

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5642 HOUSE HEALTH, EDUCATION & SOCIAL SERVICES

Ingredient costs vary widely by pharmacy, but the state's approach is to pay as close to actual cost as is possible to determine from the results of the drug cost survey.

It has consistently been the intent of all parties to this effort to maximize reimbursement to the pharmacy, within the constraints of federal requirements for accountability and reasonableness.

From the outset, all those involved recognized that Alaska's situation was very unique. Not only have we the highest costs in the country, but we have been paying full "asked price" for all prescriptions. The federal position is that government will not pay retail price. So the conflict is apparent and irreconcilable.

However, it is the consensus of this committee that the most favorable terms possible have been developed for the pharmacy program. Particular concern for the smaller pharmacies is alleviated as the formula that arose from the survey data increases payments as size and volume decrease.

The pharmacist members of the committee however, are of the opinion that federal regulators are too restrictive, and that state court action against the federal government would result in a more favorable program.

Also, three states are challenging the federal policies in this area in court. It is the recommendation of this committee that all decisions of this nature be monitored and that state policy be modified, if possible, in the future to more closely reflect the preferred options of variable fees and payment of list catalog price (average wholesale price or "AWP").

Cost/Benefit Analysis:

The total pre-time cost for the contracts to design, develop and implement the Medicaid pharmacy program was \$164,500. Savings through receipt of federal matching funds for the fiscal year ending June 30, 1989 is projected at \$1,000,000 with \$2,500,000 projected to be saved each year thereafter before inflation.

Development Process:

The Committee as a whole has operated in an open, inclusive way with the full participation and cooperation of all parties. Further, it was agreed that all representatives were conscientious in pursuing favorable program terms.

(7)

ALASKA LEGAL SERVICES CORPORATION

419 SIXTH STREET, SUITE 322

JUNEAU, ALASKA 99801

TELEPHONE (907) 586-6425

January 23, 1989

State of Alaska
House HESS Committee

Re: H.B. 70

Dear Committee members:

This letter is about H.B. 70, which will be the subject of a Committee hearing on Wednesday, January 25, 1989. Kim Busch of the Division of Medical Assistance has asked me to convey my views on this bill to the Committee. Unfortunately, I will be out of town and unable to attend the hearing. Please accept this letter as my formal testimony.

I am an attorney for Alaska Legal Services Corporation in its Juneau office. A large part of my practice consists of public benefits work, including medicaid and general relief medical ("GRM") cases. I am also a consumer advocate representative on the Medical Care Advisory Committee and a consumer advocate member of the Pharmacy Program Steering Committee.

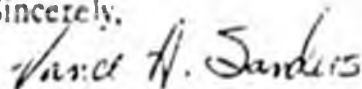
The Pharmacy Program Steering Committee was initiated by the Division of Medical Assistance to provide a forum for interested persons to propose or comment on proposals for implementing Alaska's Medicaid Pharmacy program. As you know, last year the legislature passed a law that moved funding for Alaska's pharmacy program from the G.R.M. (100% state dollars) to the medicaid program (equal state and federal funding). The Steering Committee's task was to bring together the expertise of pharmacists, policy makers, and consumers to formulate the best possible medicaid pharmacy program for Alaska's future pharmacy needs.

I believe the Steering Committee has done just that. In so doing, we held regular meetings which were open to the public. We had a high level of participation, including affected members of urban and rural pharmacies. Throughout this process, the Division of Medical Assistance sought and recieved valuable input. Once a decision was made on the workings of the program, the Department defended it with the federal bureaucracy.

As the consumer representative on the committee, I implore you to think long and hard before allowing the law authorizing the medicaid pharmacy program to sunset. In FY 90 alone, the state will realize a savings of 2.5 million dollars because of this program. Please do not retrench from a well-conceived and fiscally sound program.

On behalf of all indigent recipients of medical care in Alaska, I thank you for your time and effort on this important issue.

Sincerely,



Vance A. Sanders
Attorney at Law

09 Aug 88

State	Fiscal Year 1988				Fiscal Year 1987				Number of Prescriptions Processed*		
	Dispensing Fee	Copayment	Ingredient Reimbursement Basis	Formulary Status	State MAC	State MAC'd drugs	Vendor Drug Payments	Avg Ingrad- ient Cost Per Claim		Average Price*	
Alabama	\$3.25	.50-3.00	MAC+9.2% AMP	Yes No	C B	Yes No	12 0	\$31,081,371 N/A	\$0.00 No History	\$12.05 21.00	3,210,767 100,000
Alaska	7.00		--- AMP/CS Capitalization Plan ---								
Arizona			AMP	Yes	C	Yes	25	\$41,719,545	\$12.97	\$16.32	2,077,274
Arkansas	\$4.01		EAC	Yes	C	Yes	155	\$369,810,319	\$10.38	\$14.41	27,605,245
California	\$4.05	\$1.00 (1)	EAC (9)	Yes	C	Yes	200	\$22,444,056	\$15.30	\$10.50	
Colorado	\$3.20	\$1.00	AMP/EAC	Yes	C	No		\$32,603,536	\$11.07	\$14.53	2,696,141
Connecticut	\$3.55 (2)		AMP	No	B	No		\$4,406,023	\$10.66	\$14.31	197,741
Delaware	\$3.65		AAC	No	B	No				\$14.73	756,647
Dist of Columbia	\$4.25	\$0.50	AMP (8)	No	B	Yes	(11)	\$11,120,062			
Florida	\$4.23		MAC+7%	No	B	No		\$116,229,853			
Georgia	\$4.26		AMP	Yes	C	Yes	85	\$111,007,153		\$16.59	7,519,597
Hawaii	\$3.22		AMP/EAC	Yes	C	No		\$9,863,075			555,144
Idaho	2.50-3.50		AMP/EAC	No	B	No		\$2,920,350	\$9.13	\$12.63	191,791
Illinois	\$3.47		AMP-7.5%	Yes	C	Yes	(4)	\$137,797,393			
Indiana	\$3.00		AMP-3%	No	B	No		\$75,389,630	\$15.41	\$10.41	4,252,774
Iowa	\$3.20 (2)	\$1.00	AMP (8)	No	B	Yes	35	\$33,777,984	\$10.15	\$13.57	2,508,720
Kansas	2.46-4.67	\$1.00	AMP/EAC	Yes	C	Yes	(4)	\$20,223,950	\$9.67	\$13.46	1,642,180
Kentucky	\$3.25		EAC (8)	Yes	C	Yes	229	\$36,446,526	\$6.58	\$9.83	4,084,774
Louisiana	\$3.51		EAC	No	B	Yes	733	\$86,566,603	\$10.66		6,109,545
Maine	\$3.55	\$0.50	EAC (8)	No	B	Yes	32	\$21,086,107	\$11.91	\$15.26	1,316,180
Maryland	\$3.20	\$0.50 (1)	EAC	No	B	Yes	153	\$45,330,006		\$16.13	3,250,190
Massachusetts	\$3.22		AMP/EAC	No	A	Yes	(4)	\$89,829,373			
Michigan	\$3.45	\$0.50	AAC (8)	Yes	C	Yes	(4)	\$129,397,205	\$9.43	\$12.57	10,294,129
Minnesota	\$4.00		AMP-10%	Yes	C	Yes	120	\$47,430,102			
Mississippi	\$3.31	\$1.00	EAC	Yes	C	Yes	(4)	\$47,005,541	\$11.79	\$15.12	3,074,857
Missouri	\$3.00	.50-2.00	AMP/EAC	Yes	C	Yes	(4)	\$46,775,000		\$11.30	
Montana	2.00-3.75	\$1.00	EAC (8)	No	A	No		\$7,837,330			
Nebraska	4.30-5.12 (2)		EAC (6, 8)	No	B	Yes	395	\$10,284,744	\$10.20	\$13.20	1,267,284
Nevada	\$3.25		AMP-10%	No	B	No		\$4,751,057		\$10.94	252,304
New Hampshire	2.85-3.00	.50-1.00	AMP-10%	No	B	No		\$7,296,685	\$9.42	\$12.32	592,417
New Jersey	3.63-3.97		EAC (8)	No	B	Yes	132	\$104,568,805	\$11.15	\$14.86	8,284,261
New Mexico	\$3.65		AMP/EAC	No	B	Yes	(4)	\$14,689,445	\$13.04	\$15.51	950,400
New York	\$2.60		EAC	Yes	C	No		\$385,312,110	\$10.82	\$13.42	
North Carolina	\$3.05 (1)	\$0.50	AMP/EAC	No	A	No		\$65,511,242	\$13.30	\$16.87	3,004,020
North Dakota	\$3.25		AMP/EAC	No	B	No		\$7,516,587	\$10.78	\$14.53	530,620
Ohio	\$3.12		EAC/AMP	Yes	C	Yes	317	\$150,570,202	\$9.45	\$12.57	12,302,041
Oklahoma	\$3.55 Max		AMP	Yes	C	Yes	(4)	\$31,075,000	\$14.60	\$10.09	1,312,660
Oregon	3.45-3.75		EAC/AMP	No	A	Yes	300	\$21,140,425	\$10.64	\$14.07	1,025,312
Pennsylvania	\$2.75	\$0.50	EAC/AMP	No	B	Yes	126	\$143,387,994	\$11.30	\$14.05	12,120,407
Rhode Island	\$3.40		EAC/AMP	No	B	Yes	28	\$14,426,849		\$13.97	1,055,085
South Carolina	\$3.30	\$1.00	EAC (8)	No	B	Yes	7	\$32,385,353	\$12.98	\$16.28	1,089,276
South Dakota	\$4.25	\$1.00	EAC (8)	No	B	Yes	40	\$5,767,588	\$10.78	\$15.03	354,080
Tennessee	\$4.21		AMP-7%	Yes	C	Yes	150	\$80,961,451	\$9.71	\$13.19	6,304,177
Texas	151		EAC (6, 8)	No	B	Yes	145	\$123,297,069	\$11.69	\$15.87	7,597,296
Utah	\$3.40		EAC (8)	No	B	Yes	46	\$9,933,605		\$12.39	815,122
Vermont	\$2.75	\$1.00	AMP/EAC	No	B	Yes	352	\$8,082,238		\$14.45	550,324
Virginia	\$3.40	.50-1.00	EAC	No	B	Yes	82	\$55,496,164	\$10.73	\$13.13	4,225,285
Washington	3.05-3.85		8% AMP	Yes	C	Yes	282	\$43,891,312	\$9.15	\$12.55	4,328,011
West Virginia	\$2.75	.50-1.00	AMP	Yes	C	No		\$19,739,981	\$11.91	\$12.66	831,149
Wisconsin	\$3.20	\$0.50	AMP/EAC	No	B	Yes	291	\$66,232,967	\$8.40	\$12.39	2,847,030
Wyoming			--- No Vendor Drug Program ---						\$11.02	\$14.39	* Approx number

