award notice until the balance of the cash bonus was received by the State of Alaska.

It appears that the rental amounts should be distributed with 50% to the Permanent Fund, while only 25% of the bonus amounts would go to the Permanent Fund. I still have a question on the interest amounts. Can you provide some documentation to indicate how interest payments should be distributed? Should some portion (.5%) go to the Public School Fund?

I received the issue dates and effective dates of the federal disputed leases from Minerals Management Service. These are only the leases directly effected by the Dinkum Sands issue. I have not been able to acquire a list of other disputed leases. I'll continue to work on the additional information.

DELIVER TO: <i>Richard Fineberg</i>	LOCATION: <i>OMB Bureau</i>
FROM: <i>Carol Wilkinson</i>	LOCATION: <i>DOG Anchorage</i>
TELEPHONE/TELECOPIER # <i>465-3585</i>	TOTAL NUMBER OF PAGES <i>2</i>
TRANSMITTING ON SPEED <i>1</i>	DATE <i>12/16/87</i> TIME <i>4:00</i>
PHONE FOR PROBLEMS NAME/NUMBER <i>Carol 762-2581</i>	
COMMENTS	

Federal Managed Leases:

<u>FILE NUMBER</u>	<u>ISSUE DATE</u>	<u>EFFECTIVE DATE</u>
Y-0179	7/24/80	8/1/80
Y-0180	7/24/80	8/1/80
Y-0181	7/16/80	8/1/80
Y-0182	7/23/80	8/1/80
Y-0183	7/23/80	8/1/80
Y-0184	7/24/80	8/1/80
Y-0188	7/28/80	8/1/80
Y-0189	7/14/80	7/1/80
Y-0190	7/14/80	7/1/80
Y-0191	7/14/80	7/1/80
Y-0192	7/14/80	7/1/80
Y-0193	7/14/80	7/1/80
Y-0194	7/15/80	8/1/80
Y-0195	7/15/80	8/1/80
Y-0196	7/16/80	8/1/80
Y-0197	7/15/80	7/1/80

I find it interesting that it took them seven months to issue these leases. Let me know if you need additional information. Beverly Sires at MMS was very helpful. If you want to call her directly, her number is 261-4417.

3364t

DIVISION OF BUDGET REVIEW  
(\$ Millions)

SUMMARY OF REVENUES AND APPROPRIATIONS  
FISCAL YEARS 1988 AND 1989  
GENERAL FUND AND GENERAL FUND/PROGRAM RECEIPTS

1/14/88

ITEM	SUBTOTAL	TOTAL
<b>FISCAL YEAR 88</b>		
1. FY 87 Year-End Balance from Annual Financial Report		19.7
2. Adjustments to FY 88 Revenues		305.9
A. Drilling Incentive Credit	.0	
B. Extraordinary Payments to General Fund	2.8	
C. Estimated Lapse of FY 88 Appropriations	.0	
D. Administrative Transfer - AHFC Insured Mtge Pgm Bonds	10.9	
E. Repeal/Transfer of Prior Capital, Loan Balances	92.5	
F. TAPS Tariff Adjustment (1987)	2.1	
G. Federal Lease Rental Revenue Adjustment	-1.4	
H. FY 88 Restricted GF/Program Receipt Revenue	39.2	
I. Dinkum Sands	159.8	
3. FY 88 Appropriations		-2,323.0
A. FY 88 Operating Programs	-1,764.5	
- Ch.95, Sec.22: Personal Services	-37.7	
- GF/Program Receipts	-45.4	
B. FY 88 G.O. Debt	-148.0	
C. Capital Projects	-98.	
D. Loan Programs	-63.0	
- Student Loan Corp GF Reimbursement	41.0	
E. Supplementals (not yet drafted)		
- Personal Services	-27.7	
- Other	-28.9	
F. Jobs Bill (not yet drafted)	-150.0	
4. FY 88 Unrestricted Revenues (& ANS Oil Price on the U.S. Gulf)		2,092.4
- Mean Case (\$15.89)		
5. Estimated <del>GF Surplus</del> (Shortfall) FY 88		95.0
- Mean Case		
<b>FISCAL YEAR 89</b>		
1. Adjustments to FY 89 Revenues		295.9
A. Drilling Incentive Credit	.0	
B. Extraordinary Payments to General Fund	2.8	
C. Estimated Lapse of FY 88 Appropriations	.0	
D. Transfer of Loan Fund Balances to the General Fund	10.0	
E. FY 89 Restricted GF/Program Receipt Revenue	55.4	
F. Backup Funding Sources		
- Railbelt Energy Fund	227.7	
2. FY 89 Appropriations		-2,196.1
A. FY 89 Operating Programs	-1,886.7	
- GF/Program Receipts	-52.1	
B. FY 89 G.O. & Other Debt	-147.3	
C. Capital Projects General Fund	-69.0	
- GF/Program Receipts	-10.4	
D. Loan Programs	-30.6	
3. FY 89 Unrestricted Revenues (& ANS Oil Price on the U.S. Gulf)		
- 30% Case (\$14.69)		1,784.6
- Mean Case (\$16.01)		1,983.1
- 70% Case (\$17.66)		2,187.6
4. Estimated GF Surplus (Shortfall) Entering FY 90		
- 30% Case		-20.6
- Mean Case		177.9
- 70% Case		382.4

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

TREASURY DIVISION

STEVE COWPER, GOVERNOR

ELEVENTH FLOOR  
STATE OFFICE BUILDING  
P.O. BOX SB  
JUNEAU, ALASKA 99811-0400

January 22, 1988

JAN 26 1988

The Honorable John Sund  
House Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Sund:

At the January 20, 1988 hearing of your committee on SB 243 am, the question was raised as to what appropriations have been made to the Budget Reserve Fund. They have been:

1. Sections 301 and 538, Ch. 130, SLA 86

These sections appropriated the balance in the emergency operating expenses account ("rainy day fund") (AS 37.05.159, now repealed), effective July 1, 1986, to the budget reserve fund (AS 37.05.156.) this amount was \$433,235,000.

The major part of the balance of the budget reserve fund, \$427,360,000 was appropriated, effective March 18, 1987, to the general fund by sec. 3, Ch. 2, SLA 87. The remainder, \$5,875,000, was transferred to the disaster relief fund (AS 44.19.048) pursuant to AS 26.23.020(g)(2) and AS 26.23.050(a). This transfer was ratified by sec. 1, Ch. 2, SLA 87.

2. Section 1, Ch. 5, FSSLA 87

This is a 1987 special session appropriation from the general fund to the budget reserve fund in the amount of \$250,000,000, effective July 24, 1987. The appropriation is not required to be deposited in the budget reserve fund by any time certain. The appropriation does not lapse. The transfer thus could occur after FY 88. However, it is an outstanding obligation against the general fund and, until paid, like any other unexpended appropriation, will be counted against the general fund balance in determining the general fund surplus or deficit. This is relevant to the following appropriation.

The Honorable John Sund  
January 22, 1988  
Page 2

3. Section 2, Ch. 5 FSSLA 87

This is a 1987 special session appropriation from the general fund to the budget reserve fund in the amount of any general fund surplus as of June 30, 1988, as will be reported in the State's "Annual Financial Report" for fiscal year 1988. The surplus, if any, appropriated by this section would be net of the appropriation to the budget reserve fund already made to the fund by section 1 of the same act. The language of the appropriation does not appear to permit any delay in transfer of the funds once the amount of the surplus is determined.

I hope this helps to clarify the status of the budget reserve fund.

Sincerely,



Milton B. Barker  
Deputy Commissioner

MBB/gb  
88-18

cc: Representative Sam Cotten  
Royce Weller

Revisor's notes. — Enacted as AS 37.05.156. Renumbered in 1986. Effective dates. — Section 2, ch. 17, SLA 1986, makes this section effective April 24, 1986, in accordance with AS 01.10.070(c).

Sec. 37.05.153. Railbelt energy fund. There is established in the general fund the Railbelt energy fund. The fund consists of money appropriated to it by the legislature. The Department of Revenue shall manage the fund. Interest received on money in the fund shall be accounted for separately and may be appropriated into the fund annually. The legislature may appropriate money from the fund to assist in meeting Railbelt energy needs. (§ 1 ch 29 SLA 1986)

Revisor's notes. — Enacted as AS 44.25.050. Renumbered in 1986. Cross references. — For railbelt energy council formed to review railbelt energy problems and needs, see ch. 30, SLA 1986, in the Temporary and Special Acts. Effective dates. — Section 2, ch. 29, SLA 1986, makes this section effective May 21, 1986, in accordance with AS 01.10.070(c).

Sec. 37.05.155. [Renumbered as AS 37.05.151]

Sec. 37.05.156. Budget reserve fund; appropriation limit. (a) There is established as a separate fund in the state treasury the budget reserve fund. The budget reserve fund consists of appropriations to the fund. Money received by the state that is subject to the appropriation limit under (b) of this section and that exceeds that limit, may be appropriated to the budget reserve fund.

(b) Except for appropriations to the permanent fund or for Alaska permanent fund dividends, appropriations to the budget reserve fund, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a nonstate source in trust for a specific purpose, including revenue of a public enterprise or public corporation of the state that issues revenue bonds, appropriations from the treasury made in a fiscal year may not exceed appropriations made in the preceding fiscal year by more than five percent plus the change in population and inflation since the beginning of the preceding fiscal year. For purposes of applying this limit an appropriation is considered to be made in the fiscal year in which it is enacted and a reappropriation remains attributed to the fiscal year in which the original appropriation is enacted. The determination of the change in population for purposes of this subsection shall be based on an annual estimate of population by the Department of Labor. The determination of the change in inflation for purposes of this subsection shall be based on the Consumer Price Index for all urban consumers for Anchorage prepared by the United States Bureau of Labor Statistics. The amount of money received by the state that is subject to the appropriation

limit includes the balance in the general fund carried forward from the preceding fiscal year.

(c) If the legislature determines that the money subject to the appropriation limit received by the state in a fiscal year is less than the maximum permitted to be appropriated under (b) of this section, up to 25 percent of the balance of the budget reserve fund may be appropriated to the general fund.

(d) The Department of Revenue shall manage and invest assets of the budget reserve fund in the manner set out for the management and investment of the assets of the general fund under AS 37.10.070. Income from investment of the budget reserve fund may be appropriated to the fund each year by law.

(e) Notwithstanding other provisions of this section, appropriations may be made from the budget reserve fund needed by the governor to meet a disaster. In this subsection, "disaster" has the meaning given in AS 26.23.230. (§ 1 ch 58 SLA 1986)

Effective dates. — Section 4, ch. 58, SLA 1986, provides: "This Act takes effect July 1, 1986."

