

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5086 HSTA HB 348 - HB 365

658

POLICY IMPACTS OF MEDICAID/GRM RATE SETTING

By statute, rate setting for Medicaid/GRM for facilities is independent from other functions and payment methodologies for services within the Medical Assistance programs. The program on policy decisions made within Medical Assistance must be made around accommodating the independent rate setting function. The Department of Health and Social Services, not the Medicaid Rate Commission, is charged with securing funding for both activities. The Medicaid Rate Commission's only statutory obligation is to consider the appropriation and available federal revenues. The Medicaid Rate Commission is not a part of any policy development or formulation within the Division of Medical Assistance nor are they accountable to any entity as to the impact of policy making on rate setting.

The model used in the state of Alaska is without precedence. Normally payment systems reflect overriding state policy as to what and how services are to be delivered to the populations covered under state programs. By statute, these functions were separated in Alaska.

From a policy formulation health care delivery standpoint, the rate setting system results in several conditions which influence health care delivery system in Alaska.

1. Increasing the number of long term care beds and new facilities which is pushing occupancy down to 80%.
2. Marketing of Medicaid patients in long term care by providing very attractive physical plants. Plans have been reported to the staff at the Medicaid Rate Commission including possibility of health spas and wine and beer served in the long term care cafeteria.
3. Lack of interest in providing services to Medicare patients. This is evident by voluntary decertification for Medicare services and several facilities which have skilled services but have elected not to be Medicare certified.
4. Discouraging alternative uses of empty beds in long term care facilities as it would potentially reduce the payment rate from Medicaid.
5. Any policy changes in health care funding is evidenced in appropriations either with marginal increases or decreases must be handled through restriction or reduction of services to the recipients of Medicaid and GRM no impact can be made in definitions of reasonable payment to health care facilities.

6. The increasing bed capacity and the self-adjusting rates to pay for empty beds over a two year period of time, is creating a condition wherein regulations on admissions to long term care may become more restrictive. The scenario will ultimately result in a smaller and smaller number of recipients being served with same dollars being paid to facilities.
7. The state's payment methodology is coming under continued scrutiny by the federal government. Currently, the state is involved in long negotiations about whether we are in compliance with federal requirements. Noncompliance will result in loss of federal funds and further restrict the services to the recipients since there is no way to effect a reduced payment rate to comply with federal law.

EXHIBIT 1

MEDICAID RATE COMMISSION

02/03/88

GOLDEN EMPIRE REGION																				
	Small			Moderate			Large			CENTRAL			NORTHG			SOUTH				
	Rural	Sized	Complex	BARTLETT	PENIN	CORDOVA	FAIRBANKS	HUMANA	KETCH	KODIAK	SOUND	PTSERG	PROV	SEWARD	SITKA	PENIN	VALDEZ	VALLEY	WRANGELL	
Group Size	57	115	82	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
Patient Days	5,297	29,422	63,510	10,532	7,842	577	30,541	34,670	5,381	3,433	1,833	542	83,647	1,274	2,422	3,624	490	4,351	519	
Licensed Beds	43	189	366	63	45	13	181	238	46	25	15	11	337	32	24	22	15	36	9	
Length of Stay	4.1	5.5	5.6	3.7	3.3	2.8	4.7	4.8	3.5	2.9	3.0	2.5	6.1	N/A	4.2	3.3	2.7	3.3	2.6	
Occupancy	30.1%	48.9%	54.0%	45.9%	47.7%	12.2%	46.2%	39.9%	32.0%	37.6%	33.5%	13.5%	68.0%	10.9%	27.6%	45.1%	8.9%	48.3%	15.8%	
PATIENT CARE																				
Daily Hosp Srvc	137.61	144.11	172.52	247.69	209.08	326.44	228.66	171.22	224.87	216.71	309.19	248.10	220.27	363.79	258.33	320.21	696.99	214.35	265.90	
Ancillary	174.28	203.32	235.90	216.63	245.13	165.45	271.43	268.88	223.76	262.48	250.02	171.59	289.48	177.19	208.32	187.21	155.73	246.40	273.24	
Total	N/A	N/A	N/A	464.32	454.21	491.89	500.09	440.10	448.63	479.19	559.21	419.69	509.75	540.98	466.65	507.42	852.72	462.75	539.14	
OVERHEAD																				
Capital	18.79	35.79	26.95	36.02	186.38	73.35	43.74	168.58	38.99	39.33	110.11	365.97	123.42	37.20	264.76	173.04	66.20	105.41	85.54	
Administration	100.19	107.21	106.54	199.02	173.53	235.04	176.81	233.48	222.58	253.53	296.67	261.85	170.36	128.09	236.82	166.29	488.53	271.56	282.29	
Support Services	114.35	115.36	126.98	146.81	113.49	139.70	131.29	103.70	113.99	118.70	267.56	189.93	107.06	293.63	197.76	169.97	252.61	185.80	119.49	
Total Overhead	N/A	N/A	N/A	381.85	473.40	448.09	351.84	525.76	375.56	411.56	674.34	817.75	400.84	458.92	699.34	509.30	807.34	562.77	487.32	
TOTAL COSTS	591.86	632.17	687.64	846.17	919.61	939.98	851.93	965.86	824.19	890.75	1,233.55	1,237.44	909.59	999.90	1,165.99	1,016.72	1,660.06	1,025.32	1,026.46	
CHARGES	N/A	N/A	N/A	901.07	873.16	600.61	905.01	1,436.70	854.95	1,193	1,046.68	736.85	1,042.29	N/A	735.35	669.30	857.69	1,258.30	756.59	
Percentage of operating costs paid				106.5%	95.1%	63.9%	106.2%	148.7%	103.7%	111.0%	84.9%	59.5%	114.6%	N/A	63.1%	65.8%	51.7%	122.7%	73.7%	

CALIFORNIA COSTS REPRESENT MEDIANS. THE COSTS WILL NOT TOTAL YCR AFE INTENDED TO TOTAL.

COSTS DO NOT INCLUDE CHARITY, BAD DEBT, CONTRACTUAL ALLOWANCES, OR REVENUE OFFSETS. THE PERCENTAGE OF CHARGES TO COSTS DO NOT REPRESENT PROFIT OR LOSS FOR THE FACILITY.

EXHIBIT 2

MEDICAID RATE COMMISSION

02/03/88

1986 LONG TERM CARE COSTS PER PATIENT DAY

	NORTHAM CAL F	CORDOVA	DEHALI	KETCHIKAN	KODIAK	NORTON SOJND	OUR LADY	PETERSBURG	ST. ANN'S	SOUTH PENINSULA	WESLEYAN	WRANGELL
Patient Days	32,517	1,869	27,403	14,592	5,501	2,060	78,941	3,700	13,606	5,216	22,682	5,055
Licensed Beds	N/A	10	101	46	19	6	224	14	45	16	66	14
Filled Beds	89	5	75	40	16	6	216	10	37	14	62	14
PATIENT CARE												
Routine Service	\$20.91	\$129.30	\$57.93	\$55.78	\$66.96	\$64.98	\$53.15	\$90.60	\$64.47	\$61.65	\$41.51	\$54.56
OVERHEAD												
Capital	7.00	14.58	11.84	17.85	14.96	13.94	25.59	53.42	21.33	34.62	2.76	10.15
Plant	3.26	10.53	6.48	20.88	16.65	16.04	4.21	35.21	5.31	15.06	5.55	9.26
Administration	8.13	80.31	20.59	30.84	61.99	72.05	20.05	82.43	29.00	41.80	10.64	52.81
Support Services	9.27	55.03	29.99	44.56	46.68	80.82	28.78	44.57	41.94	60.68	30.46	35.58
Total Overhead	27.66	160.45	68.9	114.13	140.28	182.85	78.63	215.63	97.58	152.16	49.41	107.8
TOTAL COSTS	\$48.57	\$289.81	\$126.83	\$169.91	\$207.24	\$247.83	\$131.78	\$306.23	\$162.05	\$213.81	\$90.92	\$162.36
PERCENTAGES												
Routine	43.05%	44.64%	45.68%	32.83%	32.31%	26.22%	40.33%	29.59%	39.78%	28.83%	45.66%	33.60%
Overhead	56.95%	55.36%	54.32%	67.17%	67.69%	73.79%	59.67%	70.41%	60.22%	71.17%	54.34%	66.40%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

California cost data as provided in the draft cost analysis prepared by the Alaska Health Association.

Alaska data for co-located long term care provided by the analysis prepared by the Alaska Health Association.

Alaska data for free standing long term care facilities provided by the Medicaid Rate Commission.

Two different data sources were used for Alaska data since the format in the Alaska Health Association was not consistent between free standing and co-located facilities (employee benefits were allocated in free standing facilities, but were in co-located facilities)

Heritage Place was not included since only budget data was available.

EXHIBIT 3

	<u>ACUTE CARE</u>		<u>LONG TERM CARE</u>	
	Charges to Cost	Occupancy	1988 Rate	Occupancy
Petersburg	59.9%	13.5%	282.51	72.4% *
Cordova	63.9%	12.2%	271.32	51.7% *
S. Peninsula	65.8%	45.1%	233.37	89.3% *
Wrangell	73.7%	15.8%	188.66	98.9%
Norton Sound	84.9%	33.5%	193.18	95.0%
Ketchikan	103.7%	32.0%	198.49	86.9%
Kodiak	111.0%	37.6%	203.88	85.1%

* New facilities since 1985

EXHIBIT 4

MEDICAID RATE COMMISSION

01/31/88

LONG TERM CARE CO-LOCATED FACILITIES COST COMPARISONS
PER LONG TERM CARE DAY

CLASSIFICATION	HOURS PAID			EXPENSES		
	1982	1985	% CHANGE	1982	1985	% CHANGE
United States	4.47	4.34	-2.99%	63.40	50.96	-21.85%
6-24 beds	4.72	4.66	-1.25%	94.28	84.01	-10.89%
25-49 beds	4.53	4.97	9.62%	64.60	55.81	-13.50%
50-99 beds	4.09	4.17	2.09%	50.16	44.74	-10.41%
100-199 beds	4.18	4.15	-0.64%	53.72	49.68	-7.53%
200-299 beds	4.28	4.27	-0.28%	57.86	75.10	29.72%
300-399 beds	4.74	4.19	-11.72%	84.60	66.02	-22.14%
400-499 beds	6.06	4.39	-27.62%	114.15	71.71	-37.18%
500+ beds	4.96	5.05	1.82%	69.98	90.58	29.44%
Alaska	4.09	5.80	41.90%	133.62	150.13	12.35%
New England	4.98	3.83	-23.16%	96.02	52.52	-45.31%
Mid Atlantic	4.58	4.73	3.42%	74.11	74.80	0.93%
South Atlantic	4.62	4.63	0.10%	55.72	51.81	-7.01%
East Northcentral	4.42	4.59	3.68%	46.19	69.15	49.71%
East Southcentral	4.42	4.00	-9.51%	42.75	43.50	1.75%
West Northcentral	3.99	4.20	5.16%	42.49	50.23	18.23%
West Southcentral	4.65	3.88	-16.53%	94.68	46.04	-51.38%
Mountain	4.28	4.16	-2.27%	48.50	49.91	2.90%
Pacific	5.60	4.13	-26.25%	126.86	94.42	-25.57%

Data Source: Hospital Statistics
American Hospital Association
1983 and 1986 Editions