PERCENTAGE OF MEDICAID CASES BY RACE AND REGION
for month of 6/88

<u>REGION</u>	<u>Alaska Native</u>	<u>American Indian</u>	<u>Hispanic</u>	<u>Black</u>	<u>White</u>	<u>Asian</u>	<u>Pacific Island.</u>	<u>Other/ Unknown</u>
Anchorage	23.0	1.0	3.3	12.8	53.0	4.6	1.3	.8
Kotzebue	98.9	.2	-	-	.8	-	-	-
Nome	97.0	.2	.2	-	1.5	.2	-	.8
Northern	41.7	1.0	1.8	5.9	47.7	1.2	.3	.3
Southcentral	28.2	.7	1.0	.5	66.9	.4	.9	1.6
Southeast	46.0	1.3	.9	1.1	46.8	1.5	.7	1.6
Southwest	98.3	.1	-	-	1.1	-	.1	-
Total	44.2	.8	1.8	5.9	47.5	2.1	.8	.8

Pharmacy Expenditure Analysis

	Actuals						Projected	
	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89 (12/88)	FY 90 (12/89)
Total	1,358.0	1,806.2	2,453.8	2,769.3	2,847.0	3,883.6	3,518.2	4,134.1
GR	196.3	169.5	204.0	268.3	83.5	103.2	85.4	142.4
Medicaid	1,159.7	1,636.7	2,249.8	2,472.0	2,763.5	3,780.4	3,532.8	3,991.7
5%	579.9	819.4	1,124.4	1,246.0	1,381.8	1,890.2	1,766.4	1,995.9
% Change Total		33.15%	35.65%	12.5%	3.14%	36.41%	-6.83%	14.26%
% Change Medicaid		41.30%	37.23%	10.81%	10.89%	32.80%	-6.55%	12.55%
% Change GR		-14.52%	20.35%	31.52%	-65.62%	23.59%	-17.25%	66.74%

FY85 - FY88

Total Cost to the State
 Cost to State had program
 been Medicaid funded

14,085.1
 7,041.6

FY89 - FY90

Potential Savings
 if program moved to Medicaid

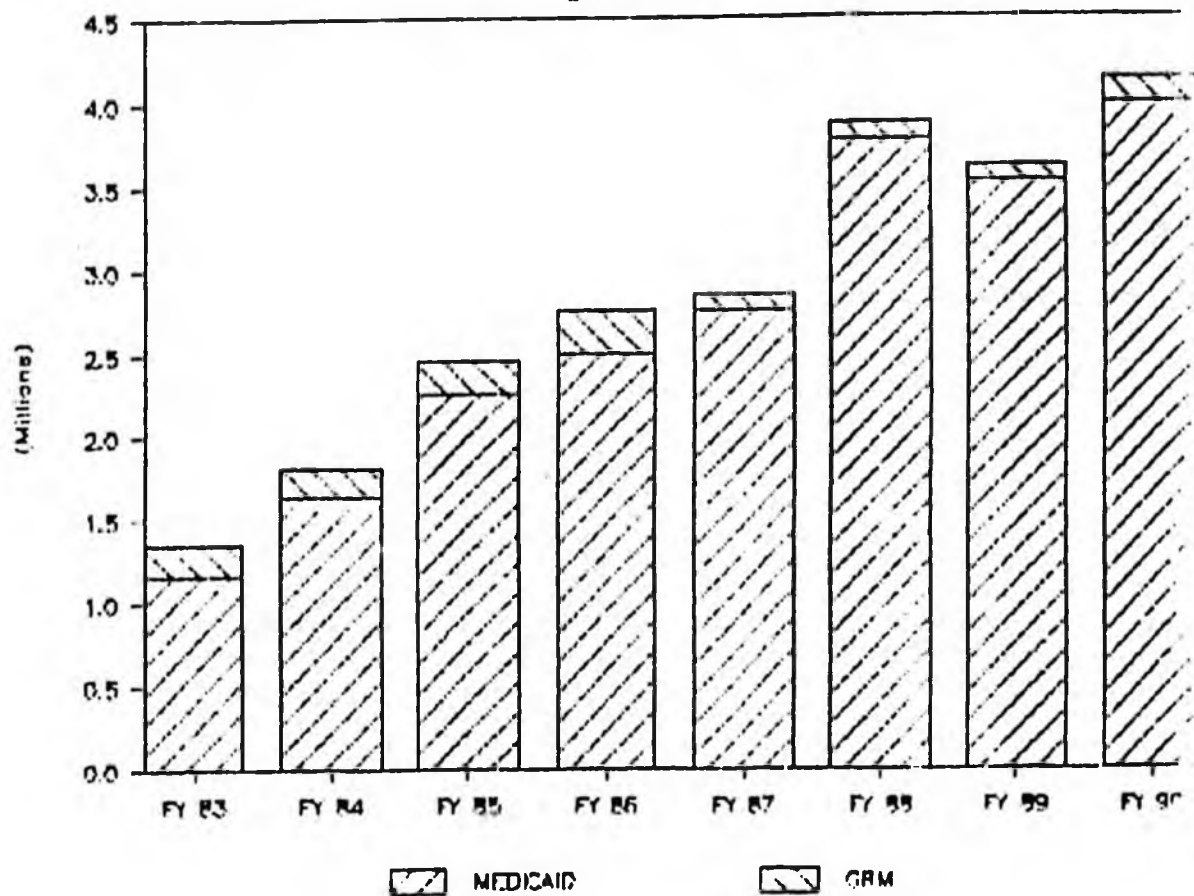
3,762.3

- .FY 87
- .GR program redefinition
 - .Implement Pharmacy Cost Containment Per Year
 - .8: Copayments
 - In FY 84 107,000 prescriptions were covered. A \$1 copayment resulted in an annual savings of: 177.0
 - .Over the Counter
 - Elimination of over the counter purchases with exception of insulin resulted in a savings of: 61.0
 - .30 day Supply or hand
 - No way to directly measure in the claims payment system. Estimated at: 50.0
 - .Generic Substitution where possible
 - No way to directly measure in the claims payment system. Estimated at: 27.0
- =====
- 415.0

.FY 89 and FY 90 Projections based on 12/88 projection.

PHARMACY EXPENDITURES

25-Jan-89



AFDC	STDS.									
	7/1/81	7/1/82	1/1/83	1/1/84	1/1/85	1/1/86	7/1/86	1/1/87	1/1/88	1/1/89
A1 2	508	516	597	617	638	657	657	665	692	719
3	577	616	674	696	719	740	740	740	776	806
4	634	651	751	775	800	823	823	833	866	899
5	697	750	828	854	881	906	906	917	953	989
6	760	818	905	933	962	989	989	1001	1040	1079
7	823	886	986	1012	1043	1072	1072	1085	1127	1169
EA ADD	63	68	77	79	81	83	83	84	87	90

ANI 1	222	238	238	246	254	261	261	264	275	286
2	445	476	476	492	508	522	522	528	550	572
3	506	544	553	571	589	605	605	612	637	662
4	571	612	630	650	670	688	688	696	724	752
5	634	680	707	729	751	771	771	780	811	842
6	697	748	784	808	832	854	854	864	898	932
7	760	816	861	887	913	937	937	948	985	1022
EA ADD	63	68	77	79	81	83	83	84	87	90

SINGLE ADULT/ PREGNANT WOMAN* 11/1/83	286	308	*359 *382	*391	404	416	416	421	437	453
**ADDITIONAL INCREMENT FOR INCAP. SPOUSE				**145	**150	**154	**154	**156	**162	**168

APA	WASKY SUIT									
INDIV. -35	426	426	546	566	586	605	624	632	659	685
+35	526	526								
COUPLE -35	638	638	802	830	859	887	925	937	976	1015
+35	773	773								
M.H.P. NEEDS:	35	70	70	70	70	70	70	70	70	75 75
-INDIV. B			451	466	482	497	516	523	545	567
-B ELIG. COUPLE			660	683	707	730	768	778	811	843
-A COUPLE, 1 INELIGIBLE			660	683	707	730	749	759	791	823
-B COUPLE, 1 INELIGIBLE			518	536	555	573	592	600	625	650
-NURSING HOME 300% CASES				942	975	1008	1020	1020	1062	1104