SLA 1986 provides that this section "applies to fiscal year 1985 and four years thereafter"

Editor's notes. — Section 3, ch. 58,

*Secs. 37.05.157, 37.05.158. Reserve for capital outlay account; reserve for energy facilities development account. [Repealed, § 62 ch 14 SLA 1987.]*

*Sec. 37.05.159. Reserve for emergency operating expenses account. [Repealed, § 2 ch 58 SLA 1986.]*

**Sec. 37.05.165. Petty cash accounts [Effective January 1, 1988].** The Department of Administration shall determine the amount of the petty cash accounts needed by each state agency and inspect the petty cash accounts at least once each year to determine that the total plus amounts of receipts for unreplenished disbursements is equal to the fixed sum of cash set aside. Shortages in petty cash accounts are a personal liability of the responsible head of the agency to whom the account is set aside. The department shall adopt necessary regulations governing use and replenishment of petty cash funds. (§ 38 ch 106 SLA 1986)

Revisor's notes. — Enacted as AS 37.05.232. Renumbered in 1986.

SLA 1986, as amended by § 27, ch. 65, SLA 1987, makes this section effective January 1, 1988

Effective dates. — Section 69, ch. 106,

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STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

*House Judiciary:*

1988 - March 29

March 30

April 19

(7)

# HOUSE COMMITTEE REPORT

Date referred: 3/7/88

FURTHER REFERRALS:

DATE: April 19, 1988

The Judiciary Committee has considered SB 246

"An Act relating to employment protection for jurors."

**RECOMMENDS:**

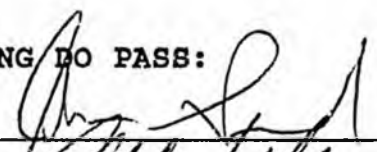
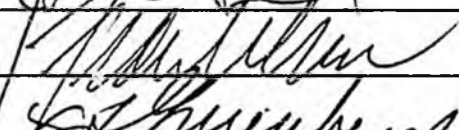
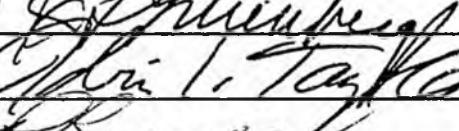
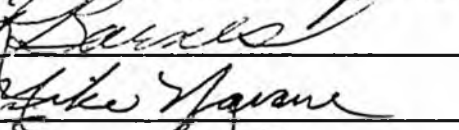
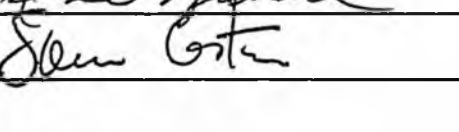
- replace with HCS SB 246 (Jud)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

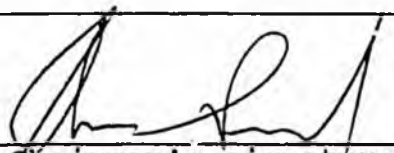
**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING TO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

  
 \_\_\_\_\_  
 Chairman's signature

5-1047L  
Cramer  
3/31/88

Original sponsor: Judiciary Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 246 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to employment protection for ju-  
7 rors."

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

9 \* Section 1. AS 09.20 is amended by adding a new section to read:

10 Sec. 09.20.015. PROTECTION FOR EMPLOYEE ON JURY DUTY. (a) An  
11 employer may not deprive an employee of employment or threaten, co-  
12 erce, or penalize an employee because the employee receives or re-  
13 sponds to a summons for jury service, serves as a juror, or attends  
14 court for prospective jury service. This section does not require an  
15 employer to pay wages to an employee for time spent on jury service or  
16 in court for prospective jury service.

17 (b) If an employer violates this section, the employee may bring  
18 a civil action to recover wages lost as a result of the violation,  
19 other damages that resulted from the violation, and may also seek an  
20 order requiring the reinstatement of the employee.



MAR 25 1987

Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE  
STAFF COUNSEL

303 K Street  
Anchorage, Alaska 99501

(907) 264-8228

March 9, 1987

Senator Jay Kerttula  
Chair, State Judiciary Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Dear Senator Kerttula:

I am writing on behalf of the Alaska Court System to ask the Senate Judiciary Committee to consider introducing legislation which would prohibit an employer from firing an employee because of the employee's absence due to jury service.

I have attached a draft of proposed legislation which would establish such a prohibition. The draft is based upon Section 17 of the Uniform Jury Selection and Service Act (copy attached). However, the court system takes no position with regard to the appropriate sanction.

The House Judiciary Committee has also considered this request, and it is my understanding that legislative counsel has provided a work draft with somewhat different wording.

Thank you for considering this request. Please let me know if I can provide additional information or answer any questions.

Sincerely,

Karla L. Forsythe  
Staff Counsel

KLF:bs

Att.

cc: Representative John Sund  
Chief Justice Jay A. Rabinowitz  
Arthur H. Snowden, II, Administrative Director

3/9/87-13

## Library References

Jury ⇨ 73, 74.  
C.J.S. Juries §§ 203, 204.

## § 17. [Protection of Jurors' Employment]

(a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(b) Any employer who violates subsection (a) is guilty of criminal contempt and upon conviction may be fined not more than [\$500] or imprisoned not more than [6] months, or both.

(c) If an employer discharges an employee in violation of subsection (a) the employee within [ ] days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for 6 weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

## COMMENT

In substance derived from Section 13 of the Uniform Consumer Credit Code (relating to wrongful discharge for garnishment), with the addition of the allowance of a reasonable attorney's fee to the prevailing plaintiff.

## Action in Adopting Jurisdictions

## Variations from Official Text:

Colorado. In subsec. (c), the time period (brackets in Official Text) is thirty days.

Idaho. In subsec. (b), substitutes "three hundred dollars" for "\$500".

In subsec. (c), the time period (brackets in Official Text) is 60 days.

North Dakota. Subsec. (b) reads: "Any employer who violates subsection 1 [subsec. (a) of uniform act] is guilty of a class B misdemeanor."

In subsec. (c), the time period (brackets in Official Text) is ninety days.

## Library References

Master and Servant ⇨ 30(1), 34 et seq., 68, 73(1).

C.J.S. Master and Servant §§ 42, 47 et seq., 81 et seq., 92, 102 et seq.

## § 18. [Court Rules]

The [Supreme Court] may make and amend rules, not inconsistent with this Act, regulating the selection and service of jurors.

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/3/88

FURTHER REFERRALS: Judiciary

DATE: 3-4-88

The State Affairs Committee has considered SB 246

"An Act relating to employment protection for jurors."

**RECOMMENDS:**

- replace with HCS SB 246 (SA)  the same title
- attached amendment(s)  a new title

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 1/22/88
- zero with analysis

**SIGNING DO PASS:**

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 Chairman's signature

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STATE OF ALASKA  
THE LEGISLATURE

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

May, 1988

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

Mary Van Nimwegen

*House Judiciary:*

*1988 - April 27*

# HOUSE COMMITTEE REPORT

(7)

Date referred: 5/15/87

FURTHER REFERRALS:

DATE: April 27, 1988

The Judiciary Committee has considered SB 252am

"An Act relating to communications to a psychologist or psychological associate by a client."

**RECOMMENDS:**

- replace with HCS SB252 (Judiciary) [ - ] the same title
- attached amendment(s) [ ] a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:** [ ] \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact [ ] same as previous fiscal note published \_\_\_\_\_
- zero fiscal note [ ] same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

*[Handwritten signatures]*  
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**SIGNING OTHER RECOMMENDATIONS:**

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*[Handwritten signature]*  
 \_\_\_\_\_  
 Chairman's signature

Original sponsor: Josephson

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 252 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to communications to a psychologist  
7 or psychological associate by a client."

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

9 \* Section 1. AS 08.86.200(a) is amended to read:

10 (a) A psychologist or psychological associate may not reveal to  
11 another person a communication made to the psychologist or psychologi-  
12 cal associate by a client about a matter concerning which the client  
13 has employed the psychologist or psychological associate in a profes-  
14 sional capacity. This section does not apply to

15 (1) a case conference with other psychologists, psychologi-  
16 cal associates, or with physicians and surgeons;

17 (2) a [, OR IN THE] case in which the client in writing  
18 authorized the psychologist or psychological associate to reveal a  
19 communication;

20 (3) a case where an immediate threat of serious physical  
21 harm to an identifiable victim is communicated to a psychologist or  
22 psychological associate by a client;

23 (4) disclosures of confidential communications required  
24 under Rule 504, Alaska Rules of Evidence; or

25 (5) proceedings conducted by the board or the department  
26 where the disclosure of confidential communications is necessary to  
27 defend against charges that the psychologist or psychological associ-  
28 ate has violated provisions of this chapter.

29 \* Sec. 2. AS 08.86.200(b) is amended to read:

1 (b) Notwithstanding (a) of this section, a psychologist or  
2 psychological associate shall report to the appropriate authority  
3 incidents of child abuse or neglect as required by AS 47.17.020,  
4 incidents of elder abuse as required by AS 47.24.010, and incidents of  
5 abuse of disabled persons disclosed to the psychologist or psychologi-  
6 cal associate by a client. In this subsection "disabled person" means  
7 a person who has a physical or mental disability or a physical or  
8 mental impairment, as defined in AS 18.80.300.  
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FISCAL NOTE

REQUEST:

Revision Date: 4-29-88  
Title: Client - psychologist  
confidentiality  
Sponsor: Josephson  
Requestor: \_\_\_\_\_

Agency Affected: \_\_\_\_\_  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

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)

*JH*

Prepared by: John Hartle, Committee Aide Phone: 465-4990  
Division: House Judiciary Committee Date: 4-29-88  
Approved by Commissioner: John Sund, Chairman Date: 4-29-88  
Agency: House Judiciary Committee

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

1 IN THE SENATE

BY JOSEPHSON

2

SENATE BILL NO. 252

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to communications to a psychologist  
7 or psychological associate by a client."

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

9 \* Section 1. AS 08.86.200(a) is amended to read:

10 (a) A psychologist or psychological associate may not reveal to  
11 another person a communication made to the psychologist or psychologi-  
12 cal associate by a client about a matter concerning which the client  
13 has employed the psychologist or psychological associate in a profes-  
14 sional capacity. This section does not apply to

15 (1) a case conference with other psychologists, psychologi-  
16 cal associates, or with physicians and surgeons;

17 (2) a [, OR IN THE] case in which the client in writing  
18 authorized the psychologist or psychological associate to reveal a  
19 communication;

20 (3) a case where an immediate threat of serious physical  
21 harm to an identifiable victim is communicated to a psychologist or  
22 psychological associate by a client;

23 (4) disclosures of confidential communications required  
24 under Rule 504, Alaska Rules of Evidence; or

25 (5) proceedings conducted by the board where the disclosure  
26 of confidential communications is necessary to defend against charges  
27 by the client that the psychologist or psychological associate has  
28 violated provisions of this chapter.