EXHIBIT 5

MEICAID RATE COMMISSION

1986 LONG TERM CARE COSTS PER PATIENT DAY

02/03.88

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	HARBORVIEW															
	CORDOVA	DEHALI	ICF/V	LTC	HERITAGE	HOPE	KETCHIKAN	KODIAK	NORTON SOUND	MARY CONRAD	JUR LADY	PETERSBURG	ST. ANN'S	SOUTH PENINSULA	WESLEYAN	WRANGELL
Fiscal Year End	6/30	12/31	6/30	6/30	12/31	6/30	6/30	12/31	9/30	12/31	12/31	6/30	12/31	6/30	6/30	6/30
Total Patient Days	1,687	27,403	24,069	N/A	2,560	11,919	14,572	5,901	2,080	N/A	78,941	3,700	13,604	5,214	22,482	5,055
Medical Assistance Days	1,870	23,146	24,069	N/A	2,316	11,719	12,568	5,087	2,090	N/A	69,090	3,566	11,944	5,054	20,243	4,824
ROUTINE (LESS CAPITAL)																
Direct Costs	\$129.36	\$57.93					\$63.33	\$68.64	\$68.85		\$53.15	\$96.51	\$64.47	\$65.21	\$41.45	\$64.71
Admin & General	33.53	10.64					12.24	20.52	20.48		9.86	30.93	17.00	14.17	8.26	19.00
Operation of Plant	5.98	6.48					12.39	16.74	13.04		4.21	20.89	5.31	10.05	5.55	3.60
Laundry & Linen	8.42	3.76					6.99	11.66	26.34		2.68	8.78	5.81	8.84	4.07	8.37
Housekeeping	12.76	4.85					17.80	10.67	4.91		5.23	8.42	10.88	11.50	5.46	7.92
Dietary	48.96	21.38					36.59	41.10	71.65		20.87	48.12	25.25	57.90	20.93	31.08
Nursing Admin	19.60	4.66					4.98	0.00	2.89		7.85	12.46	4.96	3.92	0.00	7.28
Central Services	0.00	0.00					0.27	1.57	0.00		0.00	0.00	0.00	0.00	0.00	0.00
Pharmacy	0.00	0.00					0.00	0.03	0.00		0.00	0.00	0.00	0.00	0.00	0.00
Medical Records	3.12	2.00					0.36	0.23	7.22		0.80	7.18	1.27	5.26	0.01	1.80
Social Services	0.00	3.29					2.47	0.00	0.00		1.54	0.00	5.77	0.00	2.07	0.00
ANCILLARY (WITH CAPITAL)																
Radiology	\$0.50	\$0.00					\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	\$3.54	\$0.00
Laboratory	3.80	0.00					0.00	0.00	0.00		0.00	0.00	0.00	0.00	0.39	0.00
Respiratory Therapy	0.00	0.00					3.38	0.00	0.00		2.64	0.01	0.05	0.07	0.00	1.18
Physical Therapy	0.84	4.02					3.14	3.05	0.00		3.37	2.52	3.16	6.51	0.10	6.90
Speech Therapy	0.00	0.00					0.00	2.98	0.00		0.40	0.00	0.13	0.14	0.00	0.00
Occ/R. Therapy	0.00	3.82					0.00	0.00	0.00		1.52	0.00	2.87	4.66	3.56	0.00
Electrocardiology	0.05	0.00					0.00	0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00
Medical Supplies	7.38	4.25					3.38	0.00	0.00		3.69	6.87	4.58	8.33	1.08	4.52
Drugs/IV	6.13	6.33					4.76	3.18	0.00		4.79	9.01	5.90	5.64	3.45	13.67
1986 PER PATIENT DAY TOTALS																
Routine	\$261.73	\$115.00	\$298.90	\$0.00	\$173.84	\$230.60	\$137.42	\$171.16	\$215.39	\$0.00	\$106.19	\$233.32	\$140.72	\$174.83	\$87.80	\$143.80
Capital	15.32	7.41	6.01	0.00	98.50	20.93	15.36	15.61	20.30	0.00	23.84	48.95	4.45	25.54	2.77	7.68
Ancillary	\$18.68	\$18.43	\$0.00	\$0.00	\$43.49	\$0.00	\$14.66	\$9.22	\$0.00	\$0.00	\$16.40	\$18.42	\$16.70	\$25.34	\$12.32	\$26.77
TOTAL	\$295.73	\$140.84	\$304.91	\$0.00	\$315.83	\$251.54	\$177.44	\$195.99	\$235.69	\$0.00	\$146.44	\$300.69	\$163.87	\$225.72	\$102.89	\$178.25
1988 RATE SET																
Routine	\$181.55	\$120.24	\$238.59	\$154.41	\$159.22	\$248.43	\$167.16	\$177.72	\$170.13	\$0.00	\$113.14	\$212.68	\$141.47	\$178.71	\$69.92	\$145.37
Commission added	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.07	0.00	0.00	0.00	0.00	0.00
Capital	65.68	6.34	0.00	0.00	82.58	23.06	15.95	16.50	23.05	0.00	29.51	50.55	4.92	28.80	4.72	13.42
Ancillary	23.89	19.18	0.00	0.00	24.00	0.00	15.39	9.66	0.00	0.00	17.56	19.28	17.51	25.86	8.57	29.87
TOTAL	\$271.12	\$145.76	\$238.59	\$154.41	\$241.80	\$271.49	\$198.50	\$203.88	\$193.18	\$0.00	\$160.28	\$302.96	\$163.90	\$223.37	\$83.21	\$188.66

health association of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

February 23, 1988

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John Vowell
Wrangle General Hospital

Chairman-Elect
Jim Gingerich
Fairbanks Memorial
Hospital

Immediate Past Chairman
Mike Lockwood
Central Peninsula
General Hospital
Soldotna

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Hospital Association
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American Hospital Assoc.
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Alaska Treatment Center
Anchorage

Executive Director
Harlan R. Knudson

Representative Fran Ulmer
P.O. Box V
Capitol, Room 102
Juneau, Ak 99811

Dear Representative Ulmer:

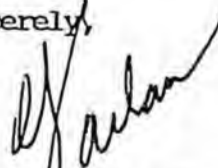
The Health Association of Alaska, representing acute care hospitals and long term health facilities, respectfully asks that you vote "no" on HB 348, revamping the membership of the State Medicaid Rate Commission.

Currently the Commission has the CEO of a licensed health facility; the designee of the Commissioner of Health and Social Services; a licensed physician; a certified public accountant, and a person representing consumers.

Under HB 348, the health facility CEO and the physician would be represented by one person, representing health care providers, and the CPA would be dropped. The Commission would then be comprised of the designees from the Commissioners of Administration; Health and Social Services, and from the Office of Budget and Management. Three (3) of the five (5) members would be state employees.

Under this makeup, the rate process becomes a method to control costs impacting the budget, rather than a vehicle to objectively evaluate and establish a fair rate of payment to health facilities for services rendered to Medicaid and General Relief Medical beneficiaries.

Sincerely,



Harlan R. Knudson
Executive Director

HK/cdr

*Bill Selovey
and I enjoyed the
chance to discuss
this with you.*

H B

353

BILL NUMBER HB 353 **

DATE	ACTION
1/22/88	MOVED OUT -

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

FOUCH 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 State Affs:

January 22, 1988

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 22, 1988

SUBJECT: Sectional analysis of HB 353
(Repurchase of retirement coverage)

TO: Representative Frau Ulmer

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

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

As a preliminary matter, I must advise you that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Secs. 1 and 2 permit a former member of the Teachers' Retirement System (TRS) who received a total refund of the contributions the member made to TRS because of a federal tax levy or a levy under AS 09.38.065 to pay back the amount levied against to TRS. The repayment has the effect of reinstating the former member's rights to retirement benefits. Under AS 09.38, contributions to the Teachers' Retirement System and the Public Employees' Retirement System are exempt from a creditor's efforts to levy against them. Under AS 09.38.065, that general exemption from creditors does not apply to certain kinds of debt, including child support, a limited amount of wages, and state or local taxes.

Sec. 3 permits a judge or justice whose contributions to the Judicial Retirement System (JRS) have been involuntarily refunded because of a levy of any kind to repay the amount levied together with interest to JRS to reinstate membership

Representative Fran Ulmer

Page 2

January 22, 1988

in the system. Contributions to JRS are not protected from levy under AS 09.38.

Sec. 4 permits a former member of the Public Employees' Retirement System (PERS) who received a total refund of contributions because of a levy under AS 09.38.065 or of a federal tax levy to repay the amount of the refund to the system and reinstate membership. Contributions to PERS are protected from levy for other kinds of debt

Sec. 5 permits members of the Elected Public Officers Retirement System who have received an involuntary refund of the individual account because of a levy of any kind to repay the amount refunded and regain all rights terminated because of the refund.

If I may be of further assistance, please advise.

TBC:gc
WKG1:044

STATE OF ALASKA



REPRESENTATIVE
FRAN ULMER

P.O. Box V
JUNEAU, ALASKA 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

M E M O R A N D U M

January 21, 1988

TO: Members of the House State Affairs Committee

FROM Representative *Fran Ulmer*

SUBJECT: House Bill 353

House Bill 353 would allow a former member of the Teachers' Retirement System (TRS), the Judicial Retirement System (JRS) and the Public Employees' Retirement System (PERS) whose entire contribution account balance is refunded in order to pay a claim under state property laws, including claims for child support, or to pay a federal tax levy, to make payments with interest to the retirement fund without having to be reemployed or in active service under the applicable retirement system.

A former member of EPORS (Elected Public Retirement System) who received an involuntary refund because of a levy could also repay the amount with interest, and upon payment the former member would regain all rights that were terminated.

Presently, if a former member's retirement account is fully refunded, the account is closed and the former member may not repay the amount refunded unless they become an active member again. HB 353 would allow a former member to repay his retirement funds if the refund was the result of a levy or involuntary refund.

In these difficult economic times, there could be many Alaskans who may lose their future retirement benefits and HB 353 would provide the opportunity to repurchase those benefits at some time in the future.

Thank you for your favorable consideration of HB 353.

STATE OF ALASKA



REPRESENTATIVE
FRAN ULMER

HOUSE OF REPRESENTATIVES

P.O. Box V
JUNEAU, ALASKA 99811
(907) 465-4947

September 1, 1987

Ken Humphreys, Director
Division of Retirement and Benefits
Department of Administration
P.O. Box CR
Juneau, AK 99811

Dear *Ken*

I received a phone call this morning from a constituent named Rod Mourant. He has a problem with the involuntary termination of his retirement with the State of Alaska as a result of action taken by the Division of Child Support Enforcement.

His problem is of interest to me not only because of the dilemma in which it has placed Mr. Mourant, but also for other individuals who may now or in the future be similarly situated. I believe there are some due process problems associated with such an involuntary closure without any notice being given to the individual with the retirement benefits.

In this particular case, Mr. Mourant and his former wife were in the process of negotiating a settlement for a debt for child support and unbeknownst to either of them or their attorneys, the Division of Child Support Enforcement attached the entire balance of his 14 years of state retirement to pay the debt.

I have questions about the Division of Child Support Enforcement being permitted to attach the funds without notice to the individual with the retirement so that in cases like this one, where an effort is being made to reach a settlement outside the use of the retirement funds, the individual's significant right in that retirement account is not taken without due process.

September 1, 1987

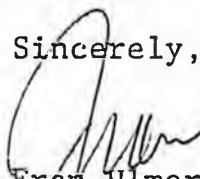
I also have questions with the Division of Retirement's involuntarily closing the account as opposed to allowing it to remain open, even with a zero balance, for the individual to purchase back his retirement. Mr. Mourant would like to begin paying into his former account in order to build back up his retirement; however, due to the fact that the account was involuntarily closed, he cannot reclaim that retirement unless he returns to State employment.

I feel that this works a particular hardship on individuals and believe that some process should be established to 1) notify individuals before their accounts are going to be involuntarily closed so that they might have an opportunity to intervene and make other arrangements so that this does not occur; and 2) that the individual at least be given the right to maintain his account and make contributions to it.

I have spoken with Bob Stalnaker who is familiar with this situation and who has assured me that the Division is attempting to fairly deal with individuals in this situation. Although I will be out of town and unable to meet with you about this matter, I would appreciate it if Judy Knight, who is my aide, might be kept informed about this issue.

Thank you very much for your consideration of this request for information and assistance.