SSI STANDARDS:										
-INDIV. "A" LVC. ARR.				314	325	336	336	340	354	368
-INDIV. "B" LVC. ARR.				209.34	216.67	224	224	226.67	236	245.3
-COUPLE "A"				472	488	504	504	510	532	553
-COUPLE "B"				314.67	325.34	336	336	340	354.67	368.6
-SSI - LONG TERM N.H.									25 30 30	

APA-SSI RESOURCE LIMITS:										
- INDIVIDUAL				1500	1600	1700	1700	1800	1900	2000
- COUPLE				2250	2400	2550	2550	2700	2850	3000

100% of Federal Poverty Level -c										
Alaska Monthly Standard										2/12/85
										600
										805
										1009
										1213
										1417
										1621
										1825
										2029

AFDC = Aid to Families with Dependent Children
 A1 = AFDC Adult Included
 ANI = AFDC Adult Not Included
 APA = Adult Public Assistance (Old Age Assistance, Aid to the Disabled, Aid to the Blind)
 M.H.P. = Nursing Home Person Needs Allowance
 B = Eligible individual or couple who live in another's household

ANCHORAGE CONSUMER PRICE INDEX
ALL URBAN CONSUMERS

<u>Period</u>	<u>Medical Care</u>	<u>Medical Care Services</u>
FY83 to FY84	4.77%	4.71%
FY84 to FY85	5.02%	4.83%
FY85 to FY86	7.47%	7.76%
FY86 to FY87	14.52%	15.65%
FY87 to FY88	6.8%	7.46%

Percentages displayed represent the percent change from one fiscal year compared to the next fiscal year.

Medical Care - Included in this category is prescription drugs, non-prescription drugs, internal and respiratory over-the-counter drugs, non-prescription medical equipment and supplies.

Medical Care Services - Physician services, dental and eye care services, other medical professional services, hospital and related services, other inpatient costs, and outpatient services.

UNDUPLICATED NUMBER OF MEDICAID RECIPIENTS BY PROGRAM
for June 1988

<u>Assistance Program</u>	<u>Unduplicated Recipients</u>
Old Age Assistance	
Cash	1,939
No Cash	283
Aid to the Blind	
Cash	55
No Cash	0
Aid to the Disabled	
Cash	2,679
No Cash	81
AFDC Children	
Cash	14,064
No Cash	4,692
AFDC Adults	
Cash	6,436
No Cash	563
Program Total	
Cash	25,173
No Cash	5,619
	<hr/>
Total Recipients	30,792

PERCENTAGE OF MEDICAID RECIPIENTS BY AGE
for month of 6/88

<u>AGES</u>	<u>PERCENTAGE of RECIPIENTS</u>
Under 1	4%
1 - 5	21%
6 - 14	23%
15 - 20	9%
21 - 44	28%
45 - 64	6%
65 - 74	5%
75 - 84	3%
85 +	1%

NUMBER OF MEDICAID CASES BY REGION
for month of 6/88

	<u>AFDC</u>	<u>APA</u>	<u>Medicaid Only</u>
Anchorage	2972	1720	1020
Kotzebue	222	175	37
Nome	231	252	55
Northern	1276	919	421
Southcentral	1438	910	581
Southeast	778	601	378
Southwest	691	909	435
	-----	-----	-----
Total	7608	5486	2927

AFDC = Aid to Families with Dependent Children

APA = Adult Public Assistance

Medicaid only = Medicaid benefits with no cash related cash assistance

PERCENTAGE OF MEDICAID CASES BY RACE AND REGION
for month of 6/88

<u>REGION</u>	<u>Alaska Native</u>	<u>American Indian</u>	<u>Hispanic</u>	<u>Black</u>	<u>White</u>	<u>Asian</u>	<u>Pacific Island.</u>	<u>Other/ Unknown</u>
Anchorage	23.0	1.0	3.3	12.8	53.0	4.6	1.3	.8
Kotzebue	98.9	.2	-	-	.8	-	-	-
Nome	97.0	.2	.2	-	1.5	.2	-	.8
Northern	41.7	1.0	1.8	5.9	47.7	1.2	.3	.3
Southcentral	28.2	.7	1.0	.5	66.9	.4	.9	1.6
Southeast	46.0	1.3	.9	1.1	46.8	1.5	.7	1.6
Southwest	98.3	.1	-	-	1.1	-	.1	-
Total	44.2	.8	1.8	5.9	43.5	2.1	.8	.8

nursing facility, and that are—
 (i) Provided by a registered nurse or a licensed practical nurse;
 (ii) Under the direction of the recipient's physician; and
 (iii) Provided to a recipient in his own home or in a hospital or skilled nursing facility.

W Clinic services.

"Clinic services" means preventive, diagnostic, therapeutic, rehabilitative, and other medical services that—
 (1) Are provided to outpatients;
 (2) Are provided by a facility that is part of a hospital but is organized separately to provide medical care to outpatients; and
 (3) Except in the case of nurse-midwife services, as specified in § 440.165, are supervised by or under the direction of a physician or dentist.

21050, May 17, 1982)

X Dental services.

"Dental services" means diagnostic, preventive, or corrective procedures provided by or under the supervision of a dentist in the practice of his profession, including treatment

of the teeth and associated structures of the oral cavity; and
 (2) Disease, injury, or impairment that may affect the oral or general health of the recipient.

"Dentist" means an individual licensed to practice dentistry or dental hygiene.

45224, Sept. 29, 1978, as amended at 24888, Apr. 11, 1980)

10 Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

"Physical therapy" means services prescribed by a physician and provided to a recipient under the direction of a qualified physical therapist. It includes any necessary supplies and equipment.

A "qualified physical therapist" means an individual who is—
 (1) A graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the

American Physical Therapy Association or its equivalent; and

(2) Where applicable, licensed by the State.

(b) *Occupational therapy.* (1) "Occupational therapy" means services prescribed by a physician and provided to a recipient by or under the direction of a qualified occupational therapist. It includes any necessary supplies and equipment.

(2) A "qualified occupational therapist" is an individual who is—

(i) Registered by the American Occupational Therapy Association; or

(ii) A graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

(c) *Services for individuals with speech, hearing, and language disorders.* (1) "Services for individuals with speech, hearing, and language disorders" means diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician. It includes any necessary supplies and equipment.

(2) A "speech pathologist or audiologist" is an individual who—

(i) Has a certificate of clinical competence from the American Speech and Hearing Association;

(ii) Has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

143 FR 45224, Sept. 29, 1978, as amended at 45 FR 24888, Apr. 11, 1980)

§ 440.120 Prescribed drugs, dentures, prosthetic devices, and eyeglasses.

(a) "Prescribed drugs" means simple or compound substances or mixtures of substances prescribed for the cure, mitigation, or prevention of disease, or for health maintenance that are—

(1) Prescribed by a physician or other licensed practitioner of the healing arts within the scope of this professional practice as defined and limited by Federal and State law;

(2) Dispensed by licensed pharmacists and licensed authorized practitioners in accordance with the State Medical Practice Act; and

(3) Dispensed by the licensed pharmacist or practitioner on a written prescription that is recorded and maintained in the pharmacist's or practitioner's records.

(b) "Dentures" are artificial structures made by or under the direction of a dentist to replace a full or partial set of teeth.

(c) "Prosthetic devices" means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law to—

(1) Artificially replace a missing portion of the body;

(2) Prevent or correct physical deformity or malfunction; or

(3) Support a weak or deformed portion of the body.

(d) "Eyeglasses" means lenses, including frames, and other aids to vision prescribed by a physician skilled in diseases of the eye or an optometrist.

§ 440.130 Diagnostic, screening, preventive, and rehabilitative services.

(a) "Diagnostic services," except as otherwise provided under this subpart, includes any medical procedures or supplies recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law, to enable him to identify the existence, nature, or extent of illness, injury, or other health deviation in a recipient.

(b) "Screening services" means the use of standardized tests given under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify for more definitive studies individuals suspected of having certain diseases.

(c) "Preventive services" means services provided by a physician or other

licensed practitioner of the healing arts within the scope of his practice under State law to

(1) Prevent disease, disability, and other health conditions or their progression;

(2) Prolong life; and

(3) Promote physical and mental health and efficiency.

(d) "Rehabilitative services," except as otherwise provided under this subpart, includes any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level.

§ 440.140 Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals age 65 or older in institutions for mental diseases.

(a) *Inpatient hospital services.* (1) "Inpatient hospital services for individuals age 65 or older in institutions for mental diseases" means services provided under the direction of a physician for the care and treatment of recipients in an institution for mental diseases that meets the requirements specified in § 482.60(b), (c), and (d) of this chapter and—

(i) Meets the requirements for utilization review in § 482.50(a), (b), (c), and (e) of this chapter; or

(ii) Has been granted a waiver of those utilization review requirements under section 190.3(a)(4) and Subpart H of Part 456 of this subchapter.

(2) "Institution for mental diseases" means an institution that is primarily engaged in providing diagnosis, treatment, or care of individuals with mental diseases, including medical care, nursing care, and related services.

(b) *Skilled nursing facility services.* "Skilled nursing facility services for individuals age 65 or older in institutions for mental diseases" means skilled nursing facility services as defined in § 440.40 that are provided in institutions for mental diseases, as defined in paragraph (a) of this section.