29 \* Sec. 2. AS 08.86.200(b) is amended to read:

1 (b) Notwithstanding (a) of this section, a psychologist or  
2 psychological associate shall report to the appropriate authority  
3 incidents of child abuse or neglect as required by AS 47.17.020,  
4 incidents of elder abuse as required by AS 47.24.010, and incidents of  
5 abuse of <sup>disabled</sup> incompetent persons disclosed to the psychologist or  
6 psychological associate by a client.

↑  
add

ALASKA STATE SENATE

P. JOSEPH...  
...  
...  
...



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4525

SPONSOR STATEMENT ON SB 252 am

What does it do?

Simple releases psychologists and psychological associates their professional commitment of confidentiality to a client in a case where the client has made an identification of a threat of serious physical harm to an individual.

The bill allows disclosures of confidential communications required under Rule 504 of the Alaska Rules of Evidence. Confidential communications may also be disclosed where necessary to defend the psychologist against a claim of misconduct.

Last, the bill expands the required reporting of incidents to include senior citizens and incompetent persons, and incidents of abuse are disclosed to the psychologist.

House Judiciary Committee  
April 27, 1988

Alaska Legislature  
Senate

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

provided by the Department of  
Social Services and the Alaska  
Department of Health. Three exceptions to the  
confidentiality of a client to the  
State are confidential.

Section 1 provides that a  
psychologist may not reveal a  
confidential setting, a  
confidential source, or with other  
persons, or with doctors,  
without the permission for the

exceptions are:

1. A threat of  
serious physical harm to a  
person;

2. A threat of  
serious physical harm to a  
person as defined in Rule 504, Alaska  
Rules of Evidence;

3. A claim of  
malpractice against a  
psychologist or the  
psychologist's employer;

4. A claim of  
malpractice against a  
psychologist or the  
psychologist's employer when  
the psychologist is  
acting in the course of the  
practice of the profession.

# **CORRECTION**

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

# ALASKA STATE SENATE

JOE P. JOSEPHSON  
DISTRICT H ANCHORAGE  
3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7611



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4525

## SPONSOR STATEMENT ON SB 252 am

### What does SB 252 do?

Simply, it releases psychologists and psychological associates from their professional commitment of confidentiality to a client in a case where the client has made an immediate threat of serious physical harm to an identifiable victim.

The bill also allows disclosures of confidential communications required under Rule 504 of the Alaska Rules of Evidence. Confidential communications may also be disclosed where necessary to defend the psychologist against a claim of misconduct.

Lastly, the bill expands the required reporting of incidents of abuse to include senior citizens and incompetent persons, when such incidents of abuse are disclosed to the psychologist.

House Judiciary Committee  
April 27, 1988.



Official Business

# Alaska State Legislature

## Senate

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

TO: House Judiciary Committee  
FROM: Senator Joe Josephson *JJS*  
DATE: January 14, 1988  
RE: Senate Bill 252

SB 252 am, which is supported by the Department of Commerce and Economic Development and the Alaska Psychological Association, would add three exceptions to the general rule that communications made by a client to a psychologist or psychological associate are confidential.

At present, AS 08.86.200(a) provides that a psychologist or psychological associate may not reveal a client's communication made in a professional setting, unless disclosure is made at a case conference with other psychologists or psychological associates, or with doctors, or unless the client has given written permission for the disclosure of the communication.

The three additional exceptions proposed are:

- when the client has made an immediate threat of physical harm to an identifiable victim;
- when disclosure is required under Rule 504, Alaska Rules of Evidence; and
- when the Board of Psychological Examiners or the Department have initiated proceedings against a psychologist or psychological associate, and disclosure is necessary to enable the psychologist or psychological associate to defend against the charges.

The reasons for adding the three additional exceptions are obvious. In the first case, when a threat of physical harm has been made, disclosure may be required to protect a potential, identifiable victim. In the second case, when disclosure is required under Rule 504, Alaska Rules of Evidence, the psychologist or psychological associate is placed in the dilemma that compliance with the Rule can

Page Two

constitute a violation of the statute. This is a "Catch 22" situation which ought to be corrected.

Finally, it is obviously unfair to impose confidentiality upon one who has been charged with a violation of law, if disclosure of a confidential communication could explain conduct and enable the charged person to defend against the charges.

In addition, SB 252 am would amend AS 08.86.200(b) by requiring a psychologist or psychological associate to report incidents of elder abuse or abuse of incompetent persons to the appropriate authority. At present, the only reporting requirement is for cases of child abuse or neglect. The additional reporting requirement is consistent with legislative concern for the protection of the elderly, and of incompetents, from abuse.

A copy of Rule 504, Alaska Rules of Evidence, and a copy of the zero fiscal note, are attached.

Attachments

110290

# STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 4-27-87

<b>REQUEST</b>	<b>FISCAL DETAIL</b>
Bill/Resolution No. : <u>SB 252</u>	Agency Affected : _____
Title : <u>Client - Psychologist Confidentiality</u>	BRU : _____
_____	_____
Sponsor : <u>Jospehson</u>	Components : _____
Requestor : _____	_____
Date of Request : _____	_____

### EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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### FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

### ANALYSIS :

Prepared by: Senate HESS *St. P. Frick* Phone: 465 - 3791  
 Division: \_\_\_\_\_ Date: 4/25/87  
 Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

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

**Rule 504. Physician and Psychotherapist-Patient Privilege.**

(a) Definitions. As used in this rule:

(1) A patient is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A physician is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A psychotherapist is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation or reasonably believed by the patient to so be, while similarly engaged.

(4) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional conditions, including alcohol or drug addiction, among himself, his physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient, by his guardian, guardian *auctorem* or conservator, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist

at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(d) *Exceptions.* There is no privilege under this rule:

(1) *Condition and Element of Claim or Defense.* As to communications relevant to the physical, mental or emotional condition of the patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, of any party claiming through or under the patient, of any person raising the patient's condition as an element of his own case, or of any person claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or after the patient's death, in any proceeding in which any party puts the condition in issue.

(2) *Crime or Fraud.* If the services of the physician or psychotherapist were sought, obtained or used to enable or aid anyone to commit or plan a crime or fraud or to escape detection or apprehension after the commission of a crime or a fraud.

(3) *Breach of Duty Arising Out of Physician-Patient Relationship.* As to a communication relevant to an issue of breach, by the physician, or by the psychotherapist, or by the patient, of a duty arising out of the physician-patient or psychotherapist-patient relationship.

(4) *Proceedings for Hospitalization.* For communications relevant to an issue in proceedings to hospitalize the patient for physical, mental or emotional illness, if the physician or psychotherapist, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization.

(5) *Required Report.* As to information that the physician or psychotherapist or the patient is required to report to a public employee, or as to information required to be recorded in a public office, if such report or record is open to public inspection.

(6) *Examination by Order of Judge.* As to communications made in the course of an examination ordered by the court of the physical, mental or emotional condition of the patient, with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise. This

exception does not apply where the examination is by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he may advise the defendant whether to enter a plea based on insanity or to present a defense based on his mental or emotional condition.

(7) *Criminal Proceeding.* For physician-patient communications in a criminal proceeding. This exception does not apply to the psychotherapist-patient privilege. (Added by Supreme Court Order 364 effective August 1, 1979)

# The Fairbanks Child Sexual Abuse Task Force

1423 Peger Road  
Fairbanks AK 99709

February 22, 1988

House Judiciary Committee Members

Representatives Barnes, Cotten, Gruenberg, Navarre, Sund,  
Taylor and Ulmer

Interior Delegation Members

Representatives Boyer, Davis, Frank, Koponen, Miller, Shultz  
Senators Coghill, Fahrenkamp, Fanning

P.O. Box V

Juneau, AK 99811

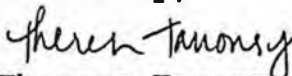
Re: Senate Bill 252 am

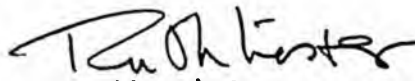
Dear Legislators,

I am writing on behalf of the Fairbanks Child Sexual Abuse Task Force, a coalition of agencies, organizations and associations involved in prevention and treatment of child sexual abuse. The CSATF wants to express its views on Senate Bill 252, which expands the exceptions to the statutory duty of confidentiality on the part of psychologists and psychological associates.

The Task Force supports this bill. In the interior, there have been suits brought by child sexual offenders in precisely those instances contemplated by the new subsection (3) which the bill would add to AS 08.86.200(a), i.e., the offender has made to the therapist an immediate threat of serious physical harm to an identifiable victim, which the therapist has then disclosed, following which the offender sued the therapist for violation of confidentiality. The court's ruling was in accordance with the statutory proposal, i.e., the offender's right to confidentiality does not apply in such situations; but having this codified in statutory form would reduce the costs of defending such an action, as well as discourage the filing of such a suit in the first place. For the sake of the victims and potential victims of such offenders, and the sake of the psychologists and psychological associates who have better uses for their time than fending off such suits, we urge enactment of the bill. Thank you for your consideration.

Sincerely,

  
Theresa Tanoury  
Coordinator

  
Ruth Lister  
Chair



Aron S. Wolf, M.D., F.A.P.A. - President  
Elinor E. Weeks, M.D.  
Grag McCarthy, M.D.  
Thomas L. Jewitt, M.D.  
Bruce N. Smith, Ph. D.  
Martin Alraps, Ph. D.  
Richard F. Lazur, Psy. D.  
Nicki J. Nielsen, M.S.W., A.C.S.W.  
Helen Craig, M.S.W., A.C.S.W. - Secretary Treasurer  
Donald Sparrow, M.S.W., A.C.S.W.  
Wendy Chase, M.S.W., A.C.S.W.  
Jackie T. Jaday, M.S.W.  
Randall Jones, M.A. - Vice President  
Theresa Turner - Office Manager

February 8, 1988

Chairman  
House Judiciary Committee  
P. O. Box V  
Juneau, Alaska 99811

Dear Sir:

I am writing this letter of support for S.B. 252 as representative for the Alaska Psychological Association. Confidentiality is the medium through which psychology is able to effect change in individuals, families, groups, or organizations. In the past 15 years, legal challenges to confidentiality (e.g., Tarasoff) have impinged upon blanket psychologist-client privilege. The National American Psychological Association has recently published recommendations to all state psychological associations to amend existing confidentiality statutes to reflect these recent court decisions. To date, 32 other states have adopted similar recommended exclusions enumerated in S.B. 252. The nucleus of this bill is to protect the consumer against intrusion into the doctor-patient relationship by clearly specifying exclusions necessary for the protection of the greater public.