Sincerely,



Fran Ulmer
Representative

cc: Holly Ploog, Child Support Enforcement Agency
Bob Stalnaker, Division of Retirement and Benefits
Judy Knight
Rod Mourant

S:2f

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

- P.O. BOX CR
JUNEAU, ALASKA 99811-0203
PHONE: (907)465-4460
- 2600 DENALI ST. SUITE 401
ANCHORAGE, ALASKA 99503-2740
PHONE: (907) 277-7504

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees' Voluntary Dental Vision Audit Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employees Social Security Contributions

STEVE COWPER, GOVERNOR

September 16, 1987

The Honorable Fran Ulmer
Chairman, House State Affairs
P.O. Box V
Juneau, AK 99811

Dear Representative *Fran* Ulmer:

This letter is in response to the concerns you expressed in your letter of September 1 regarding inactive members in the Public Employees' or Teachers' Retirement Systems receiving involuntary refunds of their employee contribution accounts by virtue of a qualified court order.

I agree that even if these attachments are allowed to continue, at least prior notice should be provided to the individual in question. Even if the enforcing agency does not begin providing such notice, we will continue our practice of notifying individuals once we receive the order and, unless we are prevented from doing so, will begin to allow the individual a 21 day period from the date of our notice in which to arrange for rescission of the order.

Per your discussion with Bob Stalnaker, we have discussed this situation with the Attorney General's Office and their informal opinion is that we do not have the legal latitude to effect a satisfactory remedy through regulation. The only method possible, in their assessment, is through statutory change.

There are at least two ways in which this problem could be addressed. The most comprehensive is to amend AS 09.38 and remove funds held in trust by the retirement systems from the definition of property; this would appear to solve all of the associated problems which we are currently experiencing and would parallel California law. A second approach would be to alter the definition of inactive member in the systems to include those members involuntarily refunded by virtue of a qualified court order, such as Qualified Domestic Relations Order, federal tax levies and child support orders. This would permit those members to repay the system without being reemployed but they and their dependents could still lose rights to future benefits. Even if a member is in the process of repaying a refund indebtedness, rights to benefits are not restored until the entire debt is repaid or five more years of service are accumulated. This can cause an extreme hardship on dependents in the event of death of the member.

September 16, 1987

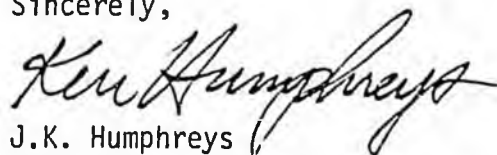
No matter what type of legislative solution, if any, is pursued, that legislation could, and I think should, include a provision to allow Mr. Mourant and all other similarly situated individuals to repay their refund indebtedness balances without returning to covered employment.

Another consideration in this area is that since January 1, 1987, all contributions to the Public Employees' Retirement Systems have been pre-tax contributions. In addition to the problems already mentioned, if these contributions are refunded before retirement, the member will not only be liable for deferred taxes but also be liable for the IRS 10% early withdrawal penalty. These types of trust accounts are considered by the IRS to be special and employer property until the employee, being aware of the penalties, personally requests them.

We would be happy to assist you if you wish to pursue a legislative solution to this problem. We will also let you know if we become aware of any other possible solutions.

We look forward to working with you on this.

Sincerely,



J.K. Humphreys
Director

JKH/RFS/cam/3

cc: Holly Ploog
Child Support Enforcement Agency

Judy Knight

Rod Mourant

STATE OF ALASKA



REPRESENTATIVE
FRAN ULMER

HOUSE OF REPRESENTATIVES

RECEIVED

SEP 03 1987

P.O. Box V
JUNEAU, ALASKA 99811
(907) 465-4947

Division of Retirement & Benefits

September 1, 1987

Ken Humphreys, Director
Division of Retirement and Benefits
Department of Administration
P.O. Box CR
Juneau, AK 99811

Dear *Ken*:

I received a phone call this morning from a constituent named Rod Mourant. He has a problem with the involuntary termination of his retirement with the State of Alaska as a result of action taken by the Division of Child Support Enforcement.

His problem is of interest to me not only because of the dilemma in which it has placed Mr. Mourant, but also for other individuals who may now or in the future be similarly situated. I believe there are some due process problems associated with such an involuntary closure without any notice being given to the individual with the retirement benefits.

In this particular case, Mr. Mourant and his former wife were in the process of negotiating a settlement for a debt for child support and unbeknownst to either of them or their attorneys, the Division of Child Support Enforcement attached the entire balance of his 14 years of state retirement to pay the debt.

I have questions about the Division of Child Support Enforcement being permitted to attach the funds without notice to the individual with the retirement so that in cases like this one, where an effort is being made to reach a settlement outside the use of the retirement funds, the individual's significant right in that retirement account is not taken without due process.

Ken Humphreys

-2-

September 1, 1987

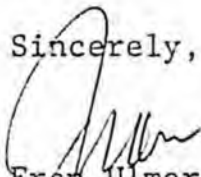
I also have questions with the Division of Retirement's involuntarily closing the account as opposed to allowing it to remain open, even with a zero balance, for the individual to purchase back his retirement. Mr. Mourant would like to begin paying into his former account in order to build back up his retirement; however, due to the fact that the account was involuntarily closed, he cannot reclaim that retirement unless he returns to State employment.

I feel that this works a particular hardship on individuals and believe that some process should be established to 1) notify individuals before their accounts are going to be involuntarily closed so that they might have an opportunity to intervene and make other arrangements so that this does not occur; and 2) that the individual at least be given the right to maintain his account and make contributions to it.

I have spoken with Bob Stalnaker who is familiar with this situation and who has assured me that the Division is attempting to fairly deal with individuals in this situation. Although I will be out of town and unable to meet with you about this matter, I would appreciate it if Judy Knight, who is my aide, might be kept informed about this issue.

Thank you very much for your consideration of this request for information and assistance.

Sincerely,



Fran Ulmer
Representative

cc: Holly Ploog, Child Support Enforcement Agency
Bob Stalnaker, Division of Retirement and Benefits
Judy Knight
Rod Mourant

S:2f

RECEIVED
SEP 03 1987
Division of Retirement & Benefits

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to repurchase of retirement coverage after certain levies. BRU: Retirement and Benefits
 Sponsor: Ulmer Components: Retirement and Benefits
 Requestor: House State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

POSITIONS:	0	0	0	0	0	0
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Attached Position Paper

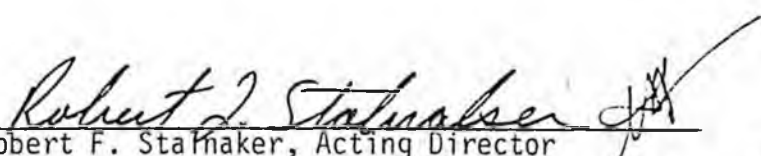
Prepared By: Robert F. Stalnaker, Acting Director Phone: 465-4470
 Division: Retirement and Benefits Date: 1-20-88
 Approved by Commissioner: John M. Andrews Date: 1/21/88
 Agency: Department of Administration

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

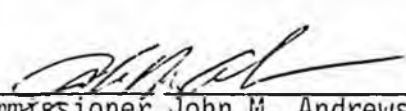
POSITION PAPER
HB 353 (State Affairs)

This bill would allow members participating in Public Employees' Retirement System (PERS), Teachers' Retirement System (TRS), Judicial Retirement System (JRS), or the Elected Public Officers' Retirement System (EPORS) to reinstate their retirement account without becoming reemployed under that system in the event they are forced to refund from that system to pay a tax levy, child support, or to comply with a qualified domestic relations order (QDRO). Currently, when a member refunds from the system, they forfeit their right to future benefits from that system. The current law allows members to reinstate refunded service only after they reemploy with an employer covered under the respective system.

The Administration supports this legislation. Passage would provide relief for those members who are forced from the system contrary to their desires and would provide the member with the ability to reinstate their right to a future benefit.


Robert F. Stalnaker, Acting Director
Division of Retirement & Benefits

1/20/88
Date


Commissioner John M. Andrews
Department of Administration

1/21/88
Date

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

P.O. BOX CR
JUNEAU, ALASKA 99811-0203
PHONE: (907)465-4460

2600 DENALI ST. SUITE 401
ANCHORAGE, ALASKA 99503-2740
PHONE: (907) 277-7504

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees' Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

STEVE COWPER, GOVERNOR

January 20, 1988

Honorable Fran Ulmer
Chair, House State Affairs Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811


Dear Representative Ulmer:

Re: House Bill 353

In accordance with AS 24.08.036, I am providing the analysis below on House Bill 353. The analysis includes the long-term and short-term impact to the state if the bill is adopted and the impact the bill will have on the actuarial soundness of the Public Employees' Retirement System (PERS), Teachers' Retirement System (TRS), Judicial Retirement System (JRS), and the Elected Public Officers' Retirement System (EPORS) funds.

This legislation would allow a member to repay the amount refunded and reinstate their retirement standing without becoming reemployed in a position covered by that retirement system if they have been forced to refund from their retirement system to satisfy payment(s) for child support, comply with the provisions of a qualified domestic relations order (QDRO) or to comply with a federal tax levy. There will be no fiscal impact of this legislation on the state government or any impact on the retirement funds involved. This legislation will not increase the employer contributions rates.

Sincerely,


R. F. Stalnaker
Acting Director

RFS/DS/bb/9

H B

355

HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: JUDICIARY

BILL: HB 355

CURRENT VERSION:

SCHEDULED: 2/5/88

SPONSOR: ULMER

PHONE NO: 4947

CONTACT FILE: _____

BILL SUBJECT: RELATING TO DAMAGES FOR DEATH OF A MINOR; AND DISTRIBUTION OF A MINOR'S ESTATE

SPONSOR BACKUP: _____

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
COURTS	JAN STRANDBERG/264-8228	

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
COURTS	2/3/88	2/4/88	-0-	-0-

ACTION

<u>DATE</u>	<u>COMMENT</u>
2/5/88	HEARING - CSHB 355 (SA) adopted & passed from committee

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/12/88

FURTHER REFERRALS: Judiciary

DATE: 2-5-88

The State Affairs Committee has considered HB 355

"An Act relating to damages for death of a minor; and distribution of a minor's estate."

RECOMMENDS:

- replace with CS HB 355 (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 _____
- zero with analysis

SIGNING DO PASS:

W.A. Boush

Cliff Davidson

Terry Martin

Frank Williams

Tom Ulmer

David Douley

SIGNING OTHER RECOMMENDATIONS:

Tom Ulmer
Chairman's signature

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 State Affrs:

Feb 5, 1988



Official Business

Alaska State Legislature

House

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

STATE AFFAIRS COMMITTEE HOUSE BILL 355

FILE CONTENTS

1. HB 355: AN ACT RELATING TO DAMAGES FOR DEATH OF A MINOR; AND DISTRIBUTION OF A MINOR'S ESTATE
2. DRAFT SPONSOR SUBSTITUTE FOR HOUSE BILL 355
3. MEMORANDUM FROM JACK CHENOWETH TO REPRESENTATIVE ULMER, DATED SEPTEMBER 25, 1987
4. ALASKA STATUTES 13.11.300 THROUGH 13.11.580
5. LETTER FROM PAUL COSSMAN TO REPRESENTATIVE ULMER, DATED JANUARY 26, 1988, AND RESPONSE, DATED FEBRUARY 1, 1988
6. ARTICLES FROM JUNEAU EMPIRE RE: PINKERTON

FISCAL NOTE

- A. ALASKA COURT SYSTEM: -0-

STATE OF ALASKA



REPRESENTATIVE
FRAN ULMER

HOUSE OF REPRESENTATIVES

P.O. Box V
JUNEAU, ALASKA 99811
(907) 465-4947

MEMORANDUM

February 4, 1988

TO: House State Affairs Members

FROM: Representative Fran Ulmer

SUBJECT: House Bill 355

House Bill 355, relating to damages for the death of a minor and distribution of a minor's estate, was introduced to change the laws of inheritance for deceased minors. This statutory change is intended to preclude a parent or other heir of a child who caused that child's death by criminal acts from benefitting or recovering damages through the estate of the child.

Several cases in recent years have pointed out the need to tighten the inheritance laws. The most recent case was one here in Juneau last year. It seems evident that a criminally negligent parent should not benefit from the death of their child.

The Sponsor Substitute for HB 355 clarifies that a parent would have had to be criminally convicted before the proposed statute applied.

Thank you for your consideration of HB 355.