(2) Meet the State plan and payment requirements described in this subpart, as applicable.

(b) *Application of the rule.* The payment methodology used by a State to set payment rates for routine SNF or ICF services must apply to all swing-bed hospitals in the State.

152 FR 28148, July 28, 1987

EFFECTIVE DATE NOTE: At 52 FR 28148, July 28, 1987, § 447.280 was revised, effective October 20, 1987. For the convenience of the user, the superseded text is set forth as follows.

§ 447.280 Hospital providers of SNF and ICF services (swing-bed hospitals).

(a) If the State plan provides for SNF services furnished by a swing-bed hospital, as specified in § 440.40(a) of this chapter, the methods and standards used to determine payment rates must provide for payment for the routine SNF services at the average rate per patient day paid to SNFs for routine services furnished during the previous calendar year.

(b) If the State plan provides for ICF services furnished by a swing-bed hospital, as specified in § 440.150(f) of this chapter, the methods and standards used to determine payment rates must provide for payment for the routine ICF services at the average rate per patient day paid to ICFs, other than ICFs for the mentally retarded, for routine services furnished during the previous calendar year.

Subpart D—Payment Methods for Other Institutional and Noninstitutional Services

SOURCE: 43 FR 45253, Sept. 29, 1978, unless otherwise noted. Redesignated at 46 FR 47973, Sept. 30, 1981.

§ 447.300 Basis and purpose.

In this subpart, §§ 447.302 through 447.334 and 447.361 implement section 1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy and quality of care. Section 447.342 of this subpart implements section 1902(a)(43) of the Act, which permits the State plan to provide for payment to a physician for laboratory services which the physician did not personally perform or supervise. Section 447.371 implements section 1902(a)(13)(F) of the Act, which requires that the State plan provide for payment for rural health

clinic services in accordance with regulations prescribed by the Secretary.

146 FR 48580, Oct. 1, 1981

§ 447.301 Definitions.

For the purposes of this subpart—
“Brand name” means any registered trade name commonly used to identify a drug.

“Estimated acquisition cost” means the agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of drug most frequently purchased by providers.

“Multiple source drug” means a drug marketed or sold by two or more manufacturers or labelers or a drug marketed or sold by the same manufacturer or labeler under two or more different proprietary names or both under a proprietary name and without such a name.

152 FR 28687, July 31, 1987

EFFECTIVE DATE NOTE: At 52 FR 28657, July 31, 1987, § 447.301 was added, effective October 29, 1987.

§ 447.302 State plan requirements.

A State plan must provide that the requirements of this subpart are met.
146 FR 48580, Oct. 1, 1981

§ 447.303 Adherence to upper limits; FFP.

(a) The Medicaid agency must not pay more than the upper limits described in this subpart.

(b) In the case of payments made under the plan for deductibles and coinsurance payable on an assigned Medicare claim for noninstitutional services, those payments may be made only up to the reasonable charge under Medicare.

(c) FFP is available in expenditures for payments for services that do not exceed the upper limits.

NOTE: The Secretary may waive any limitation on reimbursement imposed by Subpart D of this part for experiments conducted under section 402 of Pub. L. 90-428, Incentives for Economy Experimentation, as amended by section 222(b) of Pub. L. 92-603, and under section 222(a) of Pub. L. 92-603.

146 FR 48580, Oct. 1, 1981, 49 FR 54744, Nov. 4, 1984

OUTPATIENT HOSPITAL AND CLINIC SERVICES

§ 447.321 Outpatient hospital services and clinic services: Upper limits of payment.

(a) *General rule.* FFP is not available for any payment that exceeds the amount that would be payable to providers under comparable circumstances under Medicare.

(b) *Application of the rule.* Payments by an agency for outpatient hospital services may not exceed the total payments received by all providers from beneficiaries and carriers or intermediaries for providing comparable services under comparable circumstances under Medicare.

152 FR 28148, July 28, 1987

EFFECTIVE DATE NOTE: At 52 FR 28148, July 28, 1987, § 447.321 was revised, effective October 20, 1987. For the convenience of the user, the superseded text is set forth as follows.

§ 447.321 Outpatient hospital services and clinic services: Upper limits of payment.

The agency may not pay more than the combined payments the provider gets from the beneficiaries and carriers or intermediaries for providing comparable services under comparable circumstances under Medicare.

OTHER INPATIENT AND OUTPATIENT FACILITIES

§ 447.325 Other inpatient and outpatient facility services: Upper limits of payment.

The agency may pay the customary charges of the provider but must not pay more than the prevailing charges in the locality for comparable services under comparable circumstances.

DRUGS

§ 447.331 Drugs: Aggregate upper limits of payment.

(a) *Multiple source drugs.* Except for brand name drugs that are certified in accordance with paragraph (c) of this section, the agency payment for multiple source drugs must not exceed the amount that would result from the application of the specific limits established in accordance with § 447.332. If a specific limit has not been estab-

lished for other drugs, the limit in paragraph (b) applies.

(b) *Other drugs.* The agency payments for brand name drugs certified in accordance with paragraph (c) of this section and drugs other than multiple source drugs for which a specific limit has been established under § 447.332 must not exceed in the aggregate, payment for that the agency has determined by applying the lower of the:

(1) Estimated acquisition costs plus reasonable dispensing fees established by the agency; or

(2) Providers' usual and customary charges to the general public.

(c) *Certification of brand name drugs.* (1) The upper limit for payment for multiple source drugs for which a specific limit has been established under § 447.332 does not apply if a physician certifies in his or her own handwriting that a specific brand is medically necessary for a particular recipient.

(2) The agency may decide what certification form and procedure are used.

(3) A checkoff box on a form is not acceptable but a notation like “brand necessary” is allowable.

(4) The agency may allow providers to keep the certification forms if the forms will be available for inspection by the agency or HHS.

152 FR 28657, July 31, 1987

EFFECTIVE DATE NOTE: At 52 FR 28657, July 31, 1987, § 447.331 was revised, effective October 29, 1987. For the convenience of the user, the superseded text is set forth as follows.

§ 447.331 Drugs: Upper limits of payment.

(a) The agency may not pay more than the lesser of the provider's usual and customary charges plus a reasonable dispensing fee or the general public's usual and customary charges.

(b) Cost must be determined in accordance with § 447.332.

(c) The dispensing fee must be determined by the agency under § 447.332.

143 FR 45253, Sept. 29, 1978, 45 FR 24889, May 1, 1980

§ 447.332 Upper limits for multiple source drugs.

(a) Establishment and issuance of a listing. (1) HCFA will establish listings that identify and set upper limits for multiple source drugs that meet the following requirements:

(i) All of the formulations of the drug approved by the Food and Drug Administration (FDA) have been evaluated as therapeutically equivalent in the most current edition of their publication, *Approved Drug Products with Therapeutic Equivalence Evaluations* (including supplements or in successor publications).

(ii) At least three suppliers list the drug (which has been classified by the FDA as category "A" in its publication, *Approved Drug Products with Therapeutic Equivalence Evaluations*, including supplements or in successor publications) based on all listings contained in current editions (or updates) of published compendia of cost information for drugs available for sale nationally.

(2) HCFA publishes the list of multiple source drugs for which upper limits have been established and any revisions to the list in Medicaid program instructions.

(3) HCFA will identify the sources used in compiling these lists.

(b) Specific upper limits. The agency's payments for multiple source drugs identified and listed in accordance with paragraph (a) of this section must not exceed, in the aggregate, payment levels determined by applying for each drug entity a reasonable dispensing fee established by the agency plus an amount established by HCFA that is equal to 150 percent of the published price for the least costly therapeutic equivalent (using all available national compendia) that can be purchased by pharmacists in quantities of 100 tablets or capsules (or, if the drug is not commonly available in quantities of 100, the package size commonly listed) or, in the case of liquids, the commonly listed size.

[52 FR 28658, July 31, 1987]

EFFECTIVE DATE NOTE: At 52 FR 28658, July 31, 1987, § 447.332 was revised, effective October 29, 1987. For the convenience of the user, the superseded text is set forth as follows:

§ 447.332 Cost of drugs

(a) Multiple source drugs. A "multiple source drug" means a drug marketed or sold by two or more manufacturers or labelers of a drug marketed or sold by the same manufacturer or labeler under two or more different proprietary names or both under a proprietary name and without such a name. Except as specified in paragraph (b), the cost of each multiple source drug designated by the Pharmaceutical Reimbursement Board (46 CFR Part 10) and published in the *Federal Register* must be the lower of

(1) The maximum allowable cost (MAC) established by the Board and published in the *Federal Register*, or

(2) The estimated acquisition cost as described in paragraph (c) of this section.

(b) Exception. Certification of brand name drugs. (1) The cost of a multiple source drug is not limited to the MAC if a physician certifies in his own handwriting that, in his medical judgment, a specific brand is medically necessary for a particular recipient.

(2) The agency must decide what certification form and procedure are used.

(3) A checkoff box on a form is not acceptable but a notation like "brand necessary" is allowable.

(4) The agency may allow providers to keep the certification forms if the forms will be available for inspection by the agency or HHS.

(c) All other drugs. (1) The agency must set the cost of all other prescribed drugs at the estimated acquisition cost.

(2) "Estimated acquisition cost" means the agency's best estimate of what price providers generally are paying for a drug.

(3) The basis for the estimate must be the package size providers buy most frequently.

NOTE: To help Medicaid agencies with these estimates, HHS makes available information, on a current basis, on the acquisition cost of the most frequently prescribed drugs.