If you should have any further questions, please contact me by phone at 561-1361.

Sincerely,

*Bruce N. Smith Ph.D.*

Bruce N. Smith, Ph.D.  
Past President  
Chair, Legislative Committee

BNS/cs

ALASKA STATE SENATE

JH ✓

JOE P. JOSEPHSON  
DISTRICT H ANCHORAGE  
3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7611



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4525

*Committee*

To: John Sund, Chairman  
House Judiciary Committee

From: Senator Joe P. Josephson *Joe Josephson*

Re: Scheduling of Senat Bill 252

Date: March 10, 1988

I know that your committee schedule is very heavy these days, and that you are hearing a great number of House bills. I would like to request that when you begin to take up Senate bills, that you consider scheduling SB 252.

This is a bill I sponsored at the behest of the Alaska Psychological Association last year. Its topical nature warrants legislative attention.

The bill would make provisions in law to allow psychologists and psychiatrists to warn of a patient's violent threats against an identifiable victim. Such communications are currently held to be confidential between the professional and the patient.

Thank you for your attention and favorable consideration to my request.

cc: Dr. Paul Craig, President-elect  
Alaska Psychological Association

SB

274

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

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

May, 1988

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

Mary Van Nimwegen

*House Judiciary:*

*1988 - March 15*

*March 17*

# HOUSE COMMITTEE REPORT

(7)

Date referred: 3/4/88

FURTHER REFERRALS:

DATE: March 17, 1988

The Judiciary Committee has considered CSSB 274 (L&C)

"An Act relating to access to employment security records."

**RECOMMENDS:**

- replace with HCS CS SB 274 (L & C)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING IN PASS:**

*[Handwritten signatures]*  
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**SIGNING OTHER RECOMMENDATIONS:**

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*[Handwritten signature]*  
 \_\_\_\_\_  
 Chairman's signature

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, LEGISLATIVE COUNCIL  
CHAIRMAN, OIL AND GAS COMMITTEE  
515 7TH AVENUE, SUITE 130  
FAIRBANKS, ALASKA 99701  
OFFICE (907) 452-4882  
HOME (907) 456-2899



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
CAPITOL ROOM 125  
OFFICE (907) 465-3834  
HOME (907) 780-6027

## Senate

### MEMORANDUM

TO: House Labor & Commerce Committee Members

FROM: Senator Fahrenkamp

DATE: March 2, 1988

RE: CSSB 274 (L&C)

CSSB 274 (L&C) An act relating to access to employment security records by Senator Bettye Fahrenkamp

#### Background

I introduced this legislation because it has come to my attention that some recipients of retirement plans authorized under the federal Employee Retirement Income Security Act (ERISA) collect their pensions while continuing to work in the same line of work.

Under private pension plans established under ERISA, the administrator of the plan may discontinue benefits to the recipient if the recipient returns to employment in the same line of work for more than 39 hours per month. However, the administrators often have great difficulty in demonstrating that a recipient is no longer eligible to draw retirement benefits, i.e. that he or she is working in the same line of work.

#### What the bill does

This bill would allow the Alaska Department of Labor Employment Security Division to provide to administrators, on a confidential basis, the name and address of a worker's current employer and the current occupation if known. The Division should have such information because employers are required to make unemployment insurance contributions on behalf of their employees and report them quarterly.

The department is prohibited from releasing information if the U.S. Secretary of Labor rules that the release of the information would cause noncompliance with federal

requirements. The consequences would be a loss of the federal share of unemployment insurance funds. The U.S. Labor Department Employment and Training Administration addresses this "Compliance Question" annually each October.

Without this legislation, there will continue to be instances when workers, who have not yet retired, and most of them young, will be displaced by supposedly retired workers in the same line of work. In addition, retirement benefit funds would be drawn down unnecessarily, harming all retired workers.

The Alaska Department of Labor has a position paper in favor of CSSB 274 (L&C), and it has a zero fiscal note. The bill passed the Senate unanimously.

#### Proposed Committee Substitute

The proposed committee substitute before you incorporates SB 428 into CSSB 274 (L&C). SB 428, introduced by the Governor, would allow the Department to make public disclosures of the residency status of employees. Individual employees would not be identified. The purpose is to publicly inform employers of their resident hire record and to encourage them to consider qualified Alaskans for recruitment.

As in the case of release of information to plan administrators, the department may not release information on employer's hiring practices if the U.S. Secretary of Labor rules that the information would be grounds to find that the state is in noncompliance with federal law.

See attached letter of transmittal from Governor Cowper for further background information.

I urge your passage of the committee substitute proposed by the House Labor and Commerce Committee.

Sectional Analysis of proposed House L&C CS for CSSB 274 (L&C)

Sections 1. Purpose of AS 23.20.110(i)

Sets out the purpose, citing the state's high unemployment and the economic problems it causes for the state's residents, as justification for giving the department access to data on employee residency.

Section 2. AS 23.20.110 Information obtained by department.

Subsection (a) is amended to refer to exceptions in new subsections (h) and i).

Section 3. AS 23.20.110 Information obtained by department.

Adds a new subsection (h) to allow the department to make available upon request to an employee pension benefit plan administrator, the name, address, and if available, the person's current occupation. The information must be kept confidential by the administrator, unless it is relevant to a legal proceeding in which the plan or the administrator is a party. The department may also require reimbursement from the requesting party for the cost of furnishing the information.

Adds a new subsection (i) to allow the department to publicly disclose the residency status of employees to encourage employers to voluntarily consider the availability of qualified job seekers who are residents of the state. It would allow the department to disclose an employer's practice of hiring persons who are not residents of the state.

Adds a new subsection (j) that prohibits the department from releasing information under (h) or (i) if the U.S. Secretary of Labor rules that the release of the information would cause noncompliance with federal requirements. The consequences would be a loss of the federal share of unemployment insurance funds. The U.S. Labor Department Employment and Training Administration addresses this "Compliance Question" annually each October.

Provided by Senator Farhenkamp's office.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 16, 1988

The Honorable Jan Faiks  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to disclosure of certain employment security information. The bill amends existing AS 23.20.110, regarding confidentiality and release of employment security records, to allow the Department of Labor to make public disclosures of the residency status of employees. Additionally, the bill provides a mechanism to preclude disclosure if the United States Department of Labor finds that the bill would place the employment security program in substantial noncompliance with federal program requirements in 42 U.S.C. 503(a).

Alaska is presently experiencing high unemployment, with substantial economic problems, among its residents. The Department of Labor is responsible for advancing opportunities for workers in Alaska in order to reduce that alarming unemployment rate (AS 23.05.010). One avenue open to the department is to publicly inform employers of their resident hire record and to encourage them to consider qualified Alaskans for recruitment.

At the present time, AS 23.20.110(a) precludes the department from making such public statements based on employment security records. The bill amends the statute to allow disclosure. Sections 2 and 3 of the bill.

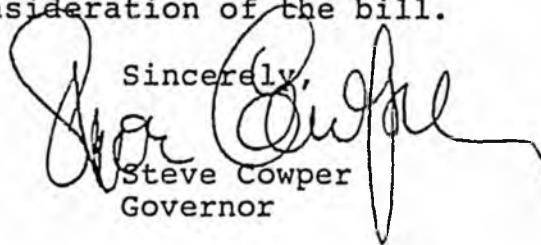
The bill adequately protects the privacy interests of the individual employees involved, for it precludes the department from releasing an employee's name, or information that would individually identify an employee. Section 3 of the bill.

Additionally, while the bill allows employers to be individually named, it expressly precludes the denial or limitation of department benefits, or other discrimination against the employer, because of the department's analysis of the employer's hiring practices. Section 3 of the bill.

Because the employment security program must comply with federal program requirements in order to receive federal money, the bill adequately protects that money by prohibiting disclosure of the information if the federal government finds that that action would cause a substantial noncompliance with the requirements of 42 U.S.C. 503(a). Section 3 of the bill.

This bill has the strong support of the Department of Labor and is consistent with this Administration's goal of enhancing job opportunities for Alaska residents. I urge your prompt and favorable consideration of the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written in a cursive style. The signature is positioned to the left of the typed name and title.

Steve Cowper  
Governor

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to disclosure  
of certain employment security information."  
Sponsor: RULES COMMITTEE  
Requestor: Governor

Agency Affected: Labor  
BRU: Employment Security  
Components: Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

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: Joe Sitton, Director Phone: 465-2725  
Division: Employment Security Date: 2/9/88  
Approved by Commissioner: Jim Sampson Date: 2/9/88  
Agency: Labor

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

# opinion

2-24-88

## Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly  
Publisher

Howard Weaver  
Managing Editor

Michael Carey  
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983  
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

## Local hiring report card

If ever there's a motherhood issue in Alaska, it's local hiring. Everybody supports it. But when it's time to turn local hiring rhetoric into reality, some employers don't try as hard as others.

Those employers might hire fewer Outsiders if they knew somebody was handing out grades and naming names. And that's what Gov. Steve Cowper wants the state Labor Department to do.

He's asking the legislature for authority to publish the local hiring records of individual businesses. To ensure accuracy, the state will cross check residency claims with that ultimate proof of Alaska residence, the permanent fund dividend check.

It's a great idea — with one catch. Federal law may prevent the state from publishing such information on individual firms. Gov. Cowper's bill would prohibit disclosure if that's the case. The rules in this area are fuzzy, and the only way to get a definitive answer is to give disclosure a try.

The U.S. Constitution properly puts tight limits on what the state can do to force employers to hire Alaskans. But one constitutionally acceptable tool is the threat of bad publicity. Gov. Cowper is right: Employers will take local hiring more seriously if they know their records are open for for all to see.

# Labor report zeroes in on Alaska jobs

By LARRY PERSILY  
The Associated Press

JUNEAU — A Department of Labor report says most non-residents working in Alaska take jobs in the seasonal industries of seafood processing, tourism and construction.

"You go where the work is," said Labor Commissioner Jim Sampson. "Those types of industries surely are migratory."

The short-term jobs mean lower wages for non-residents.

The report says Alaskans averaged \$20,137 in annual wages for 1986, while non-residents earned an average \$8,339 for their work in the state.

The report was ordered by the legislature in 1986 when it passed a new local hire preference law. The law replaced the state's mandatory resident hire statute that had been declared unconstitutional by the courts.