5-1371L ✓

Chenoweth
2/5/88

Original sponsors: Ulmer and Hudson



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IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 355 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to damages for death of a minor; and distribution of a minor's estate."

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

* Section 1. AS 09.55.580(a) is amended to read:

(a) Except as provided under (f) of this section, when [WHEN] the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had the person lived, against the latter for an injury done by the same act or omission. The action shall be commenced within two years after the death, and the damages therein shall be the damages the court or jury may consider fair and just. The amount recovered, if any, shall be exclusively for the benefit of the decedent's spouse and children when the decedent is survived by a spouse or children, or other dependents. When the decedent is survived by no spouse or children or other dependents, the amount recovered shall be administered as other personal property of the decedent but shall be limited to pecuniary loss. When the plaintiff prevails, the trial court shall determine the allowable costs and expenses of the action and may, in its discretion, require notice and hearing thereon. The amount recovered shall be distributed only after payment of all costs and expenses of suit and debts and expenses of administration.

* Sec. 2. AS 09.55.580 is amended by adding a new subsection to read:

(f) A person whose criminal negligence is a cause of the death

1 of a minor may not recover damages for the death of the minor, either
 2 directly or as a personal representative of the minor's estate.

3 * Sec. 3. AS 13.11 is amended by adding a new section to article 8 to
 4 read:

5 Sec. 13.11.310. EFFECT OF CRIMINAL NEGLIGENCE ON DISTRIBUTION OF
 6 MINOR'S ESTATE. (a) A person whose criminal negligence is a cause of
 7 the death of a minor decedent is not entitled to benefit under the
 8 will or under this chapter.

9 (b) The estate of a minor decedent described in (a) of this
 10 section passes as if the person who acted with criminal negligence had
 11 predeceased the decedent.

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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M

September 25, 1987

SUBJECT: Work order 5-1371, precluding recovery of damages for personal injury or death incurred or caused during commission of a felony.

TO: Representative Fran Ulmer

FROM: Jack Chenoweth
Legislative Counsel

This work order is based on the instruction of your assistant, Judy Knight, to limit its operation to felonies, omitting misdemeanors and violations. The essential operative provision responding to your request adds the language "or who causes another person to suffer personal injury or death" as a part of the portion of the current law designated as subsection (a).

This draft incorporates a suggestion of Assistant Attorney General Bill Mellow, the chief of the Special Litigation Section, made in response to a different work order, urging addition of provisions:

(1) to preclude a person from securing an "indirect" recovery of a damage award through distribution of the decedent's estate (appearing as the second addition in subsection (a)); and

(2) to prevent the person from securing a damage award in the event there is no criminal conviction by allowing proof of commission of the felony in a civil proceeding to cut off the person's entitlement to the award (appearing as new material in (a)(2)(B) of the draft).

Mr. Mellow's suggestions made sense to me, and I have included them. They may, of course, be modified or deleted as you may wish.

Please contact me if you have any questions, suggestions, or comments concerning the enclosed draft.

JC:mkr
m13/003

Enclosure

LAW OFFICES
BERNARD P. KELLY & ASSOCIATES

A PROFESSIONAL CORPORATION
310 K STREET, SUITE 506
ANCHORAGE, ALASKA 99501-2040
(907) 276-3188

BERNARD P. KELLY
PAUL COSSMAN
STEVEN PRADELL

January 26, 1988

Alaska House of Representatives
State Affairs Committee
Room 102, Capitol
Juneau, Alaska 99811

Re: House Bill 355

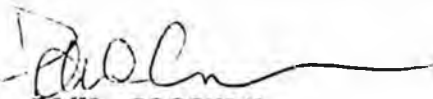
Dear Members of the House State Affairs Committee:

I vehemently oppose the passage of House Bill 355. This bill would change the current law so that any parent who is even the least bit negligent could not recover for the wrongful death of their child. The ramifications of this are severe. Consider the following example. A parent is driving their automobile with one of their minor children as a passenger. They are involved in an automobile accident in which the minor is killed. At a subsequent trial, the parent is found five percent negligent and the defendant driver is found 95 percent negligent. The parent would not be allowed to recover for the wrongful death of their child, since the parent's negligent or wrongful act or omission would be a cause of the death of their child.

House Bill 355 would create an open hole in the law which would return us to the old days of contributory negligence where even one percent of negligence on the part of a plaintiff will defeat their entire recovery. The example of an automobile collision is not an unusual one. Please do not allow House Bill 355 to hit the House floor. It is an inequitable and regressive piece of legislation.

Sincerely yours,

BERNARD P. KELLY & ASSOCIATES


PAUL COSSMAN

PC:kjn
1053n



Official Business

Alaska State Legislature

House

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

February 1, 1988

Paul Cossman
Bernard P. Kelly & Associates
310 K Street, Suite 506
Anchorage AK 99501-2040

Dear Mr. Cossman:

Thank you for your comments regarding House Bill 355, "An Act relating to damages for death of a minor; and distribution of a minor's estate." I have had a sponsor substitute drafted which I believe addresses your concerns. I have enclosed this for your review and look forward to hearing from you again.

Thank you, again, for pointing out this deficiency in the bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "Fran Ulmer".

Fran Ulmer, Chair
House State Affairs Committee

Enclosure

Father sues mother over death of child



PETER D. PAULO

EMPIRE FILE PHOTO



NATALIE IRIS PINKERTON

EMPIRE FILE PHOTO

By ED SCHOENFELD

THE JUNEAU EMPIRE

A local woman convicted in April on charges stemming from the 1986 death of her 20-month-old son is being sued by the child's father.

The civil lawsuit, filed today, asks for half a million dollars in damages from Natalie Iris Pinkerton.

Pinkerton, 23, was convicted of one count of criminally negligent homicide, a Class C felony, for her role in the death of Richard Johnson. The child died March 30, 1986, from internal injuries sustained when he was struck in the abdomen.

Pinkerton was convicted last April following a jury trial for failing to provide medical care that would have prevented the death of her son. She was sentenced in August to six months in jail but remains free while she appeals her conviction.

Peter D. Paulo, 30, who was living with Pinkerton at the time of the boy's death, was indicted in September 1986 on a manslaughter charge alleging he was responsible for the fatal blow. He was convicted and sentenced to five years in jail and a \$10,000 fine after pleading no contest to a reduced charge, criminally negligent homicide, as a result of a plea-bargain.

The suit filed this morning was authored by attorney Michael O'Brien on behalf of the estate of the boy, represented by his father,

Burnheart Johnson Jr.

O'Brien said the suit was filed in part to prevent Pinkerton from collecting half of a \$105,000 out-of-court settlement between Johnson and the state Department of Health and Social Services over alleged mishandling of reports that the younger Johnson was being beaten by Paulo.

The state has paid the settlement to the estate, but O'Brien said Pinkerton, as the child's mother, has a legal right to half that money. Her conviction in connection with the death does not prevent her from receiving the payment as laws covering such legal awards prevent them from being made only when a person is convicted of an intentional killing.

Pinkerton has never been accused of taking an active role in her son's death.

Thomas Findley, Pinkerton's attorney in the civil matter, this morning said he had not yet had a chance to review the suit. He said his client has no desire to profit from Johnson's settlement with the state, but that she also feels the child's father should not gain financially from the death.

When the issue was raised earlier this year Findley said, "She has real concerns about the process, which she has been told will result in the father, who did not provide care for the child, obtaining large sums of money

Please turn to Page 8

WEATHER

A few snow showers tonight, early Tuesday, before clearing. High 30. Page 8

Suit...

Continued from Page 1 from the state."

In sentencing Pinkerton, Juneau Superior Court Judge Walter Carpeneti ordered her not to have any financial gain from her son's death. If the sentence is imposed, the order would prevent Pinkerton from collecting her share of the settlement.

Pinkerton's attorney in the criminal case, Tricia Collins, has appealed the conviction and sentence, including the condition that would force Pinkerton to give up her right to the money. Imposition of the sentence is delayed until higher courts act on the appeal.

Findley this morning said action on the civil suit should wait until the appeal is processed.

During Pinkerton's sentencing hearing, Collins also said her client had no desire to profit from her son's death but also felt no one else should benefit financially.

O'Brien has said if his suit succeeds, the money would go to Johnson and his parents, Ken and Francine Perkins. The Perkinses became active in Justice for Children, a Juneau-based group pushing for stronger penalties for people convicted of abusing children, following their grandson's death.

O'Brien said the family considered filing suit against Paulo, but has tentatively decided not to be-

cause any judgment would likely not be collected because he has no assets.

The lawsuit that led to the settlement with the state, filed by O'Brien, alleged the department's Division of Family and Youth Services was called four times with reports that the boy was being abused but never fully investigated the matter.

A state ombudsman's investigation into the division's response to the reports of abuse determined they were mishandled, but said proper handling might not have saved the child's life.

Ken Perkins said the suit against the state was filed in part to force better handling of child abuse reports.

Pinkerton could get half of death lawsuit payment

By ED SCHOENFELD

THE JUNEAU EMPIRE

A local woman convicted of criminally negligent homicide in connection with the death of her son may be in line for half of a \$105,000 payment the state has offered the child's father as part of an out-of-court settlement.

Natalie Iris Pinkerton, 22, convicted April 24 for failing to provide medical care that would have saved the life of her 20-month-old son, Richard Johnson, apparently has a legal right to half of the settlement, stemming from a suit over the state's

handling of reports that the man Pinkerton was living with when the child died had been physically abusing the boy.

The man, Peter D. Paulo, 30, is currently serving a five-year jail term for his conviction on a charge of criminally negligent homicide, a Class C felony, in connection with the death. The boy died March 30, 1986, from injuries sustained when he was struck in the abdomen.

The boy's father, Burnheart Johnson Jr., filed a \$1 million lawsuit May 21 against the state Division of Family and Youth Services. John-

Please turn to Page 6



EMPIRE FILE PHOTO

NATALIE IRIS PINKERTON

Pinkerton...

Continued from Page 1
son's attorney, Michael O'Brien, on Monday said the state has agreed to pay \$105,000 in an out-of-court settlement.

O'Brien said the money has not been released because under state law Pinkerton, as the child's mother, has a right to half of the damages.

Her conviction in connection with the death does not prevent her from receiving the payment, the attorney said. Laws covering such legal awards prevent them from being made only when a person is convicted of murder, O'Brien said. Pinkerton was convicted of not providing care that could have saved her son's life and was never accused of taking any intentional action to injure the child.

Thomas Findley, Pinkerton's attorney in the matter, this morning said his client does not want to profit from the suit. But he said Pinkerton is worried about the amount the child's father may gain in the settlement.

"She has real concerns about the process, which she has been told will result in the father, who did not provide care for the child, obtaining large sums of money from the

state," Findley said.

He said once the process of sentencing Pinkerton is completed, a decision will be made on how to respond to the possibility that she might have a right to some of the money from the lawsuit.

At the time O'Brien filed the suit, Ken Perkins, Burnheart Johnson's stepfather and spokesman for the family, said the legal action was taken in part to force the state to do a better job of handling child abuse reports.

The suit alleged the state was called four times with reports the boy was being abused but never fully investigated the matter. An ombudsman's investigation into the state's handling of the reports of abuse determined they were mishandled, but said proper handling might not have saved the child's life. State officials said the office that received the calls was understaffed and could not properly respond.

O'Brien this morning said he or the state may take legal action to prevent Pinkerton from receiving any money from the suit.

In addition, Juneau District Attorney Rick Svobodny, the prosecutor in the criminal case against Pinkerton, this morning said he has asked Pinkerton's sentence to be designed to prevent her from benefiting finan-

cially from the suit.

Svobodny said he has asked Juneau Superior Court Judge Walter Carpeneti, who is handling the case, to fine Pinkerton \$50,000. He said he has asked the judge to base the fine on Pinkerton's ability to pay, which would reduce or eliminate the fine if she waives her right to her half of the settlement in the Burnheart Johnson suit.

Pinkerton is scheduled to be sentenced Aug. 27 and 28. A hearing to determine Pinkerton's sentence was originally scheduled for Monday but was delayed because of a lack of courtroom space.



STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____ Bill Version: HB355
 Publish Date: _____
 Revision Date: _____ Agency Affected: Alaska Court System
 Title: An act relating to damages for BRU: Trial Courts
 death of a minor...
 Sponsor: Ulmer Components:
 Requestor: State Affairs

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
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
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)

No fiscal impact.

Prepared by: *Jan Strandberg*, General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 2-3-88
 Approved by: *Stephanie Cole, for* Arthur H. Snowden, II, Administrative Director Date: 2-3-88
 Agency: Alaska Court System

- Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)
 Senate Secretary

H B

3 5 8

BILL NUMBER AB 358 **

DATE	ACTION
1/22/88	MOVED out, ADOPTED FOR LANGUAGE

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 State Affrs:

January 22, 1988



Official Business

Alaska State Legislature

House

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

STATE AFFAIRS COMMITTEE HOUSE BILL 358

FILE CONTENTS

1. HB 358: AN ACT MAKING SPECIAL APPROPRIATIONS OF WINDFALL RECEIPTS TO THE PRINCIPAL OF THE PERMANENT FUND, TO THE BUDGET RESERVE FUND, AND TO THE PUBLIC SCHOOL FUND; AND PROVIDING FOR AN EFFECTIVE DATE.
- 1A. MEMORANDUM FROM REPRESENTATIVE ULMER TO THE HOUSE STATE AFFAIRS COMMITTEE, DATED JANUARY 21, 1988
2. MEMORANDUM FROM ROBERT MAYNARD TO SENATOR JOHNE BINKLEY, DATED 11/23/87
3. ALASKA STATUTES, AS 37.13.010 THROUGH AS 37.14.170

FISCAL NOTES

- A. DEPARTMENT OF REVENUE, INCOME AND EXCISE AUDIT, DATED 1/18/88: -0-

STEVE KETTLE:DOR

FIND NO PROBLEM WITH INTENT AND PURPOSE. PROPOSED AMENDMENTS COULD MAKE IT CLEAR WHAT SETTLEMENTS ARE WE TARGETING. HIS DIVISION IS RESPONSIBLE FOR ALL STATE TAXES OTHER THAN THE ROYALTY AND SEVERANCE TAX. BOB MAYNARD POINTED OUT IT IS DIFFICULT TO ESTIMATE HOW MUCH OR WHEN THAT REVENUE WILL BE PAID INTO THE STATE.

FRAN

PHILOSOPHY BEHIND THE BILL IS THAT THESE WINDFALLS SHOULD NOT BE CONSIDERED ORDINARY INCOME. WE SHOULD THINK ABOUT THEM AS NOT SOMETHING ALLOWS US JUST TO CONTINUE TO SPEND AS WE HAVE IN THE PAST. HALF SHOULD GO TO PP AND BRP AND PARTION TO SCHOOL FUND.

CONSTITUTIONALLY HALF GOES IN; I.E. ONLY CERTAIN TYPES OF REVENUES. ROYALTYS, LEASES, BONUS'S BUT NOT TAXES. THERE ARE CERTAIN WINDFALLS THAT ARE ANTICIPATED THAT DON'T GO INTO THE PP. THERE ARE SOME TAXES COVERED UNDER SECTIONS 4 AND 5 NONE OF IT GOES TO PF OR BRP. THOSE NORMALLY GO TO GF.

AMENDMENTS: CLAIFICATIONS TO DEFINE WHAT WE ARE LOOKING FOR.

SECTION 1, 2 AND 3: CONSISTENCY. PROPOSED "FINAL JUDICIAL DETERMINATION IN" AS OPPOSED TO "OTHER CONCLUSIONS". IN THE AMERADA AND DINKUM CASES, THERE IS LITTLE DISPUTE AS TO WHAT A FINAL DETERMINATION WILL BE. ONCE ITS OVER ITS OVER. BUT WITH THE LANGUAGE PROPOSED THE MONEY WOULD NOT BE DISTRIBUTED UNTIL A FINAL DETERMINATION OF THE COURT.

SECTION 4 AND 5: DIFFERENCE IS INCLUDED "AN AGREEMENT UNDER AS 43.05.060 FOR THE TERM "SETTLEMENT". WHAT THAT REFERS TOO, AS.05.060, IS THE LANGUAGE THAT GIVES THE AUTHORITY TO DOR TO ENTER INTO A FINAL RESOLUTION OF A TAX MATTER. ONLY DO THAT UNTIL GET THE CONCURRENCE OF THE DOL. POINT THAT HAPPENS, WE ENTER INTO THAT AND DOR APPROVES IT THEN IT BECOMES FINAL AND IT IS NOT SUBJECT TO BE REOPENED, AT THAT POINT THE CASE IS FINAL. OTHERWISE THE TAX PAYER COULD RAISE THE ISSUE AGAIN.

WITHIN THE DEPT., FOR INSTANCE, WE HAVE A NUMBER OF DIFFERENT PHASES IN THE ADMIN APPEAL PROCESS WHERE SOMEONE COULD CONTEND THAT IT WAS A CONCLUSION OR SETTLEMENT AND WE HAVE THE INFORMAL CONFERENCE, FORMAL HEARING AND IT GOES TO COURT ON UP. THE LANGUAGE THEY PROPOSE HERE WOULD NOT MAKE THE MONEY ABLE TO GO INTO THE FUNDS UNTIL EXHAUSTED ALL AVENUES OF APPEAL AND BECAME FINAL.

"PERSON ENGAGED IN THE TRANSPORTATION BY" .."OIL AND GAS IN THE STATE"- CLARIFYCATION WHAT PORTION OF CHAP 20 THAT WE ARE DEALING WITH AS WELL AS CHAP 21 AND 55. THESE ARE THE SEVERANCE TAX STATITUES RELATING TO SEPERATING ACCOUNTING.

A

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 358
PUBLISH DATE: 1/18/88

FISCAL NOTE

REQUEST:

Revision Date: 1/18/88
Title: "An Act making special appropriations of windfall receipts to ..."
Sponsor: Ulmer, Navarre, Brown & Davis
Requestor: St. Aff., Hlth, Ed & Soc Svcs.

Agency Affected: Revenue
BRU: Income and Excise Audit

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: 465-2320
Date: 1/18/88

Approved by Commissioner:
Agency:

Date: 1/19/88

Distribution (by preparer):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB358
Publish Date: 1/13/88

REQUEST _____

Revision Date: _____
Title: An Act making special appropriations
ow windfall receipts to the PF.....
Sponsor: Ulmer et al
Requestor: State Affairs

Agency Affected: Revenue
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary
(see attached analysis)

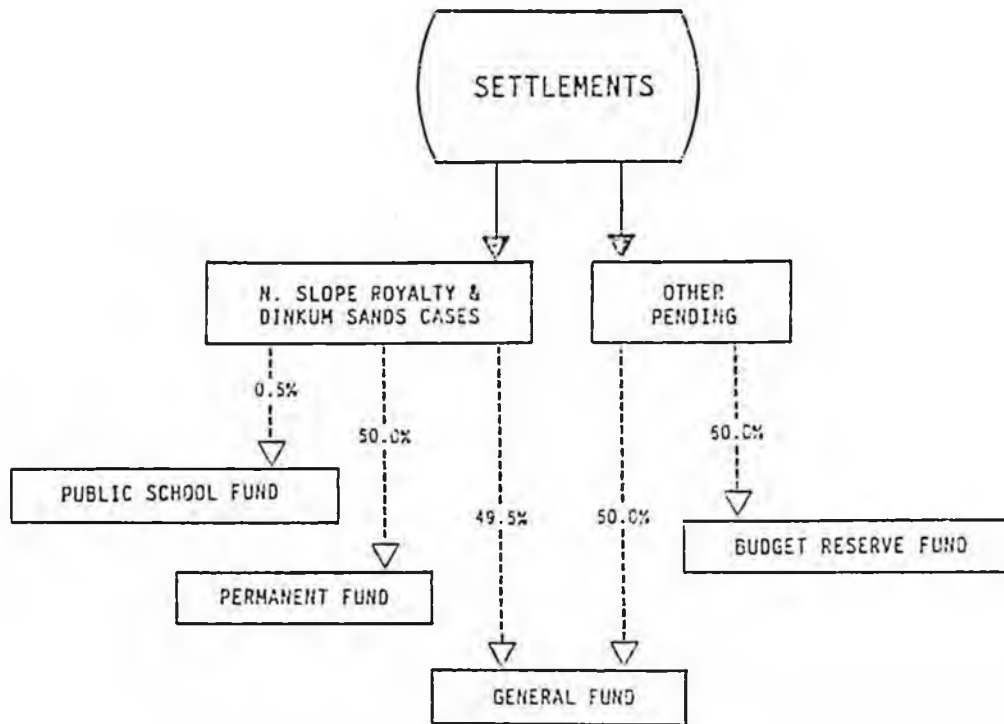
MEJ RWE
Prepared By: M. E. Frank & R. W. Elliott
Division: Office of the Commissioner, Research
Approved by Commissioner: [Signature]
Agency: _____

Phone: 465-2174
Date: 1/20/88
Date: 1/22/88

Distribution (by Agency preparing fiscal note):

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

HB 358 would appropriate to various funds, windfall receipts from settlements of the North Slope royalty/Dinkum Sands cases and other pending litigation. The specific amounts of the settlements cannot be anticipated at the current time. The flowchart below shows where receipts would go.



The analysis attached indicates the effect of a \$100 million addition to the Permanent Fund in FY 1989. The amounts are the addition to the September 1987 forecast that result from a one time addition to the Permanent Fund. This forecast is presented on pages 44 - 46 of the September, 1987 REVENUE SOURCES. Once a better idea of possible receipts is known, this analysis can be a guide to what the effects of the specific numbers would be. It should be noted that any additions to the General Fund, Budget Reserve Fund, and Public School Fund will increase the respective investment earnings which may also be appropriated.

(millions of current dollars unless otherwise noted)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	TOTAL	YEARLY
	DEFERRED FUND- CONTR	APPROF	PRINCIPAL BALANCE	INFLATION PROOFING	PRINCIPAL BALANCE	TOTAL EARNINGS	DISP. AC EARNINGS	INCOME AVAIL FOR INFL PROOF	DIVIDEND PROGRAM COSTS	FFO CLAIM YEAR	FFO FUND PRINCIPAL FEAR BIL	FFO FUND BALANCE NOMINAL	FFO FUND N.M. BAL
81	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
82	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
83	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
84	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
85	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
86	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
87	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
88	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
89	0.00	100.00	100.00	4.62	104.62	9.44	7.00	8.63	0.00	0.00	75.96	108.63	108.63
90	0.00	0.00	104.62	5.24	109.87	10.72	8.19	9.22	1.01	0.00	75.96	116.25	116.25
91	0.00	0.00	109.87	5.73	115.60	11.78	8.93	9.99	2.10	0.00	75.78	124.85	124.85
92	0.00	0.00	115.60	6.31	121.91	12.97	9.70	11.02	3.28	0.00	75.78	134.28	134.28
93	0.00	0.00	121.91	6.86	128.77	14.29	10.58	11.91	4.55	0.00	75.78	144.55	144.55
94	0.00	0.00	128.77	7.47	136.24	15.76	11.57	12.87	5.97	0.00	75.78	155.52	155.52
95	0.00	0.00	136.24	8.13	144.37	17.39	12.69	13.94	7.56	0.00	75.67	167.08	167.08
96	0.00	0.00	144.37	8.84	153.21	19.23	13.94	15.16	9.29	0.00	75.67	179.37	179.37
97	0.00	0.00	153.21	9.61	162.82	21.25	15.32	16.54	11.13	0.00	75.67	192.50	192.50
98	0.00	0.00	162.82	10.44	173.26	23.44	16.78	18.02	13.10	0.00	75.64	207.60	207.60
99	0.00	0.00	173.26	11.34	184.60	25.88	18.36	19.66	15.24	0.00	75.64	224.63	224.63
00	0.00	0.00	184.60	12.31	196.91	28.57	19.99	21.46	17.57	0.00	75.64	243.70	243.70
01	0.00	0.00	196.91	13.35	210.26	31.52	21.77	23.42	19.99	0.00	75.64	264.93	264.93
02	0.00	0.00	210.26	14.46	224.72	34.74	23.70	25.54	22.71	0.00	75.64	288.49	288.49
03	0.00	0.00	224.72	15.64	240.36	38.28	25.78	27.82	25.71	0.00	75.64	314.52	314.52
04	0.00	0.00	240.36	16.90	257.26	42.14	27.97	30.34	29.33	0.00	75.64	343.26	343.26
05	0.00	0.00	257.26	18.24	275.50	46.38	30.31	33.07	33.36	0.00	77.57	374.93	374.93