§ 447.333 State plan requirements, findings and assurances.

(a) State plan. The State plan must describe comprehensively the agency's payment methodology for prescription drugs.

(b) Findings and assurances. Upon proposing significant State plan changes in payments for prescription drugs, and at least annually for multiple source drugs and triennially for all other drugs, the agency must make the following findings and assurances

(1) Findings. The agency must make the following separate and distinct findings:

(i) In the aggregate, its Medicaid expenditures for multiple source drugs, identified and listed in accordance with § 447.332(a) of this subpart, are in accordance with the upper limits specified in § 447.332(b) of this subpart; and

(ii) In the aggregate, its Medicaid expenditures for all other drugs are in accordance with § 447.331 of this subpart.

(2) Assurances. The agency must make assurances satisfactory to HCFA that the requirements set forth in § 447.331 and 447.332 concerning upper limits and in paragraph (b)(1) of this section concerning agency findings are met.

(c) Recordkeeping. The agency must maintain and make available to HCFA, upon request, data, mathematical or statistical computations, comparisons, and any other pertinent information to support its findings and assurances.

[52 FR 28658, July 31, 1987]

EFFECTIVE DATE NOTE: At 52 FR 28658, July 31, 1987, § 447.333 was revised, effective October 29, 1987. For the convenience of the user, the superseded text is set forth as follows:

§ 447.333 Dispensing fee.

(a) The agency may set the dispensing fee by taking into account the results of surveys of the costs of pharmacy operation. The agency must periodically survey pharmacy operations including

- (1) Operational data;
- (2) Professional services data;
- (3) Overhead data; and
- (4) Profit data.

(b) The dispensing fee may vary according to -

- (1) Size and location of pharmacy;
- (2) Whether the drug is a legend item (for which Federal law requires a prescription) or nonlegend item; and
- (3) Whether the drug is dispensed by a physician or an outpatient department of an institution.

(c) The dispensing fee may also vary for drugs furnished recipients in institutions by a pharmacy using a unit dose system. In those cases -

- (1) The dispensing fee is added to the ingredient cost of the drug actually used; and
- (2) The fee is either -
 - (i) An amount added to the cost of each unit dose; or

§ 447.334 Upper limits for multiple source drugs

The upper limits for multiple source prescribed drugs in a State plan that apply to payment for such drugs as part of skilled nursing facility services and intermediate care in the services and under prepaid capitalization arrangements.

CLINICAL LABORATORY SERVICES

§ 447.312 Physician bills for clinical laboratory services.

(a) This section applies when a State plan provides for payment to physicians for clinical laboratory services.

(b) (Reserved)

(c) A State plan may provide for payment to a physician of bills for clinical laboratory services performed by an outside laboratory when these circumstances, the plan must provide that the agency will not pay the physician more than the amount that would be authorized under Medicare in accordance with § 409.60 (b), (c) and (d) of this chapter.

[46 FR 48560, Oct. 1, 1981]

PREPAID CAPITALIZATION PLANS

§ 447.361 Upper limits of payment: Risk contract.

Under a risk contract, Medicaid payments to the contractor, for a defined scope of services to be furnished to a defined number of recipients, may not exceed the cost to the agency of providing those same services on a fee-for-service basis, to an actuarially equivalent nonenrolled population group.

[48 FR 54025, Nov. 30, 1983]

§ 447.362 Upper limits of payment: Non-risk contract.

Under a nonrisk contract, Medicaid payments to the contractor may not exceed -

(a) What Medicaid would have paid on a fee-for-service basis for the services actually furnished to recipients; plus

(b) The net savings in administrative costs the Medicaid agency achieves by

Report
On the Cost of Dispensing
Pharmaceutical Prescriptions
In the State of Alaska

Prepared for the

Division of Medical Assistance
Department of Health and Social Services
State of Alaska
4433 Business Park Boulevard, Building "M"
Anchorage, Alaska 99503

Prepared by

Myers and Stauffer, Chartered
Certified Public Accountants
909 Topeka Avenue
Topeka, Kansas 66612

In Consultation with

Gene Hotchkiss, RPh
Carol Morgan, RPh

December 1988

The big lie about generic drugs

As patents on some best-selling prescription drugs run out, the makers have turned on a propaganda war against their generic competitors. The goal: To make sure you keep paying top dollar.

In 1983, a group of New York legislators tried to save consumers money by changing the prescription forms used by the state's doctors. Under their proposal, patients would receive a generic drug from pharmacists unless the doctor wrote "dispense as written" when prescribing a brand-name drug. Prescription drugs marketed under their generic names often are half the price of the same drug sold under a brand name—the name given it by the company that held the original patent.

Three of America's largest drug companies—American Home Products, Bristol-Myers, and Hoffmann-LaRoche—sent key legislators a "Memorandum in Opposition." It featured aerial photos of two modern "major pharmaceutical manufacturers" played against a ground-level shot of "a New York City generic manufacturer." The latter photo focused on a garbage-strewn vacant lot. "We would appreciate your contrasting their facilities," the memo said, "and question whether you believe [they] can uniformly produce identical drug products."

That was the opening salvo in the latest round of a long war waged by the makers of brand-name drugs against the generic-drug firms that compete with them. The brand-name companies dominate the \$25-billion annual market in prescription drugs. They barrage legislators, doctors, pharmacists, and consumers with an unrelenting message: Generic drugs are low in quality and may harm you.

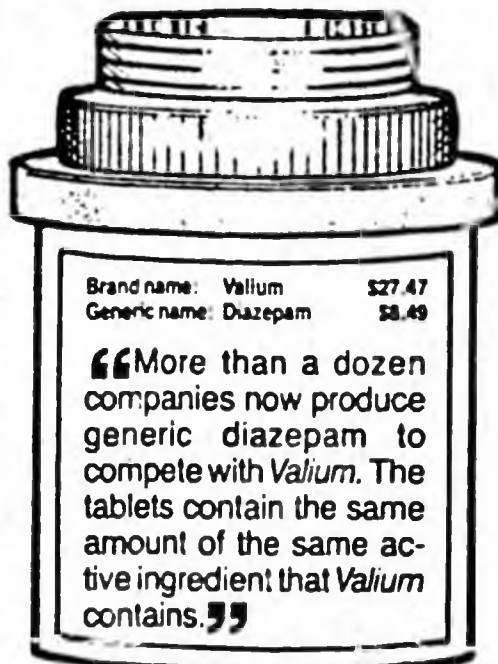
Few distortions in the history of commercial propaganda have cost consumers more money than that one.

Who makes what?

The 59 firms that make brand-name drugs are called "innovator" drug companies. Each of them devotes millions of dollars a year to developing new drugs and ushering them through a long testing and approval process. When an innovator's drug is finally approved, the company gives it a brand name like *Valium* or *Inderal* and then spends millions more promoting it. As a reward for its investment,

the innovator earns a patent that protects the drug from competition, usually for at least a decade.

When the patent expires, any pharmaceutical company can apply for Federal approval to produce its own version of that drug and market it under the drug's "generic" name—diazepam rather than *Vali-*



um, for example, or propranolol rather than *Inderal*.

Most generic drugs are manufactured not by fly-by-night factories operating next to garbage dumps but by the very same companies that develop brand-name drugs. Indeed, the 59 brand-name drug companies manufacture about 80 percent of all generic drugs as well. Some 300 smaller pharmaceutical companies scramble for the rest of the generic market.

More than a dozen companies now produce generic diazepam to compete with *Valium*, which is made by Hoffmann-LaRoche. These manufacturers include not only generic companies but also two of the largest innovator firms, American Cyanamid and Warner-Lambert. The tablets differ from *Valium* in color and shape,

and in the inactive "excipients" used to formulate all tablets. But they contain the same amount of the same active ingredient that *Valium* contains.

For the innovator companies, however, the big profit is in their brand-name products, not their generic sidelines. And the main price competition for those high-profit brands comes not from other innovator companies but from the smaller generic firms, which commonly charge the lowest prices.

Thus brand-name firms "would have you believe that only they make that magic formula," says a senior official at the U.S. Food and Drug Administration. "But they don't. And frankly, what's required is not all that complicated."

Quality: The crucial issue

FDA inspectors visit all drug-manufacturing facilities to insure they meet standards for equipment, workplace cleanliness, and drug quality, purity, and strength. "In most instances," says the FDA, "the generic firms have modern, state-of-the-art equipment and plants that compare favorably to or even surpass those of innovator companies."

But the real proof of generic quality resides in the pills themselves: Do they work as well as their brand-name counterparts? Independent experts we've consulted say the answer is yes. They cite FDA's approval standards as the reason.

Currently, generic-drug approval differs from new-drug approval in one major way: The maker of a generic drug no longer has to carry out clinical studies to establish safety and efficacy for drugs introduced since 1962. Such studies, says the FDA, merely redemonstrate what's already known from the original manufacturer's studies. Instead, a generic manufacturer must prove to the FDA that it has formulated the product correctly, using the same amount of the identical active ingredient in the brand-name version.

If the generic is made well, it will be absorbed into the bloodstream as rapidly and completely as the brand-name product it matches. The FDA test required for dem-

onstrating that is called a bioequivalence study, a far more sophisticated procedure than the tests the agency used in earlier years for pre-1962 drugs. The generic manufacturer carries out this study on 20 to 24 healthy men. Typically, the men are first given a single dose of the generic product. Technicians take blood samples at timed intervals and then determine the amount of drug in each blood sample. These values are plotted over time, producing a "bioavailability curve" that describes the absorption of the drug into the bloodstream.