The 60-page report given to lawmakers this session does not contain any statistics from 1987.

Although non-residents work fewer months and earn less wages than do residents, thousands of them find work in Alaska each year.

"I wish there were a lot of easy answers," Sampson said Thursday. "We still have a problem out there."

The report compares unemployment statistics with permanent fund dividend residency information.

## Cowper wants local hire records open to the public

The Associated Press

JUNEAU — Employers' local hire records would become public information under legislation introduced by Gov. Steve Cowper.

The Department of Labor publishes non-resident hire information by industry and occupation. Cowper's bill (SB459) would permit the department to report non-resident hire records of individual employers.

"I think the public wants to know which businesses are doing their part to put Alaskans to work," Cowper said. "Right now we can find out who's hiring outsiders, but we can't tell anyone. That's absurd."

The Labor Department is able to match employment records with residency information from Alaska Permanent Fund dividend applications. The bill would remove the confidentiality provisions of state law to allow disclosure of the hiring information. It would not allow the release of employee names and wages.

Alaska's current local hire preference law is not as strong as the prior law that was declared unconstitutional by the courts.

"Public pressure is an important tool in convincing employers to hire residents," Cowper said.

A report from the Labor department shows that non-residents took home 8.7 percent of all wages paid in Alaska in 1986.

Alaska residents in 1986 earned more than \$5 billion in wages, compared to \$486 million paid to non-residents.

The report, released last month, also shows that non-residents comprised about 19 percent of the workers in Alaska, but earned much less than residents. The average earnings for a non-resident in 1986 were \$8,339, compared to \$20,137 for an Alaskan.

Unemployment checks going out of state, the report says, "reflect the migration of workers to residences and labor markets outside of Alas-

• A good year for commercial fishing and recovery in the timber industry was not enough to offset dramatic drops in oil and gas and con-

dents worked three months or less in 1986, accounting for the low earnings per employee when compared to resident workers.

The seafood industry is the largest single employer of non-resident workers, with retail and service jobs next in line.

"In some industries, such as seafood processing, the poor percentage of resident workers may be due to the refusal of many Alaskans to work in the plants," the report says. "Alaskans cite the seasonal nature of the work, the remoteness of the plants, and most of all, the long hours and low pay as reasons for not wanting to work in this industry."

The report notes that the Labor Department is working to improve the percentage of Alaskans hired at seafood plants. It also states, "As companies turn to processing a variety of species, employment will become less seasonal in nature."

The oil and gas industry, perhaps the most controversial employer in Alaska, paid non-residents \$80 million of its \$567 million payroll in 1986. Because of shorter employment, non-residents earned about 60 percent of the annual wages paid resident workers at oil and gas jobs.

The report says, "The state should assist industry in the permitting process, but expedited permits deserve something in return, and making a commitment to hire Alaska's

m. levine

LOOTER

APPOINTEES: How link appointed? Could as to race, sex and

Tymick, the mayor's 44 people so far. Of the 12 women, one is e Caucasian.

ve figures from the ner mayor appointed . Among the men, 106 d two were Hispanic. handicapped. Among two were black and

TACKLE: I have jaw at what's known as not happy with the ge and would like to enter Outside. — R.N.

rd than your question any clinics, probably a recognized dental society in Anchorage. does not endorse any tional clearinghouse, local society's public

n get a cure for the some dentists feel it's

r has been told before poor posture.

May 11, 1987

Senator Bettye Fahrenkamp  
State Capitol  
Room 125  
Juneau, Alaska 99811

Re: Senate Bill No. 274

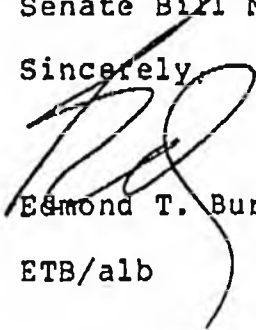
Dear Senator Fahrenkamp:

I hope serious consideration will be given to Senate Bill No. 274.

As you know, all multi-employer pension plans are designed to provide benefits upon retirement. Most have a suspension of benefits provision should participants return to active employment after retirement. Unfortunately, it is almost administratively impossible to equitably enforce this provision as there is no "efficient" mechanism to determine if a person has returned to work. Plan sponsors have only social security, word of mouth, or statements from participants. Senate Bill No. 274 would help plan sponsors to efficiently and equitably administer the return to work provisions of multi-employer pension plans.

We, therefore, hope serious consideration is given to Senate Bill No. 274 by both the Senate and House.

Sincerely,



Edmond T. Burgan

ETB/alb

Bill No. Committee Substitute for  
Senate Bill 274 (L&C)

Title "An Act relating to access to  
employment security records."

Date May 13, 1987

Contact: Joe Sitton  
465-2712

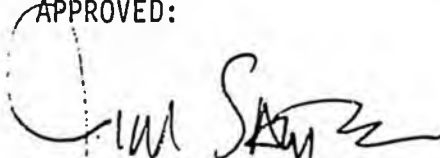
Eileen Plate  
465-2700

Committee Substitute for Senate Bill 274 (L&C) allows the Employment Security Division to provide to an Administrator of a joint administered pension plan information verifying an individual's employment and occupation. The plan administrator is required to keep such information confidential, unless it is relevant to a legal proceeding in which the administrator or plan is a party. This bill will help pension plans implement and enforce ERISA's return to work regulations, which provide that trustees can disallow pension benefits to participants in a plan should they return to work in the industry in the geographical area covered by the plan and work over 39 hours in a calendar month. This bill is supported by both management and labor trustees who serve on pension plans in Alaska.

The Department's concerns with this legislation have been addressed in the Labor and Commerce Committee Substitute for Senate Bill 274, which states that should the release of this information cause the department to be out of conformity, such information cannot be released. The importance of this is that should the U.S. Department of Labor rule that Alaska is out of conformity, all funding for our Employment Service and Unemployment Insurance programs could be withheld. Section 3 of the bill, therefore, safeguards against this.

The Department of Labor supports this bill.

APPROVED:

  
Jim Sampson, Commissioner  
Department of Labor

Bill No. House Committee Substitute for Committee Substitute for Senate Bill 274 (L&C)

Date March 9, 1988

Title

Contact: Joe Sitton  
465-2712

"An Act relating to access to employment security records."

Eileen Plate  
465-2700

House Committee Substitute for Committee Substitute for Senate Bill 274 (L&C) amends AS 23.20.110, which relates to the confidentiality and release of employment security information. Specifically, this bill

- (1) allows the Employment Security Division to provide to an Administrator of a joint administered pension plan information verifying an individual's employment and occupation. The plan administrator is required to keep such information confidential, unless it is relevant to a legal proceeding in which the administrator or plan is a party. This will help pension plans implement and enforce ERISA's return to work regulations, which provide that trustees can disallow pension benefits to participants in a plan should they return to work in the industry in the geographical area covered by the plan and work over 39 hours in a calendar month. This provision is supported by both management and labor trustees who serve on pension plans in Alaska; and
- (2) allows the Department of Labor to analyze resident hire practices by employers, and to publicly disclose the results of the analysis. At the present time, the department has access to permanent fund dividend files and can match that information with employment security information reported on employees by employers, but may not publicly disclose the results of that analysis due to confidentiality provisions in employment security statutes.

The proposed disclosure provision adequately protects the privacy interests of the individual employees involved, inasmuch as it precludes the department from releasing an employee's name, or information that would individually identify an employee.

Additionally, while the provision allows employers to be individually named, it expressly precludes the denial or limitation of department benefits, or other discrimination against the employer, because of the department's analysis of the employer's hiring practices.

Alaska is presently experiencing high unemployment, with substantial economic problems among its residents. The Department of Labor is responsible for advancing opportunities for workers in Alaska in order to reduce the unemployment rate; and the proposed amendment to the employment security statute would enable the department to publicly inform employers of their resident hire record and to encourage them to hire Alaskans.

In addition, because the Employment Security Division must comply with federal program requirements in order to receive federal funding for its employment service and unemployment insurance programs, the bill adequately protects that money by prohibiting disclosure of the information as provided in the bill if the federal government finds that that action would cause a substantial noncompliance with federal law. The provisions of the bill would, in effect, become

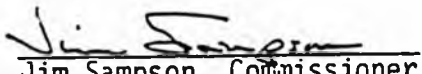

# POSITION PAPER/Department of Labor

March 9, 1988

inoperative if a determination of nonconformity was made by the U.S. Secretary of Labor.

The Department strongly supports the provisions of this bill. It will not have a fiscal impact on the Department.

APPROVED:

  
Jim Sampson, Commissioner  
Department of Labor 

Bill No. Committee Substitute for  
Senate Bill 274 (L&C)  
Title "An Act relating to access to  
employment security records."

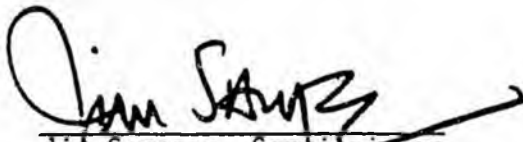
Date February 17, 1988  
Contact: Joe Sitton  
465-2712  
Eileen Plate  
465-2700

Committee Substitute for Senate Bill 274 (L&C) allows the Employment Security Division to provide to an Administrator of a joint administered pension plan information verifying an individual's employment and occupation. The plan administrator is required to keep such information confidential, unless it is relevant to a legal proceeding in which the administrator or plan is a party. This bill will help pension plans implement and enforce ERISA's return to work regulations, which provide that trustees can disallow pension benefits to participants in a plan should they return to work in the industry in the geographical area covered by the plan and work over 39 hours in a calendar month. This bill is supported by both management and labor trustees who serve on pension plans in Alaska.

The Department's concerns with this legislation have been addressed in the Senate Labor and Commerce Committee Substitute, which states that should the release of this information cause the department to be out of conformity, such information cannot be released. The importance of this is that should the U.S. Department of Labor rule that Alaska is out of conformity, all funding for our Employment Service and Unemployment Insurance programs could be withheld. Section 3 of the bill, therefore, safeguards against this.

The Department of Labor supports this bill.

APPROVED:

  
Jim Sampson, Commissioner  
Department of Labor

**POSITION PAPER/**Department of Labor

Original sponsor: Fahrenkamp

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 274 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to access to employment security  
7 records."