(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	YEARLY
	AVAIL INFLATION PROOFING TOTAL	CURRENT EARNINGS	DEPOSIT/ -/DRAWAL	UNDISTURBED EARNINGS	INCOME SUBS	INCOME ACCOUNT	CUMULATIVE EARNINGS	TOTAL	REQUIRED INFLATION PROOFING	SHORTFALL INFLATION PROOFING	EXCESS INFLATION PROOFING	ACCT W EPA TOTAL
81	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
82	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
83	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
84	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
85	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
86	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
87	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
88	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
89	4.62	8.63	4.01	0.00	0.00	4.61	0.00	4.61	4.62	0.00	0.00	4.61
90	5.24	8.72	2.63	0.00	0.00	6.89	0.00	6.89	5.24	0.00	0.00	2.63
91	5.90	8.90	2.11	0.63	0.00	8.77	0.00	8.77	5.90	0.00	0.00	2.11
92	6.21	7.52	1.21	0.87	0.00	10.20	0.00	10.20	6.21	0.00	0.00	1.21
93	6.86	6.91	0.25	0.77	0.00	10.45	0.00	10.45	6.86	0.00	0.00	0.25
94	7.47	7.17	-0.15	1.01	0.00	10.65	0.00	10.65	7.47	0.00	0.00	-0.15
95	7.40	7.45	0.06	1.03	0.00	10.65	0.00	10.65	7.40	0.00	0.00	0.06
96	8.03	9.25	0.22	1.07	0.00	10.68	0.00	10.68	8.03	0.00	0.00	0.22
97	8.71	8.64	-0.07	1.07	0.00	10.81	0.00	10.81	8.71	0.00	0.00	-0.07
98	9.22	9.06	-0.16	1.03	0.00	10.65	0.00	10.65	9.22	0.00	0.00	-0.16
99	9.75	9.49	-0.26	1.06	0.00	10.29	0.00	10.29	9.75	0.00	0.00	-0.26
00	10.21	9.94	-0.27	1.04	0.00	10.02	0.00	10.02	10.21	0.00	0.00	-0.27
01	10.97	10.59	-0.39	1.01	0.00	9.63	0.00	9.63	10.97	0.00	0.00	-0.39
02	11.67	11.15	-0.54	0.97	0.00	9.27	0.00	9.27	11.67	0.00	0.00	-0.54
03	12.25	11.71	-0.65	0.91	0.00	8.45	0.00	8.45	12.25	0.00	0.00	-0.65
04	13.97	12.31	-0.76	0.85	0.00	7.69	0.00	7.69	13.97	0.00	0.00	-0.76
05	20.64	12.95	-7.69	0.77	0.00	0.00	0.00	0.00	20.64	6.80	6.80	-7.69

(25)	(26)	(27)	(28)	(29)	(30)	(31)	(32)	(33)	(34)
	EARNINGS TRANSFER	FFO FUND APPROF	CLAIM YEAR	FFO PROGRAM PAYMENT	FFO PROGRAM ADM & OTHER	TOTAL TOTAL	TOTAL FFO APPLICANTS	DIVIDEND INCENTIVES TOTAL	TOTAL TOTAL
81	0.00	0.00	00	0.00	0.00	0.00	0.00	0.00	0.00
82	0.00	0.00	01	0.00	0.00	0.00	0.00	0.00	0.00
83	0.00	0.00	02	0.00	0.00	0.00	0.00	0.00	0.00
84	0.00	0.00	03	0.00	0.00	0.00	0.00	0.00	0.00
85	0.00	0.00	04	0.00	0.00	0.00	0.00	0.00	0.00
86	0.00	0.00	05	0.00	0.00	0.00	0.00	0.00	0.00
87	0.00	0.00	06	0.00	0.00	0.00	0.00	0.00	0.00
88	0.00	0.00	07	0.00	0.00	0.00	0.00	0.00	0.00
89	1.01	0.00	08	1.01	0.00	1.01	1.01	1.01	1.01
90	2.10	0.00	09	2.10	0.00	2.10	2.10	2.10	2.10
91	3.28	0.00	10	3.28	0.00	3.28	3.28	3.28	3.28
92	4.55	0.00	11	4.55	0.00	4.55	4.55	4.55	4.55
93	5.97	0.00	12	5.97	0.00	5.97	5.97	5.97	5.97
94	7.57	0.00	13	7.57	0.00	7.57	7.57	7.57	7.57
95	9.29	0.00	14	9.29	0.00	9.29	9.29	9.29	9.29
96	11.13	0.00	15	11.13	0.00	11.13	11.13	11.13	11.13
97	13.10	0.00	16	13.10	0.00	13.10	13.10	13.10	13.10
98	15.24	0.00	17	15.24	0.00	15.24	15.24	15.24	15.24
99	17.57	0.00	18	17.57	0.00	17.57	17.57	17.57	17.57
00	20.64	0.00	19	20.64	0.00	20.64	20.64	20.64	20.64
01	23.97	0.00	20	23.97	0.00	23.97	23.97	23.97	23.97
02	27.57	0.00	21	27.57	0.00	27.57	27.57	27.57	27.57
03	31.46	0.00	22	31.46	0.00	31.46	31.46	31.46	31.46
04	35.74	0.00	23	35.74	0.00	35.74	35.74	35.74	35.74
05	40.42	0.00	24	40.42	0.00	40.42	40.42	40.42	40.42

PREPARED BY THE DOR
DIVISION OF INCOME & EXCISE AUDIT
CARL A. MEYER
JANUARY 19, 1988

IN THE HOUSE

PROPOSED AMENDMENTS BY DOR TO

HOUSE BILL NO. 358

JANUARY 18, 1988

*Section 1. Fifty percent of the money received by the state after the effective date of this Act from a (THE) settlement or final judicial determination in (OTHER CONCLUSION OF) the North Slope royalty case (State v. Amerada Hess, et al.) and the Dinkum Sands case (United States v. Alaska) is appropriated to the principal of the permanent fund to implement AS 37.13.101.

*Section 2. Forty-nine and one-half percent of the money received by the state after the effective date of this Act from a (THE) settlement or final judicial determination in (OTHER CONCLUSION OF) the North Slope royalty case (State v. Amerada Hess, et al.) and the Dinkum Sands case (United States v. Alaska) is appropriated to the budget reserve fund (AS 37.05.156).

*Section 3. One-half of the money received by the state after the effective date of this Act from a (THE) settlement or final judicial determination in (OTHER CONCLUSION OF) the North Slope royalty case (State v. Amerada Hess et al.) and the Dinkum Sands case (United States v. Alaska) is appropriated to the public school fund (AS 37.14.110).

*Section 4. One-half of the money not included in the estimated receipts set out in the budget for fiscal year 1989 submitted under AS 37.07.020(a) that is received by the state during the fiscal year ending June 30, 1989, from an agreement under AS 43.05.060 (THE SETTLEMENT) or a final judicial determination (OTHER CONCLUSION OF PENDING TAX PROCEEDINGS) against an oil and gas producer or person engaged in the transportation by pipeline of oil and gas in the state under AS 43.20, former AS 43.21, or AS 43.55, is appropriated to the principal of the permanent fund.

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*Section 6. This Act takes effect immediately under AS 01.10.070(c).

Original sponsors: Ulmer, Navarre,
Brown and Davis

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 358 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making special appropriations of windfall
7 receipts to the principal of the permanent fund, to
8 the budget reserve fund, and to the public school
9 fund; and providing for an effective date."

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

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13 tion in the North Slope royalty case (State v. Amerada Hess, et al.) and
14 the Dinkum Sands case (United States v. Alaska) is appropriated to the
15 principal of the permanent fund to implement AS 37.13.010.

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17 state after the effective date of this Act from a settlement or final
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Official Business

Alaska State Legislature

House

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

MEMORANDUM

TO: House State Affairs Committee Members

FROM: Representative Fran Ulmer, Chair
House State Affairs Committee

SUBJECT: HB 358: "An Act making special appropriations of windfall receipts to the principal of the permanent fund, the budget reserve fund, and to the public school fund; and providing for an effective date."

DATE: January 21, 1988

Sections 1, 2 and 3 make a special appropriation of windfall receipts received by the state from the North Slope royalty case and the Dinkum Sands Case to the principal of the Permanent Fund, to the Budget Reserve Fund and to the Public School Fund.

Sections 4 and 5 appropriate windfall receipts received by the state during fiscal year 1989 from tax proceedings against oil and gas production or pipeline companies under AS 43.20 (corporate income tax), and AS 43.55 (oil and gas properties production tax), and AS 43.55 (oil and gas properties production tax).

The provisions of HB 358 apply only to revenue received after the effective date of this bill. Therefore the above appropriations do not include the \$322 million recently received by the state as revenue sharing.

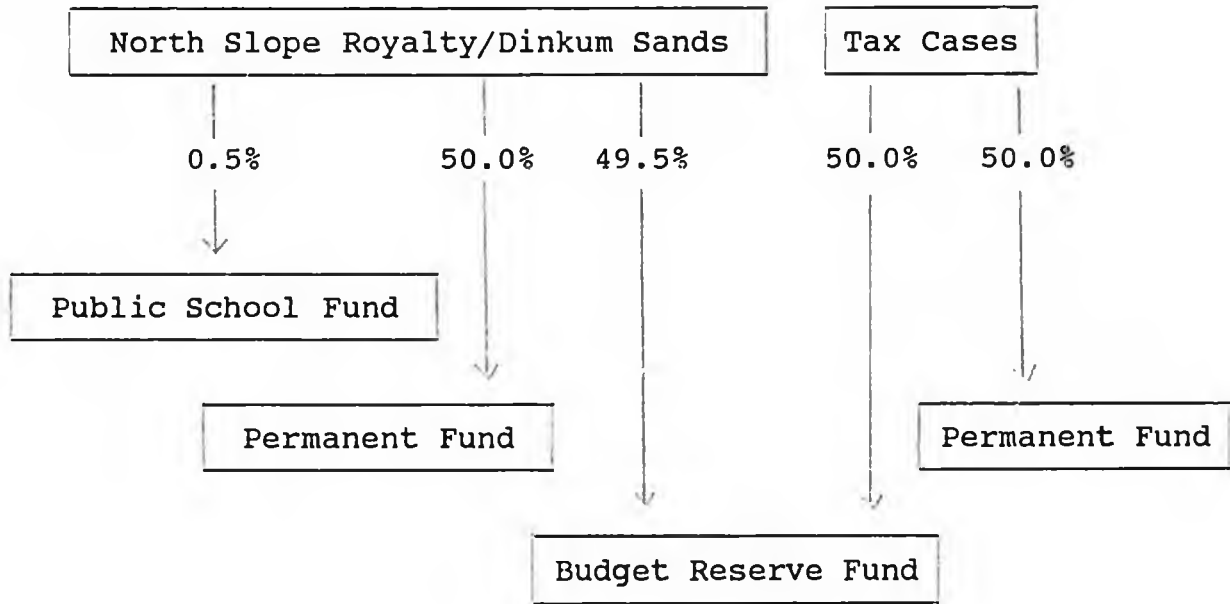
The proposed legislation would accomplish the following:

- 1) Dedicate funds to the principal of the Permanent Fund at a time when revenue decline reduces the likelihood of comparable deposits; and
- 2) Create a cushion against budget shortfalls.