Later the same procedure is repeated on the same subjects, this time using the brand-name product. If the generic drug's bioavailability curve closely matches that of the brand-name drug, the FDA will approve the product. A drug that's bioequivalent to another should have the same therapeutic effect.

Bioequivalence tests enable generic companies to market their products relatively quickly and inexpensively. Rankled by that competition, the brand-name companies publicly attack the validity of the tests. Yet brand-name firms rely on bioequivalence testing themselves. Many of them reformulate their own products from time to time, adding a new coating or changing the inactive ingredients. Not surprisingly, they don't want to spend millions of dollars on clinical studies to show that the newly formulated pill also works.

Instead, they do what generic firms do—carry out a bioequivalence test comparing the new formulation with the old. They then submit their data to the FDA for approval. Bristol-Myers has gotten 105 of its formulations approved this way; American Home Products, 86; Hoffmann-LaRoche, 13.

When evaluating bioequivalence, the FDA looks at two things: how much of the drug is absorbed into the bloodstream and how fast. The generic must match the brand-name drug closely, but it needn't be identical. That's because two formulations of the same drug can vary slightly in their absorption and still work equally well in the body. Most pharmacological experts agree that differences of less than 20 percent are not clinically significant for most drugs. If a generic drug differs by more than 20 percent in either the speed or amount of absorption, the FDA won't approve it.

This allowable difference is called the "plus-or-minus 20 percent rule." The brand-name companies insist that the variability allowed for generics is much too great. They've distorted the carefully established rule into a scary hypothetical situation that goes like this:

A patient takes Generic X, whose bioavailability tested out as 120 percent of the

brand-name's. That patient's prescription is then refilled with another version of the drug, Generic Y, whose bioavailability is 80 percent of the brand-name's. The change from 120 percent to 80 percent means a 33 percent decrease in bioavailability—and, it's claimed, drug therapy that may no longer be effective. Brand-name companies call this scenario "the dangers of indiscriminate interchange."

This scenario sends a clear message to doctors: Generics may differ from each other in bioavailability. So play it safe and stick with the dependable brand-name product.

Actually, the differences are extremely small. The FDA recently reviewed all new generics it has approved since 1984. It calculated that the average difference in bioavailability between brand-name drugs and their generic copies is only 3.5 percent—no greater than the difference between one batch of a brand-name drug and another batch off the same assembly line. So far, about 5000 generics have been approved as bioequivalent to brand-name products. The FDA recently stated that it's not aware of a single documented case in which any of the 5000 generics has caused a treatment problem.

Those claiming it's dangerous to switch from one generic to another "are fooling themselves and, more importantly, fooling the public," says Dr. Leslie Benet, president of the American Association of Pharmaceutical Scientists.

The only exceptions, say CU's medical consultants, are a few "critical" drugs that have a narrow range between blood levels that are ineffective, effective, or toxic. These drugs include digoxin (*Lanoxin*), levothyroxine (*Synthroid*, *Levothroid*), and warfarin (*Coumadin*). For this small number of drugs, blood levels should be monitored when patients switch from one formulation to another.

The threat of competition

Over the past decade, organizations that pay health-care bills—the Federal Government, the states, and insurance companies—have sought ways to brake the rapid rise in health-care costs. In this climate, lobbying efforts by generic companies stimulated Congress to consider legislation that would make lower-priced generic drugs more widely available. The result was a new Federal law, the Drug Price Competition and Patent Term Restoration Act of 1984.

The law represented a painstaking compromise between the generic drug companies and the Pharmaceutical Manufacturers Association, the trade association that represents the innovator drug companies. The innovator companies got what they wanted: longer patent protection on new drugs. Generic companies, in turn, won the right to eventually market the same chemical under its generic name without having to prove again what the innovator companies had already proven—that the

If the price is right . . .

Many of the best-selling prescription drugs are now available in generic form. Below are recent retail prices for brand-name and generic versions of 11 of the most frequently pre-

scribed drugs, as posted by a major national pharmacy chain. Overall, the brand names cost 70 percent more than the generics. In the case of Valium, the difference is 223 percent.

Brand name	Generic name	Dosage	Retail price*	
			Brand	Generic
Amoxil	amoxicillin	250 mg	22.46	8.52
Ativan	lorazepam	1	31.99	17.99
Darvocet-N 100	propoxyphene	100	28.01	17.88
	acetaminophen	650		
Dilantin	phenytoin	100	7.49	5.79
EES 400	erythromycin ES	400	17.99	14.97
Inderal	propranolol HCL	40	19.56	10.49
Keflex	cephalexin	250	77.34	48.99
Lasix	furosemide	40	15.74	5.89
Motrin	ibuprofen	600	18.25	8.93
Tylenol No. 3	acetaminophen	300	14.89	6.88
	codeine	30		
Valium	diazepam	5	27.47	8.49

*For 100 tablets or capsules.

chemical works. Until the 1984 law, the need to redo costly clinical trials for drugs introduced since 1962 had effectively barred generic companies from marketing some of the most frequently prescribed drugs in medicine. Already, the law has helped spur the introduction of generic competitors for many of the leading brands. (See the table on page 481.)

The increased competition promises special benefit to consumers who pay for prescription drugs completely out of their own pockets, including the majority of people 65 or older. Suppose you were a diabetic taking *Diabinese*, Pfizer Labs' brand of chlorpropamide, a drug that reduces blood-sugar levels. A major national pharmacy chain charges \$31.54 for 100 tablets of *Diabinese*. By contrast, the same chain charges \$7.59 for 100 tablets of generic chlorpropamide. If you were taking one tablet per day, the cost would be about \$115 a year for *Diabinese*, versus about \$28 for the generic version.

A recent Federal Trade Commission report estimated that, in 1984 alone, generic drugs saved consumers approximately \$236-million. Such savings are especially important to anyone who must take drugs regularly, as elderly people often do. People over 65 constitute 12 percent of the population but consume about 30 percent of all prescription drugs.

The campaign against generics

Beginning in 1983, with increased price competition from generic companies in sight, the major pharmaceutical firms opened a campaign of disparagement that continues to this day, confusing and frightening doctors, pharmacists, and patients alike.

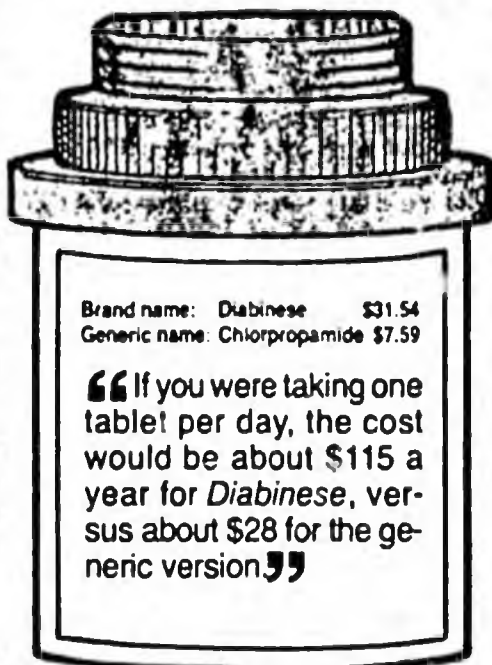
Consider the propaganda put out by Ayerst Laboratories, a division of American Home Products, when it realized it would soon face competition from generic versions of *Inderal*, its brand name for propranolol, a drug used for hypertension and other disorders. *Inderal* rang up yearly sales of \$350-million and was Ayerst's most profitable drug.

Ayerst Laboratories, like all major drug companies, employs hundreds of sales representatives, called "detail persons," who make the rounds of doctors' offices. Just before generic propranolol became available, Ayerst indoctrinated its sales force with a "sales simulation" videotape. It shows a detail person telling a doctor that patients on *Inderal* "are high-risk patients," who "need *Inderal's* proven therapeutic efficacy." With a generic propranolol, the doctor is told, "there's always that chance that patient response may be compromised."

Lest the doctor dare compromise the patient's treatment by permitting the

pharmacist to substitute a cheaper propranolol for the high-priced brand, Ayerst also sent out "Dear Pharmacist" letters. They discussed a pharmacist's "potential liability" if generic propranolol were dispensed instead of *Inderal* and something went wrong. The letter warned of "troublesome and expensive" lawsuits that would "generate adverse publicity."

The letter was labeled false and misleading by the FDA. "It serves only to confuse and intimidate pharmacists into



dispensing only *Inderal*... by suggesting unknown perils," the agency wrote in a regulatory notice it sent to Ayerst. Laws in most states protect pharmacists from incurring any increased liability when they dispense an approved generic product.

The FDA has challenged similar "Dear Pharmacist" and "Dear Doctor" letters sent by other companies, including Sandoz and A.H. Robins. The FDA regards such letters from drug firms as part of a drug's labeling; the agency can thus take action when a letter is false or misleading. But the FDA has no authority over similar letters sent by "public interest" groups.

A passion for "education"

In the summer of 1985, California pharmacists received a notice headlined "Generic Alert!!!" It was sent by Pharmacists Planning Service Inc., a nonprofit educational organization headed by Frederick S. Mayer, a Sausalito pharmacist. Pharmacists were warned of lawsuits that could arise if they didn't dispense "brand-name propranolol." A short time later, Mayer received a \$10,000 check from Ayerst "to support the educational goals of the Pharmacists Planning Service."