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

9 \* Section 1. AS 23.20.110(a) is amended to read:

10 (a) Except as provided in (h) of this section, the [THE] depart-  
11 ment shall hold information obtained from an employing unit or indi-  
12 vidual in the course of administering this chapter and determinations  
13 as to the benefit rights of an individual confidential and may not  
14 disclose them or open them to public inspection in a manner which  
15 reveals the identity of the individual or employing unit. A claimant  
16 or the legal representative of the claimant is entitled to information  
17 from the records of the department to the extent necessary for the  
18 proper presentation of the claim in a proceeding under this chapter.  
19 Subject to restrictions which the department prescribes by regulation,  
20 the information may be made available to an agency of this state or  
21 another state or federal agency charged with the administration of an  
22 unemployment compensation law or the maintenance of a system of public  
23 employment offices, or, for the purposes of the Federal Unemployment  
24 Tax Act, to the Internal Revenue Service of the United States, or, for  
25 tax purposes, to the Department of Revenue. Information obtained in  
26 connection with the administration of the employment service may be  
27 made available to persons or agencies for purposes appropriate to the  
28 operation of a public employment service.

29 \* Sec. 2. AS 23.20.110 is amended by adding a new subsection to read:

1 (h) The department shall make information obtained from an  
2 employing unit or an individual available on request to an adminis-  
3 trator of a joint administered defined pension benefit plan estab-  
4 lished under 29 U.S.C. 1001 - 1461 (Employee Retirement Income Securi-  
5 ty Act) to assist the administrator in verifying whether a person  
6 receiving a retirement benefit from the plan has been employed in the  
7 last six months. To the extent the information is available to the  
8 department, the department shall provide the administrator with the  
9 name and address of the person's current employer and the person's  
10 current occupation. The administrator shall keep information received  
11 under this subsection confidential. However, the administrator may  
12 reveal the information if it is relevant to a legal proceeding in  
13 which the administrator or the plan is a party. The department may  
14 require the plan to reimburse the department for the cost of furnish-  
15 ing the information.

16 \* Sec. 3. Notwithstanding AS 23.20.110(h), added by sec. 2 of this Act,  
17 the department may not release information to an administrator if the  
18 United States Secretary of Labor rules that release of the information  
19 would be grounds to find that the state is in substantial noncompliance  
20 with 42 U.S.C. 503(a).

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, LEGISLATIVE COUNCIL  
CHAIRMAN, OIL AND GAS COMMITTEE  
515 7TH AVENUE, SUITE 130  
FAIRBANKS, ALASKA 99701  
OFFICE (907) 452-4882  
HOME (907) 456-2899



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
CAPITOL ROOM 125  
OFFICE (907) 485-3834  
HOME (907) 780-6027

## MEMORANDUM

## Senate

TO: House Judiciary Committee Members  
FROM: Senator Bettye Fahrenkamp  
DATE: March 17, 1988  
RE: CSSB 274 (L&C)

CSSB 274 (L&C) An act relating to access to employment security records by Senator Bettye Fahrenkamp

At the March 15 meeting of the committee, Vice Chair Representative Ulmer asked for more information on the impact the suspension of benefits provision would have on recipients of benefits from private pension plans established under the Employee Retirement Income Security Act of 1974 (ERISA).

Title 29 U.S.C. Section 1053 MINIMUM VESTING STANDARDS subsection (a)(3)(B) (attached) says:

"...the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits-

(i) in the case of a plan other than a multi-employer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multi-employer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, and when such benefits commenced. (Emphasis added).

Federal regulations, 29 CFR Chapter XXV Section 2530.203-3, SUSPENSION OF PENSION BENEFITS UPON EMPLOYMENT, set forth the circumstances and conditions under which benefit payments may be suspended in greater detail and defines the relevant terms.

SB 274 would give the administrator of a plan an enforcement tool, a way to verify that a recipient is re-employed in violation of the federal statute and regulations cited above.

A suspension of benefit under this federal section is not grounds for forfeiture of benefits.

th period beginning on an employment commencement anniversary of that an is prohibited, however, any period that would official postponement of t, such as a period meas- iversaries of the date four- owing the employment ent date.

with 3-year 100 percent rules regarding when a as a nonforfeitable right ed benefit, see section i) of the Act and section i) of the Code and regula- hereunder.

ments to change the vest- tion period. (1) A plan ed to change the vesting period to a different 12- onth period provided ult of such change no em- ed percentage of the ac- t derived from employe- is less on any date after than such vested percent- e in the absence of such- an amendment changing- computation period shall comply with the require- ; subparagraph if the first- putation period estab- such amendment begins- ast day of the preceding- utation period and an em- is credited with 1,000- vice in both the vesting- period under the plan- amendment and the first- utation period under the- nded is credited with 2- ice for those vesting com- ods. For example, a plan- en using a calendar year- utation period is amend- for a July 1-June 30 vest- tion period starting in- ees who complete more- ours of service in both of- 1 periods extending from- 77 to December 31, 1977- y 1, 1977 to June 30, 1978- two years on the plan's- tute. The plan is deemed- requirements of this sub-

ditional requirements per- changes in the vesting

schedule, see section 203(c)(1) of the Act and section 411(a)(10) of the Code and the regulations issued thereunder.

(d) *Service preceding a break in service.* For purposes of applying section 203(b)(3)(D) of the Act and section 411(a)(6)(D) of the Code, (relating to counting years of service before a break in service for vesting purposes), the computation periods used by the plan in computing years of service before such break must be the vesting computation periods. (For application of the break in service rules, see section 203(b)(3)(D) and section 411(a)(6)(D) of the Code and regulations issued thereunder.)

§ 2530.203-3 Suspension of pension benefits upon employment.

(a) *General.* Section 203(a)(3)(B) of the Act provides that the right to the employer-derived portion of an accrued pension benefit shall not be treated as forfeitable solely because an employee pension benefit plan provides that the payment of benefits is suspended during certain periods of re-employment which occur subsequent to the commencement of payment of such benefits. This section sets forth the circumstances and conditions under which such benefit payments may be suspended. A plan may provide for the suspension of pension benefits which commence prior to the attainment of normal retirement age, or for the suspension of that portion of pension benefits which exceeds the normal retirement benefit, or both, for any reemployment and without regard to the provisions of section 203(a)(3)(B) and this regulation to the extent (but only to the extent) that suspension of such benefits does not affect a retiree's entitlement to normal retirement benefits payable after attainment of normal retirement age, or the actuarial equivalent thereof.

(b) *Suspension rules—(1) General rule.* A plan may provide for the permanent withholding of an amount which does not exceed the suspendible amount of an employee's accrued benefit for each calendar month, or for each four or five week payroll period ending in a calendar month, during which an employee is employed in

"section 203(a)(3)(B) service" as described in § 2530.203-3(c).

(2) *Resumption of payments.* If benefit payments have been suspended pursuant to paragraph (b)(1) of this section, payments shall resume no later than the first day of the third calendar month after the calendar month in which the employee ceases to be employed in section 203(a)(3)(B) service: *Provided,* That the employee has complied with any reasonable procedure adopted by the plan for notifying the plan that he has ceased such employment. The initial payment upon resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of employment and the resumption of payments, less any amounts which are subject to offset.

(3) *Offset rules.* A plan which provides for the permanent withholding of benefits may deduct from benefit payments to be made by the plan payments previously made by the plan during those calendar months or pay periods in which the employee was employed in section 203(a)(3)(B) service: *Provided,* That such deduction or offset does not exceed in any one month 25 percent of that month's total benefit payment which would have been due but for the offset (excluding the initial payment described in paragraph (b)(2) of this section, which may be subject to offset without limitation).

(4) *Notification.* No payment shall be withheld by a plan pursuant to this section unless the plan notifies the employee by personal delivery or first class mail during the first calendar month or payroll period in which the plan withholds payments that his benefits are suspended. Such notification shall contain a description of the specific reasons why benefit payments are being suspended, a general description of the plan provisions relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable Department of Labor regulations may be found in § 2530.203-3 of the Code of Federal Regulations. In addition, the suspension notification shall inform the em-

ployee of the plan's procedure for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of the Act and applicable regulations. In the case of a plan which requires the filing of a benefit resumption notice as a condition precedent to the resumption of benefits, the suspension notification shall also describe the procedure for filing such notice and include the forms (if any) which must be filed. Furthermore, if a plan intends to offset any suspendible amounts actually paid during the periods of employment in section 203(a)(3)(B) service, the notification shall identify specifically the periods of employment, the suspendible amounts which are subject to offset, and the manner in which the plan intends to offset such suspendible amounts. Where the plan's summary plan description (SPD) contains information which is substantially the same as information required by this paragraph (b)(4), the suspension notification may refer the employee to relevant pages of the SPD for information as to a particular item, provided the employee is informed how to obtain a copy of the SPD, or relevant pages thereof, and provided requests for referenced information are honored within a reasonable period of time, not to exceed 30 days.

(5) *Verification.* A plan may provide that an employee must notify the plan of any employment. A plan may request from an employee access to reasonable information for the purpose of verifying such employment. Furthermore, a plan may provide that an employee must, at such time and with such frequency as may be reasonable, as a condition to receiving future benefit payments, either certify that he is unemployed or provide factual information sufficient to establish that any employment does not constitute section 203(a)(3)(B) service if specifically requested by the plan administrator. Once an employee has furnished the required certification or information, the plan must forward, at the next regularly scheduled time for payment of benefits, all payments which had been withheld pursuant to this para-

graph (b)(5) except to the extent that payments may be withheld and offset pursuant to other provisions of this regulation.

(6) *Status determination.* If a plan provides for benefits suspension, the plan shall adopt a procedure, and so inform employees, whereunder an employee may request, and the plan administrator in a reasonable amount of time will render, a determination of whether specific contemplated employment will be section 203(a)(3)(B) service for purposes of plan provisions concerning suspension of benefits. Requests for status determinations may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of the Act and applicable regulations.

(7) *Presumptions.* (i) A plan which has adopted verification requirements described in paragraph (b)(5) of this section, and which complies with the notice requirements set forth in paragraph (b)(7)(ii) of this section may provide that whenever the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service and the retiree has not complied with the plan's reporting requirements with regard to that employment, the plan fiduciaries may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the retiree had worked a period exceeding the plan's minimum number of hours for that month. In addition, a plan covering persons employed in the building trades which has adopted verification requirements described in paragraph (b)(5) of this section and which complies with the notice requirements set forth in paragraph (b)(7)(ii) of this section may provide that whenever the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service at a construction site and the retiree has not complied with the plan's reporting requirements with regard to that employment, then the plan fiduciaries may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the retiree engaged in such employment for the same employer in work at that site for so long before the work in question as

except to the extent that they may be withheld and offset under other provisions of this

**determination.** If a plan provides for a suspension of benefits, the plan must adopt a procedure, and so long as the employee, whereunder an employee requests, and the plan administrator provides a reasonable amount of information, a determination of the employee's eligibility for the benefits contemplated under the plan shall be made in accordance with the procedure adopted by the plan under section 503 of the Act and the regulations thereunder.