TABLE 1 *

HB 358 appropriates various oil and gas windfall receipts and pending tax case receipts to the following funds:

SETTLEMENTS AND CONCLUSIONS



*

SOURCE: DOR

PREPARED BY THE DOR
DIVISION OF INCOME & EXCISE AUDIT
CARL A. MEYER
JANUARY 19, 1988

IN THE HOUSE

PROPOSED AMENDMENTS BY DOR TO

HOUSE BILL NO. 358

JANUARY 18, 1988

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Original sponsors: Ulmer, Navarre,
Brown and Davis

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5-1160A
Utermohle
1/11/88

1 IN THE HOUSE

BY ULMER

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 11, 1988

SUBJECT: Draft bill appropriating windfall receipts
(Work Order No. 5-1160A)

TO: Representative Fran Ulmer

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum accompanies a new version of a draft bill appropriating certain windfall receipts by the state to the principal of the permanent fund and to the the budget reserve fund.

This version of the bill clarifies that the bill applies only to funds received from the Amerada Hess case and the Dinkum Sands case after the effective date of this bill. The \$322 million just received as part of the Dinkum Sands case is not subject to this bill.

In regard to the letter from Jack Fragnoli to you, dated January 8, 1988, suggesting that this bill may conflict with sec. 2, ch. 5, FSSLA 1987 because this bill is appropriating fiscal year 1988 general fund surplus money that has already been appropriated by sec. 2, ch. 5 FSSLA 1987, there is no conflict between this bill and sec. 2, ch. 5, FSSLA 1987. First, this bill relates to money received by the state after the effective date of the bill. It is not expected that the state will receive any more money from the settlement of these cases during fiscal year 1988, so no conflict is expected. Second, sec. 2, ch. 5 FSSLA 1987 appropriates any general fund surplus existing on June 30, 1988. If by some good fortune the state should receive money from the Amerada Hess case or the Dinkum Sands case before the end of this fiscal year, sec. 2, ch. 5 FSSLA 1988 still would not apply because this bill appropriates that money so

Representative Fran Ulmer
Page 2
January 11, 1988

that it would not be included in any general fund surplus. Third, to the extent that a conflict does exist, this bill having a later effective date will be presumed to have the effect of amending the prior law.

Also, in his letter Mr. Fragnoli correctly observes that the Governor's fiscal year 1989 budget submission does not disaggregate estimated receipts and that it is not possible to determine the source of anticipated receipts included in the budget. However secs. 3 and 4 of the bill are drafted to address this problem as specifically as anything can be given the existing budgeting procedures. The language of secs. 3 and 4 was drafted with the assistance of Legislative Finance.

GU:gc
WKG1:018

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Office of Management and Budget
Division of Policy

Steve Cowper, Governor

P.O. Box AD
Juneau, Alaska 99811
Phone: (907)465-3568

January 8, 1988

The Honorable Fran Ulmer
Chair, State Affairs Committee
Alaska House of Representatives
State of Alaska - Pouch Y
Juneau, Alaska 99811

Dear Representative Ulmer:

At Dennis Burns' request, I am providing comments that bear on the intent of Sections 1-2 of your draft bill appropriating windfall receipts to the Permanent Fund and the Budget Reserve Fund. (A copy of the draft bill is attached).

Essentially, my question is whether these two sections of the bill intend that the two funds each should receive:

- (a) fifty percent of the total amount of Amerada Hess/Dinkum Sands money received by the State, including constitutionally and statutorily required dedications of a portion of those monies to the Permanent Fund [Alaska Constitution, Article IX, Sect. 15; AS 37.13.010(1-2); AS 37.14.150; attached] ; **or**,
- (b) fifty percent of the net amount that would go to the general fund after the constitutionally and statutorily required dedications to the Permanent Fund were made.

If (a) is the intent, then the draft as written appears to accomplish that purpose, by effectively appropriating to the Permanent Fund the difference between the amount already dedicated to the Permanent Fund by law and the amount equal to fifty percent of the total amount received by the State. If you haven't already done so, you may wish to confirm this interpretation with legal staff.

If (b) is the intent, however, clarifying language acknowledging the effect of the constitutional and statutory dedications needs to be added to Sections 1 and 2.

In addition to the comments above, two other points about the draft bill also should be noted. One is that House Bill 166 passed last session (ch. 5, SLA 87, attached) already provides that any FY89 year-end general fund surplus is appropriated to the Budget Reserve Fund. Since that surplus will incorporate any Amerada Hess/Dinkum Sands or tax settlement monies received during FY89 (see FY89 Dinkum Sands estimates from Dept. of Revenue, attached), you may wish to expressly coordinate the proposed draft bill with HB 166.

The second point to note is that, according to our understanding here in the Division of Policy, "estimated receipts" as referred to in Sections 3-4 of the proposed draft bill are not specified in the Governor's FY89 budget submission at the disaggregated level the draft bill anticipates. You may wish to confirm whether this is true with Jay Hogan's office.

Please don't hesitate to contact me if I can be of any further help.

Sincerely,

Jack Fargnoli

Jack Fargnoli
Senior Analyst

Attachments: (6)

cc: Mary Halloran, Director
Division of Policy

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 9, 1987

SUBJECT: Windfall Receipts (W.O. 5-1160)

TO: Representative Fran Ulmer
Attn: Dennis Burns

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed is the draft bill requested for you by Dennis Burns. I have deleted the reference to Arco v. State, because the two major Arco cases that have been made public are fully resolved. Arco may well be included among the taxpayers involved in the \$2.5 billion in pending tax proceedings, but it would not be appropriate to identify by taxpayer the potential receipts from those proceedings until their identity (and the amounts in dispute) are made public.

You might want to consider the following language, which would capture for your purposes any receipts from pending tax proceedings:

One-half of the money not included in the estimated receipts set out in the budget for fiscal year 1989 submitted under AS 37.07.020(a) that is received by the state during the fiscal year ending June 30, 1989, from the settlement or other conclusion of pending tax proceedings is appropriated to * * *

The matter would be simplified if the revenue side of the budget, and the revenue estimates, included an item describing estimated receipts from the collection of disputed or delinquent taxes. Unfortunately, such receipts appear only within the total estimated unrestricted general fund receipts. It is my understanding that "windfall" receipts are not projected, but are included only when the money is in the bank. Consequently, the suggested language should pick up any receipts that are not in the routine revenue flow.

If you want me to prepare a draft that would incorporate the suggested language, please advise.

DRD:mkr
m13/118

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

December 9, 1987

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TO: Representative Fran Ulmer
Attn: Dennis Burns

FROM: David R. Dierdorff 
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DRD:mkr
m13/118

Enclosure

5-1160A ✓
Dierdorff
12/9/87

1 IN THE HOUSE

BY ULMER

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

November 23, 1987

P O BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

The Honorable John Binkley
Co-Chairman
Senate Finance Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Oil and gas litigation status
report

Dear Senator Binkley:

The Department of Law is actively engaged in oil and gas litigation on four broad fronts. These are summarized below:

State v. Amerada Hess. The North Slope royalty case presents a dispute over lease form interpretation and ultimately over the amount of royalty the state is entitled to from the North Slope producers from pipeline start-up through December 31, 1986. The parties had originally limited the suit to the period 1977 through 1984. As a result of recent negotiations, however, the parties decided to add 1985 and 1986. On November 3, 1987 Judge Carpeneti set the Amerada Hess case for trial, beginning October 2, 1989. It is expected to last at least six months.

On November 2, 1987 three producers, Standard Alaska, Exxon, and Chevron, filed suit in U.S. District Court in Anchorage in an attempt to block trial of the case in any Alaska court. The three producers have publicly declared their intent to abide by the schedule adopted by Judge Carpeneti in the state's case, even as they seek to have the trial itself held outside Alaska. These producers have estimated the potential liability could approach \$2 billion.

United States v. Alaska. This case involves the Beaufort Sea title dispute at which more than \$1.8 billion is in dispute. Should the state prevail, the potential to the state may be many times that amount because of its application to all off-shore areas in Alaska. The case is currently pending before a special master appointed by the United States Supreme Court.

The Honorable John Binkley
Senate Finance Committee

November 23, 1987
Page 2

We expect the special master's report to be issued within the next several months. That report must be approved by the Supreme Court after opportunity for briefing by both the state and federal governments.

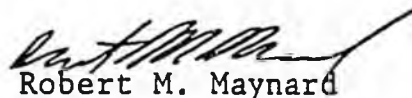
FERC Proceedings. In October 1987 the United States Court of Appeals upheld the validity of the TAPS settlement. We expect the matter to be appealed to the United States Supreme Court. In the interim we plan to undertake a major compliance audit of the settlement. In addition, the state is litigating tariffs filed for both the Kuparuk and Endicott pipelines.

Tax Proceedings. Trial will be completed in one major tax proceeding during FY 89 and another major proceeding placed on track for trial in FY 90. Other cases, not necessarily involving high stakes, but containing major legal issues, will also be at various stages of trial preparation. Because of confidentiality the amounts in issue in any given case may not be disclosed. However, consolidated assessments exceed \$2.1 billion.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Robert M. Maynard
Assistant Attorney General

RMM:jf

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 18, 1988

SUBJECT: Sections 4 and 5, HB 358
TO: Representative Fran Ulmer
FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to the request of Dennis Burns of your staff for a summary of sections 4 and 5, of HB 358 and a brief discussion of the ambiguities in the language of those sections.

Sections 4 and 5 of HB 358 appropriate windfall receipts received by the state during fiscal year 1989 from tax proceedings against oil and gas production or pipeline companies under AS 43.20 (corporate income tax), former AS 43.21 (oil and gas corporate income tax), and AS 43.55 (oil and gas properties production tax). These windfall receipts are appropriated equally between the principal of the permanent fund and the budget reserve fund.

Sections 4 and 5 of the bill appropriate "money not included in the estimated receipts set out in the budget for fiscal year 1989." Because the budget document does not describe in detail the sources of estimated receipts, it is very difficult to determine whether the state anticipates receiving money as the result of a particular tax proceeding. Without a detailed description of the money that the state anticipates to receive from tax proceeding of the kind subject to sections 4 and 5 of the bill, it is impossible to determine which of the current tax proceedings may result in windfall receipts to the state. When the state receives money as the result of a tax proceeding that may be subject to the appropriations made by sections 4 and 5 of the bill, the Department of Revenue will have to subjectively decide whether the state had anticipated that money when the budget was developed.

Representative Fran Ulmer
Page 2
January 18, 1988

The money appropriated by sections 4 and 5 is derived from "the settlement or other conclusion of pending tax proceedings." This phrase is taken from the Department of Law's report to the Senate Finance Committee. The department of Law uses this phrase to refer to both administrative and judicial proceedings and to include "partial" (preliminary) settlements as well as the ultimate conclusion of the proceeding. However, unless the phrase "settlement or other conclusion" is defined in HB 358, it is ambiguous as to whether it includes money derived from tax proceedings that are not the result of a final and conclusive settlement of the case. For instance, the Dinkum Sands money just received by the state was not the result of a settlement or conclusion of the Dinkum Sands case. That money was released from escrow and was due to the state under federal revenue sharing laws regardless of the outcome of the case. The ultimate issue in the Dinkum Sands case is the fate of the money that is still being held in escrow and that won't be determined until there is a decision as to who owns the land surrounding Dinkum Sands. If any of the pending tax proceedings should result in a partial payment to the state of outstanding taxes owed because that portion of the tax is not disputed by the parties, would that be considered a "settlement or other conclusion?" A partial settlement is a "settlement" but it is not an "other conclusion" to a tax proceeding. So there is an ambiguity as to what kinds of settlements are subject to appropriation by the bill.

Pending tax proceedings usually begin as administrative tax proceedings within the Department of Revenue. If the parties to the tax proceeding (the state and the taxpayer) cannot resolve their dispute in the administrative proceeding, the dispute is ultimately decided by the courts. Sections 4 and 5 relate to "pending tax proceedings" without regard to whether the proceeding is administrative or judicial. In my view "pending tax proceedings" means either an administrative proceeding or judicial proceeding, though it can be argued that "tax proceeding", as used in HB 358, means only an administrative proceeding.

If I can provide a further discussion of the issues inherent in sections 4 and 5 of HB 358, please contact me.