Another Ayerst "educational" grant

went to the Philadelphia College of Pharmacy and Science, the country's oldest pharmacy school. In exchange, the college agreed last year to sponsor a new organization with the avowed aim of educating professionals and the public about "the critical role research-intensive pharmaceutical firms play in preserving health care." The organization's educational thrust tended to run in a narrow groove. "Pharmaceutical research... is threatened by widespread consumer use of generic drugs," said its press release. Increased generic drug use, it said, "could be catastrophic." The college disbanded the organization six months after its creation because the antigeneric theme had become so dominant.

Ayerst now gets its message across through a speakers bureau staffed by doctors and pharmacology professors. Ayerst pays them to travel around the country on media tours. By CU's count, the tours have resulted in at least 25 newspaper articles, with headlines such as "Warning Sounded on Generic Drugs," and "Some Doctors Still Uneasy About Generics." The articles often omit the speakers' affiliation with Ayerst.

Such antigeneric campaigns now occur with "predictable regularity," says Dr. Peter Weinstein, director of the FDA's office of drug standards. "Every time a brand-name drug becomes vulnerable to generic competition, the makers do whatever they can to protect their market."

The campaigns seem to have an impact. Surveys show that doctors, pharmacists, and consumers prefer brand-name drugs over generics. According to a 1985 Federal Trade Commission report, when prescriptions gave pharmacists a choice between dispensing a brand-name drug or its generic equivalent, they dispensed the generic only about 15 percent of the time. Their reluctance stemmed partly from fear of liability, the FTC report found.

The FTC report also found that consumers tend to "equate price with quality," especially for "high perceived risk" products like drugs. Doubts about generics make some consumers refuse them or even switch to a different pharmacy—another reason pharmacists haven't embraced generics.

A case of epilepsy

Last April during a Congressional hearing, Gerald Mossinghoff, president of the Pharmaceutical Manufacturers Association, was asked if he could assure consumers that generics were as effective as brand-name drugs.

He could not. "We have trouble with the Food and Drug Administration's tests for generic drugs," said Mossinghoff. "In some cases that test, we think, is not

sharply defined. It led, for example, in November to the Epilepsy Institute putting out a physicians' alert saying some anti-convulsive drugs were *not* effective. So I am not in a position, Congressman, to give you that assurance."

The Epilepsy Institute is a nonprofit organization in New York City. On November 3, 1986, the institute issued a three-page medical-alert bulletin, "GENERIC MEDICATIONS LINKED TO RENEWED SEIZURE ACTIVITY IN PEOPLE WITH EPILEPSY," read the headline. The bulletin warned against generic versions of three brand-name drugs: *Tegretol*, *Dilantin*, and *Depakene*, made by Ciba-Geigy, Warner-Lambert, and Abbott, respectively. The warning went to 7000 physicians and to some 100 media outlets.

The Epilepsy Institute's bulletin has been cited many times as proof that generic drugs can endanger health.

Boston's CBS affiliate broadcast a segment, seen by 300,000 people, that began, "Well, the health of nearly five million people with seizure disorders might be in jeopardy now because of a generic drug that's been approved by the FDA." Articles conveying the warning appeared in *Medical World News*, *Woman's Day*, the *Boston Globe*, the *Arizona Republic*, and other publications.

Four months earlier the Epilepsy Institute's president, Ira Brody, had written a letter soliciting money from three drug companies: Ciba-Geigy, Warner-Lambert, and Abbott. In his letter, Brody listed various institute "programs" that needed financial support: educational pamphlets for drugstores, seminars for physicians, and the institute's *New York Journal of Epilepsy*, which needed advertising so it could appear quarterly.

Brody scored with all three firms. Ciba-Geigy agreed to pay \$4000 for a five-page ad in the Spring 1987 issue of the journal. Warner-Lambert agreed to advertise in the Summer 1987 issue. Abbott would sponsor the Fall 1987 issue and would also donate \$22,000 for brochures and another \$8000 to sponsor a seminar.

Brody said there was "no connection whatsoever" between their contributions and the decision to issue the medical-alert bulletin. "It's just doing good fund-raising," Brody said. "We solicit funds from companies that have a vested interest in us," he said.

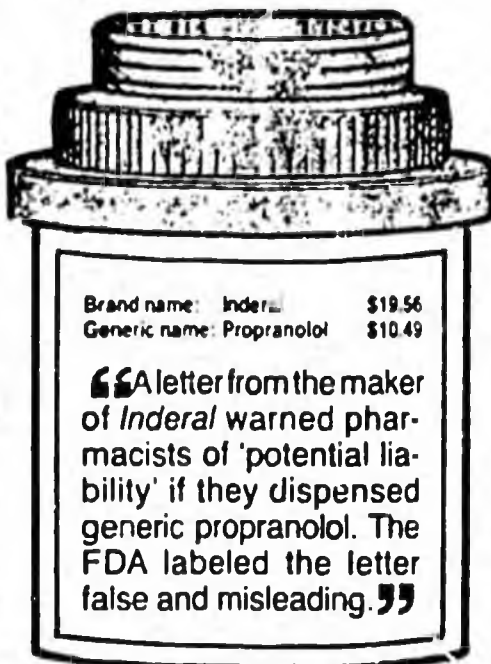
The Epilepsy Institute decided to sound the alarm, its bulletin said, "after receiving and confirming scores of reports" showing that seizure-free epileptics had convulsions after being "switched from brand-name pharmaceuticals to generics."

Scores of reports? A "typist's exaggeration," Brody acknowledges. He now says the actual number of cases was 23. The in-

stitute "confirmed" eight of those, says Brody.

The bulletin quoted Dr. Hart deC. Peterson, professor of neurology and pediatrics at New York Hospital-Cornell Medical Center and former chairman of the Epilepsy Institute's professional advisory board. CU asked Peterson about the reports. "They're hearsay," he said, "but the inclination is to believe at least some of it."

"If I get any good solid cases and I could prove them, I certainly would," Peterson



said. "I personally haven't seen any really good cases where switching to a generic has caused problems."

The bulletin prompted the FDA to contact Peterson. In a November 21 letter, the agency asked him for "all available data that you have on these alleged therapeutic failures." It offered to send an investigator to look at records. As of this writing, Peterson hasn't replied.

Dinner, then a slice dish

Meanwhile, foes of generic drugs were having a field day with the Epilepsy Institute's bulletin. Ciba-Geigy, maker of *Tegretol*, paid eight New York neurologists \$100 each to attend a dinner discussion of their product. While the restaurant served pasta, Ciba-Geigy served up the Epilepsy Institute's medical-alert bulletin.

"It made us feel anxious about switching our patients to a generic drug," said a doctor who was present. "After all, this reputable institution had issued the alert."

The *Medical Tribune*, a medical-news tabloid that is mailed free to more than 100,000 doctors, gave the story page-one treatment. The paper, which has long crusaded against generic drugs, had been published until recently by Dr. Arthur

Sackler, who died last May. Sackler concurrently owned an advertising agency that serves many innovator drug firms.

Dr. Louis Lasagna, one of the nation's most outspoken opponents of generic drugs, also stressed the epilepsy theme in a debate presented in *USA Today*. Lasagna is dean of Tufts University's Sackler School of Graduate Biomedical Sciences.

"Doctors," he said, "hear stories, like those from the Epilepsy Institute, and are justifiably concerned. It only takes a few cases to engender anxiety."

That, of course, is the purpose of such anecdotal reports.

Another nonprofit organization has also fronted for a major drug company in spreading fear of generics. Last December, local news shows on 23 television stations ran a chilling two-minute segment that featured an 11-year-old girl clutching her throat as she demonstrated what happened when she was switched from her brand-name asthma medication to a generic version. "It's like someone strangling you," said the girl, Billie Bloom, of North Hollywood, Calif. "And it hurts, and you can't get enough air through."

The reporter concluded with this advice: "If you take a medication for a chronic illness—diabetes, asthma, epilepsy, or heart disease—you should ask your physician to indicate—in writing—'Dispense As Written' or 'Do Not Substitute' on your next prescription."

The story was seen by an estimated 1.3 million people. News? No. It was a "video news release"—a commercial message masquerading as news. The sponsor of this commercial message was listed as the "Asthma and Allergy Foundation of America, Los Angeles chapter." But its \$30,000 cost was paid by Key Pharmaceuticals. Key (now part of Schering-Plough Corp.) makes *Theo-Dur*, a drug for asthma. *Theo-Dur* had lost 20 percent of its \$100-million a year market to the generic product vilified in the commercial.

Schering-Plough claims that the commercial message was an "important public service announcement." But the Asthma and Allergy Foundation feels differently. "The Los Angeles chapter saw it as an opportunity to get some publicity," said David Branson, president of the national foundation. "But it was a mistake. They shouldn't have done it."

CU recently spoke with one of Billie Bloom's doctors. He reported that the girl's physicians made no effort to confirm that the generic drug was actually the cause of her breathing problem.

The FDA has followed up on these publicized reports of "bad" generics. According to FDA's Rheinstein, the result is always the same: "You ask for documentation and you get evasion." Yet

such reports proliferate. FDA officials say that these anecdotes are now a key part of the antigeneric campaign. By having a non-profit organization spread the word, the drug company avoids FDA charges of deceptive advertising.

Getting the message across

Promotional efforts, whether deceptive or not, are the lifeblood of the prescription-drug business. Major drug companies generally spend more each year on promotion than on research. Most of that promotion money is lavished on doctors, and it has an impact.