(1) A plan which requires verification requirements under paragraph (b)(5) of this section which complies with the requirements set forth in paragraph (i) of this section may require an employee to be aware that a retiree is not eligible for benefits under section 203(a)(3)(B) service if the retiree has not complied with the reporting requirements under that employment, the employee may, unless it is under the circumstances to the basis of a rebuttable presumption that the retiree had not exceeded the plan's number of hours for that employment, a plan covering an employee employed in the building has adopted verification requirements described in paragraph (b)(7)(ii) of this section and which compliance requirements set forth in paragraph (b)(7)(ii) of this section provide that whenever an employee becomes aware that an employee employed in section 203(a)(3)(B) service at a construction site if the retiree has not complied with the reporting requirements under that employment, then an employee may, unless it is under the circumstances to the basis of a rebuttable presumption that the retiree was not employed for the period in work at that site for the work in question as

that same employer performed that work at that construction site.

(ii) A plan which provides for a presumption described in paragraph (b)(7)(i) of this section may employ such presumption only if the following requirements are met. The plan must describe its employment verification requirements and the nature and effect of such presumption in the plan's summary plan description and in any communication to plan participants which relates to such verification requirements (for example, employment reporting reminders or forms), and retirees must be furnished such disclosure, whether through receipt of the above communications or by special distribution, at least once every 12 months.

(c) **Section 202(a)(3)(B) Service—(1) Plans other than multiemployer plans.** In the case of a plan other than a multi-employer plan, as defined in section 3(37) of the Act, the employment of an employee, subsequent to the time the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, results in section 203(a)(3)(B) service during a calendar month, or during a four or five week payroll period ending in a calendar month, if the employee, in such month or payroll period,

(i) Completes 40 or more hours of service (as defined in 29 CFR 2530.200b-2(a) (1) and (2)) for an employer which maintains the plan, including employers described in § 2530.210 (d) and (e), as of the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment; or

(ii) Receives from such employer payment for any such hours of service performed on each of 8 or more days (or separate work shifts) in such month or payroll period. *Provided,* That the plan has not for any purpose determined or used the actual number of hours of service which would be required to be credited to the employee under § 2530.200b-(2)(a).

(2) **Multiemployer plans.** In the case of a multiemployer plan, as defined in section 3(37) of the Act, the employment of an employee subsequent to

the time the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment results in section 203(a)(3)(B) service during a calendar month, or during a four or five week payroll period ending in a calendar month, if the employee, in such month or payroll period:

—Completes 40 or more hours of service (as defined in § 2530.200b-2(a) (1) and (2)) or

—Receives payment for any such hours of service performed on each of 8 or more days (or separate work shifts) in such month or payroll period. *Provided,* That the plan has not for any purpose determined or used the actual number of hours of service which would be required to be credited to the employee under § 2530.200(b)-(2)(a); in

—An industry in which employees covered by the plan were employed and accrued benefits under the plan as a result of such employment at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, and

—A trade or craft in which the employee was employed at any time under the plan, and

—The geographic area covered by the plan at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment.

(1) **Industry.** The term "Industry" means the business activities of the types engaged in by any employers maintaining the plan.

**Example.** One of the employers contributing to a multiemployer plan engages in heavy construction, another in textile manufacturing, and another in communications. Employee E began his career as an employee of an employer engaged in heavy construction. Later E was employed by an employer in communications. With both employers, E accrued benefits under the plan. If E retires and then becomes reemployed in the same trade or craft and in the same geographic area, employment by E in either heavy construction, communications or textile manufacturing, whether or not with an employer who contributes to the plan or in a self-employed capacity, may be considered

by the plan to be employment in the same industry, assuming that employees covered by the plan were accruing benefits as a result of employment in these industries at the time E commenced receiving benefits. This is true even though E did not previously accrue benefits as a result of employment with an employer engaged in textile manufacturing because other employees covered by the plan were employed in that industry and were accruing benefits under the plan as a result of such employment at the time when benefit payments to E commenced or would have commenced if E had not returned to employment.

(ii) *Trade or craft.* A trade or craft is (A) a skill or skills, learned during a significant period of training or practice, which is applicable in occupations in some industry, (B) a skill or skills relating to selling, retailing, managerial, clerical or professional occupations, or (C) supervisory activities relating to a skill or skills described in (A) or (B) of this paragraph (c)(2)(ii). For purposes of this paragraph (c)(2)(ii), the determination whether a particular job classification, job description or industrial occupation constitutes or is included in a trade or craft shall be based upon the facts and circumstances of each case. Factors which may be examined include whether there is a customary and substantial period of practical, on-the-job training or a period of related supplementary instruction. Notwithstanding any other factor, the registration of an apprenticeship program with the Bureau of Apprenticeship and Training of the U.S. Department of Labor is sufficient for the conclusion that a skill or skills which is the subject of the apprenticeship program constitutes a trade or craft.

*Example.* Participation in a multiemployer plan is limited solely to electricians. Electrician E retired and then became reemployed as a foreman of electricians. Because a "trade or craft" includes related supervisory activities, E remains within his trade or craft for purposes of this section.

(iii) *Geographic area covered by the plan.* (A) With the exception of a plan covering employees in a maritime industry, the "geographic area covered by the plan" consists of any state or any province of Canada in which contributions were made or were required

to be made by or on behalf of an employer and the remainder of any Standard Metropolitan Statistical Area (SMSA) which falls in part within such state, determined as of the time that the payment of benefits commenced or would have commenced if the employee had not returned to employment.

*Example.* A multiemployer plan covers plumbers in Pennsylvania. All contributing employers have always been located within Pennsylvania. Accordingly, the "geographic area covered by the plan" consists of Pennsylvania and any SMSAs which fall in part within Pennsylvania. Thus, for example, in the case of the Philadelphia SMSA, Burlington, Camden and Gloucester Counties in New Jersey are within the "geographic area covered by the plan".

(B) [Reserved—for definition of the geographic area covered by a plan that covers employees in a maritime industry.]

For purposes of this paragraph (c)(2)(iii), contributions shall not include amounts contributed: after December 31, 1978 by or on behalf of an employer where no contributions were made by or on behalf of that employer before that date, if the primary purpose of such contribution is to allow for the suspension of plan benefits in a geographic area not otherwise covered by the plan; or with respect to isolated projects performed in states where plan participants were not otherwise employed.

(3) *Employment in a maritime industry.* For plans covering employees employed in a maritime industry, as defined in § 2530.200b-6, the standard of "five or more days of service, as defined in § 2530.200b-7(a)(1)" shall be used in lieu of the standard "40 or more hours of service", for purposes of determining whether an employee is employed in section 203(a)(3)(B) service.

(d) *Suspendable amount—(1) Life annuity.* In the case of benefits payable periodically on a monthly basis for as long as a life (or lives) continues, such as a straight life annuity or a qualified joint and survivor annuity, a plan may provide that an amount not greater than the portion of a monthly benefit payment derived from employer contributions may be withheld per-

or on behalf of an employee remainder of any metropolitan Statistical area which falls in part in the State, determined as of the date of the payment of benefits would have commenced had the employee not returned to

multiemployer plan covers Pennsylvania. All contributing employers always been located within the State. Accordingly, the "geographic area of the plan" consists of Pennsylvania SMSAs which fall in part in the State. Thus, for example, in Philadelphia SMSA, Burleigh and Gloucester Counties in North Carolina within the "geographic area of the plan".

d—for definition of the area covered by a plan that exists in a maritime industry.

of this paragraph contributions shall not include contributions contributed after December 8, 1981 by or on behalf of an employee if no contributions were made on behalf of that employee after December 8, 1981. If the primary purpose of the contribution is to allow for the accrual of plan benefits in an area not otherwise covered; or with respect to contributions performed in states where participants were not otherwise covered.

ent in a maritime industry covering employees in the maritime industry, as defined in § 30.200b-6, the standard "40 days of service, as defined in § 30.200b-7(a)(1)" shall be the standard "40 or more days of service", for purposes of determining whether an employee is covered under section 203(a)(3)(B) service.

able amount—(1) Life annuity—In the case of benefits payable on a monthly basis under a life (or lives) continuing annuity or a survivor annuity, a portion of a monthly benefit derived from employment may be withheld per-

manently for a calendar month, or for a four or five week payroll period ending in a calendar month, in which the employee is employed in section 203(a)(3)(B) service.

(2) *Other benefit forms.* In the case of benefits payable in a form other than the form described in paragraph (d)(1) of this section, a plan may provide for the permanent withholding of an amount of the employer-derived portion of benefit payments for a calendar month, or for a four or five week payroll period ending in a calendar month, in which the employee is employed in section 203(a)(3)(B) service, not exceeding the lesser of—

(i) The amount of benefits which would have been payable to the employee if he had been receiving monthly benefits under the plan since actual retirement based on a single life annuity commencing at actual retirement age; or

(ii) The actual amount paid or scheduled to be paid to the employee for such month. Payments which are scheduled to be paid less frequently than monthly may be converted to monthly payments for purposes of this paragraph (d)(2)(ii).

(Approved by the Office of Management and Budget under control number 1210-0048)

(46 FR 8903, Jan. 27, 1981, as amended at 46 FR 59245, Dec. 4, 1981; 46 FR 60572, Dec. 11, 1981; 49 FR 18295, Apr. 30, 1984)

§ 2530.204-1 Year of participation for benefit accrual.

(a) *General.* Section 204(b)(1) of the Act and section 411(b)(1) of the Code contain certain requirements relating to benefit accrual under a defined benefit pension plan. Some of these requirements are based on the number of years of participation included in an employee's period of service. Paragraph (b) of this section relates to service which must be taken into account in determining an employee's period of service for purposes of benefit accrual. Section 2530.204-2 sets forth rules relating to the computation periods to be used in measuring years of participation for benefit accrual ("accrual computation periods").

(b) *Service which may be disregarded for purposes of benefit accrual.* (1)

In calculating an employee's period of service for purposes of benefit accrual under a defined benefit pension plan, section 204(b)(3) of the Act and section 411(b)(3) of the Code permit the following service to be disregarded: service before an employee first becomes a participant in the plan; service which is not required to be taken into account under section 202(b) of the Act and section 410(b)(5) of the Code (relating to one-year breaks in service for purposes of eligibility to participate); and service which is not required to be taken into account under section 204(b)(3)(C) of the Act and section 411(b)(3)(C) of the Code (relating to 12-consecutive-month periods during which an employee's service is less than 1,000 hours). In addition, in calculating an employee's period of service for purposes of benefit accrual, a defined benefit plan shall not be required to take into account service before the conclusion of a series of consecutive 1-year breaks in service occurs which permits a plan to disregard prior service under section 203(b)(3)(D) of the Act and section 411(a)(6)(D) of the Code.