GU:gc
WKG1:030



Official Business

Alaska State Legislature

House



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

M E M O R A N D U M

TO: House State Affairs Committee Members

FROM: Representative Fran Ulmer, Chair
House State Affairs Committee

SUBJECT: HB 358: "An Act making special appropriations of windfall receipts to the principal of the permanent fund, the budget reserve fund, and to the public school fund; and providing for an effective date."

DATE: January 21, 1988

HB 358 makes a special appropriation of revenue received by the state from the North Slope royalty case and the Dinkum Sands Case to the principal of the Permanent Fund, to the Budget Reserve Fund and to the Public School Fund.

HB 358 makes a special appropriation of the money not included in the estimated receipts set out in the budget for FY 89 from pending tax proceedings to the principal of Permanent Fund and to the Budget Reserve Fund.

The provisions of HB 358 apply only to revenue received after the effective date of this bill. Therefore the above appropriations do not include the \$322 million recently received by the state as revenue sharing.

The proposed legislation would accomplish the following:

- 1) Dedicate funds to the principal of the Permanent Fund at a time when revenue decline reduces the likelihood of comparable deposits; and
- 2) Create a cushion against budget shortfalls.

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FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: Credited Service under the BRU: Retirement and Benefits
Teachers' Retirement System
 Sponsor: Larson and Menard Components: Retirement and Benefits
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Analysis Attached

Prepared By: Robert F. Stalnaker *RFS* Phone: 465-4470
 Division: Retirement and Benefits Date: 1-26-88

Approved by Commissioner: John M. Andrews *JMA* Date: 1/27/88
 Agency: Department of Administration

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

POSITION PAPER
House Bill 362

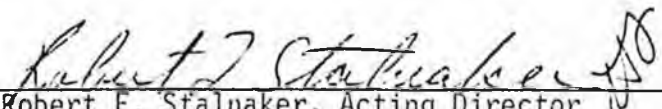
This bill will allow a select few members in the Teachers' Retirement System (TRS) to be credited with up to 13.5 year of membership credit for service which has been fully credited in the federal civil service retirement system. There are currently two non-vested members working at the university who would become eligible immediately for retirement if granted this retroactive service. Plus, there are approximately 14 other people who would become eligible for benefits immediately upon their employment with any TRS employer.

The Palmer Agricultural Experiment Station was established by the federal Department of Agriculture (USDA) and was jointly managed by the federal government and the University of Alaska from 1955 to the present. From 1965 through 1968, the USDA began conveying property and some resources to the university. In 1968 the employees were given a choice to either remain in the federal service or to transfer to the university. The group of employees who transferred to exclusive university employment in 1968 were allowed to receive credit in the TRS for prior Palmer federal service as an incentive and to reduce the adverse impact of terminating their federal retirement credit. Those employees continuing in their USDA positions, continued to accrue retirement credits in the federal system and were not adversely impacted by the university's greater involvement at the Palmer Station.

Ten years of the USDA service at the Palmer Agriculture Station between 1955 and 1968 may be claimed as outside service under AS 14.25.060 under the current statutes.

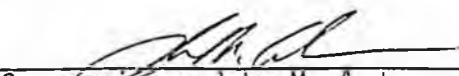
This bill would decrease the TRS funding ratio by 0.1% and would increase the employer contribution rate by 0.3%.

The department could support this bill if amended to allow those members not eligible for concurrent retirement credit in the federal Civil Service Retirement System to be credited with pre-1968 service at the Palmer Station thus precluding double dipping.



Robert F. Stalnaker, Acting Director
Division of Retirement & Benefits

2/10/88
Date



Commissioner John M. Andrews
Department of Administration

2/12/88
Date

H B

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HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: JUDICIARY

BILL: HQ 365

CURRENT VERSION:

SCHEDULED: 2/8/88

SPONSOR: GOVERNOR

PHONE NO:

CONTACT FILE: _____

BILL SUBJECT: DELEGATION OF RESPONSIBILITIES OF AK PF CORP. BOARD OF TRUSTEES; AND LIABILITY

SPONSOR BACKUP: TRANSMITTAL LETTER

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
REVENUE	ROYCE WELLER/2300	NOTIFIED 2/3/88

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
REVENUE		12/29/87	-0-	-0-

ACTION

<u>DATE</u>	<u>COMMENT</u>
1/29/88	HEARING CANCELLED DUE TO LACK OF QUORUM
2/8/88	PASSED FROM HOUSE STATE AFFAIRS

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 State Affairs:

Feb. 8, 1988



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 15, 1988

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the delegation of authority from the Board of Trustees of the Alaska Permanent Fund Corporation (board) to the employees and outside advisors of the corporation, and limiting the liability of the fund, its board, and employees.

Section 1 of the bill adds proposed AS 37.13.105, concerning delegation of the board's duties and limiting liability. The proposed statute (1) clarifies that the board may allocate responsibilities among its members and may delegate any of its responsibilities to the corporation's employees; (2) specifically authorizes the board to contract with one or more investment managers for investment of the fund's assets, and defines "investment manager"; (3) relieves the board from liability with respect to assets for which investment authority has been prudently delegated; and (4) clarifies the degree of indemnity provided to the board and its employees in performing their official duties.

Although I believe that the board already has implied authority or coverage regarding some of these matters, there are arguments that could lead a court to conclude otherwise. Therefore, this bill provides specific statutory authorization and clarification to protect both the board and its employees from untoward liability that could otherwise arise even if actions taken are prudent and appropriate under the circumstances.

In an opinion dated September 13, 1982, the Department of Law discussed board delegation of decision-making to an employee or investment manager. That opinion stated that, given the statutory scheme under which the board is compensated, by honorarium, only for those days spent dealing directly with board work, it is "obviously implied" that the board would delegate to its employees, or to investment managers retained under contract, substantial responsibility

for day-to-day decisions. The opinion further stated that the board may so delegate as much authority as is consistent with the prudence displayed by similarly situated institutional investors.

Notwithstanding this opinion, however, there is no express statutory language that permits allocation or delegation of final investment decisions or even lesser matters. Express statutory authorization is desirable, particularly in light of (1) the consistently applied common law rule that such delegations are not usually permitted; (2) the fact that other institutional investors that allow such delegations almost uniformly do so under express authorizations; and (3) the fact that the reasoning of the opinion would not support the delegation of authority to subcommittees of the board (as has sometimes occurred in the past).

Current AS 37.13.120(f) permits the board to enter into "all contracts necessary, convenient or desirable" for the purposes of the corporation. While the state would argue that this is clear support for the board's authority to contract with professional investment managers for investment services, the board is not relieved of liability for the subsequent investment decisions of those investment managers -- even if the choice of a particular manager was prudent. Under 29 U.S.C. 1105(d), a provision of the federal Employee Retirement Income Security Act (ERISA), a fiduciary is expressly absolved of liability if investment responsibility is delegated to a professional investment manager, and such a provision is desirable here. Additionally, the language of AS 37.13.120(f) would not cover allocation of duties among board members or delegation of responsibilities to corporation employees.

Therefore, proposed AS 37.13.105(a) and (b) make clear that the board may allocate its responsibilities among its members and may delegate any of its responsibilities to its employees. Proposed AS 37.13.105(c) expressly permits the board to contract with one or more "investment managers" for investment of the permanent fund, and relieves the board of liability with respect to assets for which investment responsibility is so delegated, as long as the delegation was done in a prudent manner. Proposed AS 37.15.105(d) provides a definition of "investment manager," with the language in subparagraphs (2)(A) -- (C) of that subsection being taken from the parallel provisions of ERISA. Subparagraph (d)(2)(D) adds a category for real estate investment managers which is not included in ERISA but which is appropriate for permanent fund investments.

Finally, subsection (e) of proposed AS 37.13.105 clarifies the degree of indemnity provided to the board and its employees in performing their official duties. AS 09.50.250 immunizes the state against suit based upon an agency's or employee's exercise or failure to exercise discretionary functions or duties, whether or not the discretion involved is abused. The Department of Law stated in an opinion dated December 2, 1982, that the immunity for discretionary acts probably covers most decisions of the board; it is state policy to defend and indemnify officers or employees against personal liability.

Nonetheless, the opinion pointed out that there is no statutory provision relating to indemnity, and suggested that enactment of a statute stating the scope of indemnity would be helpful. Furthermore, in several cases in recent years the Alaska Supreme Court has held that only decisions that rise to the level of planning or policy formulation fall within the discretionary acts exception, while decisions made at the operational or ministerial level will not be shielded from liability. E.g., Japan Air Lines Co., Ltd. v. State, 628 P.2d 934 (Alaska 1981); Carlson v. State, 598 P.2d 969 (Alaska 1979); Adams v. State, 555 P.2d 235 (Alaska 1976); State v. Abbott, 498 P.2d 712 (Alaska 1972). This doctrine leaves a great deal of room for successful lawsuits attempting to impose liability for decisions that, with hindsight, might appear ill-advised. For example, in Division of Corrections v. Neakok, 721 P.2d 1121 (Alaska 1986), the Alaska Supreme Court held that decisions by the counselors and parole officers in formulating a particular individual's parole plan, in deciding on the type of special conditions to impose, and in deciding on whether to inform persons in the community and potential future victims of possible crimes about the character of the parolee, were "ministerial," rather than protected "discretionary" acts.

Consequently, an argument might be made under present law that while the decision to delegate investment responsibility to the staff or to a yet-to-be selected investment manager is a discretionary act and thus immune from suit, the actual choices of the investment manager and of investments themselves are "operational," and thus not immune. This narrow application of the distinction between "discretionary" and "ministerial" acts renders the present immunity statute (AS 09.50.250) practically meaningless; yet it is an increasingly plausible outcome under recent court reasoning. Thus, express protection for the board and its employees against liability should be extended.

The bill proposes another new section, AS 37.25.25, to authorize the board to create one or more limited liability trusts. The Alaska Permanent Fund Corporation has a substantial, diversified investment portfolio, which includes a variety of investments in real estate. Some of these investments have taken the form of general partnership interests in partnerships owning and operating various kinds of real estate. Because of the liability that can attach to general partners in such circumstances, it has become desirable to provide a means by which assets of the Alaska Permanent Fund Corporation other than general partnership interests are insulated from any such liability that may accrue through ownership of general partnership interests. The purpose of the proposed statute is to expressly allow creation of a separate legal entity, a trust, that would afford the Alaska Permanent Fund Corporation the same protection against liability that a corporation affords a shareholder.

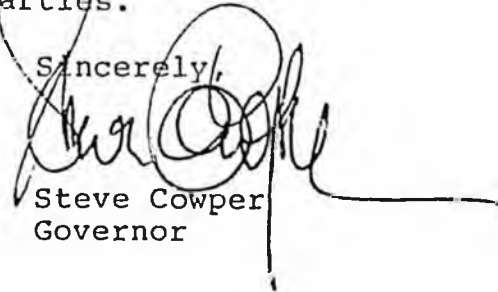
Such a trust, holding general partnership interests and any other related assets considered appropriate by the board, would be created by a trust instrument that names the board as trustees of that trust and names the Alaska Permanent Fund Corporation itself as the the exclusive beneficiary of the trust. The corporation would at all times have the unfettered ability (1) to withdraw the corpus and income from such a trust, (2) to revoke the trust, (3) to dismiss the trust's investment advisor after reasonable notice, and (4) to terminate its interest in the trust by selling its interest to any organization permitted to own such a trust under 26 U.S.C. 501(c)(25) (Internal Revenue Code, as amended as of 1986).

The trust instrument would permit investment of trust assets in such general partnership interests, and otherwise limit the trust to the exclusive purpose of acquiring such partnership interests or other real property, and holding title to and collecting income from the property. The trust must remit the entire amount of such income (less expense) to the Alaska Permanent Fund Corporation.

Under the laws of Alaska, only the trust assets would stand behind obligations of the trust. Neither the trustees, nor the Alaska Permanent Fund Corporation as the trust beneficiary, would be liable for any obligations of the trust, except that the Alaska Permanent Fund Corporation could be

liable for an amount up to the value of any trust assets distributed to it after a liability of the trust arose, to the extent that trust assets are insufficient to satisfy the trust's liability to third parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", with a long horizontal flourish extending to the right.

Steve Cowper
Governor