(2) *Example.* The following example illustrates paragraph (b)(1) of this section. A plan has a calendar year vesting and accrual computation period and, under § 2530.202-2 (a) and (b)(1), uses eligibility computation periods beginning on an employee's employment commencement date and anniversaries thereof. The plan provides that an employee who has at least 10 years of service has a vested right to 100 percent of his accrued benefit derived from employer contributions. The plan provides that an employee who is credited with at least 1,000 hours of service in a calendar year accrual computation period is credited with at least partial year of participation for purposes of benefit accrual. An employee whose birthday is October 16, 1956, begins employment with an employer maintaining the plan on January 1, 1977. Under § 2530.202-2(a)(1), January 1, 1977 is the employee's employment commencement date and the calendar year 1977 is the employee's initial eligibility computation period. The employee completes at least 1,000 hours of service in each of

ative Date. Section applicable in the plan years beginning after Sept. 2, except as otherwise provided in section of this title. see section 1061(a) of this

e case of plans in existence on Jan. 1, section applicable in the case of plan beginning after Dec. 31, 1975, except as se provided in section 1061(c) and (d) title, see section 1061(b)(2) of this title.

ulgation of Regulations. Secretary ed, effective Sept. 2, 1974, to promul- gulations wherever provisions of this ter call for the promulgation of regu- see section 1031(c) of this title.

lative History. For legislative history pose of Pub.L. 93-406, see 1974 U.S. ng. and Adm.News, p. 4639. See, b.L. 98-397, 1984 U.S.Code Cong. n.News, p. 2547.

ection 1060 of this title. an for purposes of this section, see

section. see section 1061 of this title. of minimum vesting standards, see

of benefit accrual requirements, see

tions

re pension benefit plans, see 29 CFR

Labor Relations § 124. Master and Servant § 167 et seq.

of union pension fund's consistent refusing to permit employers to ontributions for employees under , in order to protect actuarial and tive soundness of the fund, the not required to accept contributions oyer whose collective bargaining with union local provided that emust attain age of 25 before employer ed to make contributions on their alarico v. United Furniture Work- on Fund A, D.C.Neb.1979, 479 172.

tatus individual members who were sole proprietors itred other union members to work were not eligible for participation

a pension fund as dual status employer em- ployee in that, under this chapter, dual status individuals are not eligible for inclusion in employee pension benefit plans. Peckham v. Board of Trustees of Intern. Broth. of Paiat- es and Allied Trades Union, C.A.Okl.1981, 653 F.2d 424.

**3. Persons covered**

Even though language of employer's wel- fare benefit plan, under which employee was not covered, was almost identical to language of pension plan, employee was entitled to benefits under pension plan in view of fact that, unlike welfare benefit plans, pension plan was not exempt from participation, vest- ing, and funding requirements of this chapter; rather, this chapter expressly set forth mini- mum participation standards which had no exception applicable to persons in employee's position, so that, because pension plan stated that it was to be construed to meet require- ments of this chapter, and there were obvious and significant benefits to meeting such re- quirements, plan would be construed as in- cluding employee as a participant. Crouch v.

Mo-Kan Iron Workers Welfare Fund, C.A. Kan.1984, 740 F.2d 805.

**4. Inclusion of ineligible individual**

Mere inclusion of individuals who are not eligible for participation in a plan within coverage of this chapter does not invalidate, as a whole, the plan which otherwise com- plies with requirements of this chapter; in such situation, all that is required is invalida- tion of the plan as it pertains to such ineligi- ble participants. Insurance & Prepaid Bene- fits Trusts v. Marshall, D.C.Cal.1981, 90 F.R.D. 703.

**5. Estoppel**

Union pension fund's accepting contribu- tions from employer which excluded contri- butions for employees under age of 25 did not estop fund from subsequently taking action inconsistent with that acceptance, where fund had not known that employer was excluding such contributions and had not intended to deceive employer, but at most, had been merely mistaken in accepting the contribu- tions. Talarico v. United Furniture Workers Pension Fund A, D.C.Neb.1979, 479 F.Supp. 1072.

**§ 1053. Minimum vesting standards**

**(a) Nonforfeitable requirements**

Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retire- ment age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employ- ee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

Years of service:	Nonforfeitable percentage
5 .....	25
6 .....	30
7 .....	35

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 1052(c)(8) of this title.

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 1054(c)(2)(C) of this title) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 1054(c)(2)(C) of this title (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before September 2, 1974, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) Cross Reference

For nonforfeitably<sup>1</sup> where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 1056(c) of this title.

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SLA 1986)

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Sec. 23.20.110. Information obtained by department. (a) The department shall hold information obtained from an employing unit or individual in the course of administering this chapter and determinations as to the benefit rights of an individual confidential and may not disclose them or open them to public inspection in a manner which reveals the identity of the individual or employing unit. A claimant or the legal representative of the claimant is entitled to information from the records of the department to the extent necessary for the proper presentation of the claim in a proceeding under this chapter. Subject to restrictions which the department prescribes by regulation, the information may be made available to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or, for the purposes of the Federal Unemployment Tax Act, to the Internal Revenue Service of the United States, or, for tax purposes, to the Department of Revenue. Information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service.

(b) Upon request the department shall furnish to an agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to a state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to benefits under this chapter.

(c) Upon request of an agency of this or another state or of the federal government which administers or operates one or more programs of public assistance under either federal law or the law of this state, or which is charged with any duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this section, the department shall provide, with respect to any named individual specified by the requesting agency, the following information:

(1) whether the individual is receiving, has received, or has made application for unemployment compensation under this chapter;

(2) the period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid;

(3) the individual's most recent address; and

(4) whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and rate of pay.

(d) The department may require that an agency to which it provides information under this section reimburse the department for its costs of furnishing that information.

(e) The department shall provide information requested by a state or federal agency under an income and eligibility verification system that meets the requirements of 42 U.S.C. 1320b-7 (Social Security Act).

(f) [Repealed, § 2 ch 60 SLA 1985.]

(g) The requirements of this section concerning the confidentiality of information obtained in the course of administering this chapter apply to officers and employees of a state or federal agency to whom the department provides information as authorized by this section. (§ 323 ch 5 ESLA 1955; am § 1 ch 79 SLA 1969; am § 2 ch 122 SLA 1977; am § 3 ch 9 SLA 1980; am § 2 ch 115 SLA 1982; am §§ 1, 2 ch 60 SLA 1985)

Effect of amendments. — The 1985 amendment, repealed subsection (f), concerning disclosure of information contained in records of the department.

Article 3. Contributions.

Section 200. Lien	Section 250. Lien upon distribution or assignment of assets
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Sec. 23.20.200. Lien. (a) A claim for contributions, including interest and penalties, not paid when due is a lien in favor of the state against all the real and personal property of the employer.

(b) The claim becomes a lien when the department files a notice of the lien with the recording officer of the recording district in which the property is located. The claim becomes a lien on a motor vehicle when the department files a notice of the lien in the office of the commissioner of public safety. Filing of the notice of lien is constructive notice of the lien against the property described in the notice to creditors of the owner, and to subsequent purchasers and encumbrancers.

(c) [Repealed, § 80 ch 9 SLA 1980.]

(d) The department may release a notice of lien by filing a certificate of release in the manner prescribed for the filing of a notice of lien. The department may not file a certificate of release until the amount of contributions, including interest, and penalties and costs, is paid, or until it receives assurance of payment which it considers adequate. (§ 514 ch 5 ESLA 1955; am § 1 ch 37 SLA 1963; am § 1 ch 67 SLA 1967; am § 80 ch 9 SLA 1980; am § 27 ch 21 SLA 1985)

Effect of amendments. — The 1985 amendment, in subsection (b) substituted "public safety" for "revenue" at the end of the next-to-last sentence.

Stated in In. Inc., 53 Bankr. 1985).

Sec. 23.20.250 sets. (a) If t orde, includi proceeding, o a composition which become lien is prior t filed under A more than \$25 starting of th (b) The exist judicial procee tion of assets c department or (c) In the ev cially-confirme (Federal Bank) entitled to the p 5 ESLA 1955;

Effect of amendt amendment, in sub. "11 U.S.C. (Federal "the Federal Bankr

Applied in In re A Inc., 53 Bankr. 551 1985).

Sec. 23.20.260.

Essentially, subsect or in business i collecting agent of th there is no fund avail successor can withhold tax debt, the obligatio not arise. Northern Lig ployment Sec. Div., Su (File No. S-390), 695 Except when no fur withholding. — Wner

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: HCS for CSSB 274 (L&C)

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: " An Act relating to access to  
employment security records." BRU: Employment Security  
 Sponsor: Fahrenkamp Components: Unemployment Insurance  
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

\_\_\_\_\_

Prepared by: Joe Sitton, Director Phone: 465-2712  
 Division: Employment Security Division Date: 03/02/88

Approved by Commissioner: Jim Sampson Date: 03/02/88  
 Agency: Department of Labor

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act relating to access to employment security records."  
Sponsor: Fahrenkamp  
Requestor: Senate Labor and Commerce

Agency Affected: Labor  
BRU: Employment Security  
Components: Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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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: Joe Sitton, Director   
Division: Employment Security Division

Phone: 465-2712  
Date: 1/15/88

Approved by Commissioner: Jim Sampson   
Agency: Labor

Date: 1/15/88

Distribution (by preparer):

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

NO 317

19

# STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Bill Version: CS SB274 LFC  
Publish Date: 5-4-87

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Title: "An Act relating to access to employment security records."

Sponsor: Fahrenkamp

Requestor: Senate Labor and Commerce

Agency Affected: Labor

BRU: Employment Security

Components: Unemployment Insurance

## EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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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)

\_\_\_\_\_  
NB *[Signature]*

Prepared by: Joe Sitton, Director Phone: 465-2712  
Division: Employment Security Division Date: 5/1/87

Approved by Commissioner: NB Jim Sampson *[Signature]* Date: 5/1/87  
Agency: Labor

Distribution (by preparer):

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

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS: Judiciary

DATE: 3/3/88

The Labor & Commerce Committee has considered CSSB 274(L&C)

"An Act relating to access to employment security records."

**RECOMMENDS:**

- replace with HCS for CSSB 274(L&C)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

*David Ouley*  
*Alta Korman*  
*D. C. Young*  
*Scott Morrison*  
 \_\_\_\_\_  
 \_\_\_\_\_  
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*David Ouley*  
 Chairman's signature