"Most doctors are brainwashed," says the director of medicine at a hospital in Westchester County, N.Y. "I know some very intelligent practitioners who always prescribe brand-name medications and would never think of prescribing a generic product."

Years ago, doctors had some cause to be wary of generic drugs. In 1969, millions of capsules of ineffective tetracycline were recalled. In 1971, problems were reported involving a generic version of digoxin. Now, however, the FDA's more rigorous generic approval process makes such failures extremely unlikely.

Isolated cases of illegal generics have also influenced doctors' perceptions. In 1979 the FDA found that three firms were illegally marketing unapproved and ineffective versions of furosemide, a diuretic. To this day, many doctors still refuse to prescribe generic furosemide, turning instead to the more expensive brand-name drug, Lasix.

Problems with low-quality or illegal generics have been extremely rare. But doc-

tors remember those incidents. And innovator companies try to make sure they never forget.

The effort to influence doctors starts while they are still in training. To familiarize interns and residents with their brands, companies practically give drugs away to hospital pharmacies. (See "How do drugs become 'the ones hospitals use most?'" CONSUMER REPORTS, June 1987.)

The practicing physician encounters drug-company influence everywhere. Drug companies sponsor seminars, conferences, breakfasts, luncheons, dinners, and awards. They give away books, slides, and audio and video tapes. They entertain lavishly at medical conventions. (For a recent meeting of the American Academy of Family Physicians, SmithKline Beckman rented Disneyland for an evening to entertain doctors and their families.)

A major part of a drug company's promotional budget goes to two areas: advertising in medical journals and fielding a marketing sales force.

In leafing through the journals, a doctor will encounter thousands of ads each year. They rarely mention drug prices. As a result, most doctors know very little about the cost of the medicines they prescribe.

Drug company sales representatives provide doctors with much of the information they receive about drugs. They also give doctors free drug samples as well as pens, scratch pads, prescription pads, calendars, and other merchandise.

But increasingly, sales reps influence doctors in other ways. Ciba-Geigy, for example, places special emphasis on "Peer Influence" programs. They're designed to get physicians to influence other physi-

cians. Ciba-Geigy spends more than \$6-million a year on such activities.

One type of program involves clinical conferences. Here, a sales rep gets a group of doctors together for lunch or dinner. They're shown a videotaped case history and then asked for their ideas on possible therapy. The idea, a sales rep says, is to include at least one or two doctors who use the Ciba-Geigy product. That way, "they can tell success stories of their therapy that may rub off" on the other doctors.

Then there are the seminars in paradise. Large firms regularly send the nation's most influential specialists and their spouses on all-expense-paid trips to tropical climes. Last year, for example, Ciba-Geigy flew 100 gynecologists to Cancun, Mexico, to bone up on *Estraderm*, the company's new estrogen skin patch.

In 1985, the top 50 pharmaceutical companies officially spent \$1.26-billion on "promotion," according to industry sources. But the total amount spent to influence doctors is actually far greater. According to FDA sources, drug companies often charge heavily promotional activities, such as costs on entertaining and the far-flung seminars, to their education or research budgets. The FDA sources estimate that total promotional spending by major drug companies exceeds \$4-billion a year, or almost \$9000 per doctor.

Casualties of the campaign

The antigeneric campaign numbers many consumers among its casualties. Some are patients who pay brand-name prices for medication available for a fraction of the cost. But the casualties also include all taxpayers.

Medicaid pays the prescription bills of many low-income people—and those costs are shared by the Federal Government and the states. The New Jersey Health Department recently reported on the cost of 2.6 million Medicaid prescriptions the state had paid for in 1985. All of the drugs were available in both brand-name and generic form. Each brand-name prescription cost the state an average of \$12.39; the average generic prescription cost \$6.66.

Recommendations

To realize the savings offered by generic drugs, you need the cooperation of both your doctor and your pharmacist.

Doctors usually write the brand name when they prescribe drugs. It's shorter and easier to remember than the generic name. And since the brand name had no generic competition during the long life of its patent, the doctor is probably accustomed to writing it.

That medical habit doesn't prevent you from buying generically. The laws in all 50

The empty research argument

Many doctors prescribe brand-name drugs to reward the companies that develop them. They figure the company will use the sales income on research that will lead to better drugs in the future.

Innovator companies encourage this attitude among doctors. They want the increased sales of generics will cut into their profits and prevent them from investing in the necessary research. But a recent Congressional study suggests that research doesn't get top priority.

Earlier this year, the House subcommittee on health and the environment investigated recent hikes in prescription-drug prices—a 12% percent increase between July 1985 and April 1987 versus only a 2.7 percent in-

crease in the Consumer Price Index during that time).

The subcommittee staff obtained revenue data from the nation's 25 largest drug companies and prepared a report. Subcommittee chairman Henry Waxman summarized the findings at a hearing last April.

"Most of the money generated by the recent enormous price increases is not going to fund R&D. Between the years 1962 and 1986, drug-price increases produced revenue gains of \$4.7 billion. During the same period, R&D expenditures rose only \$1.6 billion—or about a third of the revenue gains from price increases.

"In short, the money was arriving in backyards, but was going to R&D in sporadic amounts," Waxman said.

states allow pharmacists to substitute a less expensive generic version when the doctor prescribes by brand. Indeed, the doctor must make a conscious effort to limit you to the brand name. In some states, that means he or she must write out "dispense as written" or some other phrase. In other states, the doctor chooses which of two lines on the prescription form to sign. Signing on one line means the patient must receive the brand specified; signing on the other means the pharmacist may substitute a generic.

The major drug companies lobby fiercely for two-line prescription pads. Doctors seldom bother to write out "dispense as written"; but studies show that when doctors must merely choose one of the two lines, they sign the brand-name line more than half the time.

Some drug companies try to make the choice for both patient and doctor. They give doctors preprinted prescription pads with the brand name and the words "dispense as written," in the doctor's handwriting, on each form. This "professional courtesy" sticks you with the brand-name drug and its premium price. It's also considered illegal in several states.

Your doctor, therefore, may represent a hurdle to your getting a generic drug. You must explicitly ask your doctor to write the prescription so that it permits a generic version to be dispensed.

What if your doctor doesn't know whether a generic version of the drug you need is yet available? That doesn't matter; the pharmacist will know. Whether the pharmacist will dispense the generic is a different question. Pharmacists should jump at the chance, since they usually make a greater profit on generics than on brand-name drugs. But drug-company propaganda has led many pharmacists to fear that dispensing generic drugs may result in lawsuits.

So once again, you must take the initiative. Tell your pharmacist that you want the least expensive version of the drug that's been prescribed for you. Usually, that will be the generic version. But occasionally the brand-name version may be cheaper—if the pharmacist has gotten a special deal from the maker, for example.

Drug prices vary widely from pharmacy to pharmacy. So shop around, checking both chain stores and independent pharmacies. Many pharmacies now give out price information over the phone.

If you switch from a brand-name to a generic, don't worry if its color and shape are different from the brand-name product you've been taking. (Brand-name makers sue generic firms whose products duplicate the appearance of brand-name drugs.) Keep in mind that the pill's appearance won't affect how the drug works. ■

NEW from
Consumer Reports

How to find the product with exactly the features you want.

For everyone who's ever walked out of a store in total confusion... Or with the wrong product for too much money... Consumers Union has created Product Features Service. This new service doesn't rate or evaluate products. But it tells you everything we know before we buy a product for rating. Product Features Service offers you up-to-date reports, straight from the Consumers Union database, covering:

- The current models offered by virtually every major brand.
- Every significant feature of every listed model.
- What each feature does.
- Which features our experts think are important.
- The suggested or approximate retail price, when available.
- The manufacturer's phone number so you can find out which stores carry the model you want.
- Where to look in Consumer Reports for background information and our latest test report.

Do you need Product Features Service if you read Consumer Reports? You do if Consumer Reports hasn't recently covered the product you want. There are too many new and changing models of major appliances and electronics products for our magazine to test them all.

Product Features Service is the way to inform yourself when you're ready to shop for that major appliance or electronics product. It covers more models than we can test, and it's updated more often than our test reports.

If you need up-to-date information right now, you can order Product Features Reports by mailing the coupon below. Do it today to find out which product is exactly right for you.

YES, I want to make smarter buying decisions about important electronics products and major appliances.

Please send me the Product Features Reports I've checked, via first-class mail for timely delivery. The cost is \$8 for the first Report (\$6 for each additional), including shipping and handling. My check or money order is enclosed.

- | | | |
|--|---|--|
| <input type="checkbox"/> Color TVs — large-screen (22"-96" including projection TVs) | <input type="checkbox"/> Compact-disc players | <input type="checkbox"/> Ranges — electric* |
| <input type="checkbox"/> Color TVs — small-screen (21"-20") | <input type="checkbox"/> Dishwashers | <input type="checkbox"/> Ranges — gas* |
| | <input type="checkbox"/> Microwave ovens | <input type="checkbox"/> Refrigerator/freezers |
| | <input type="checkbox"/> Photo-answering machines | <input type="checkbox"/> VCRs |

*including cooktops, wall ovens

Prices: \$8 for 1 Report, \$14 for 2 Reports, \$20 for 3 Reports, etc.

Total amount enclosed \$ _____

Name _____

Address _____ Apt _____

City _____ State _____ Zip _____

Mail this coupon with your check or money order to:
Consumer Reports PRODUCT FEATURES SERVICE, Box 17007, Hauppauge, NY 11788
Make check payable to Product Features Service

5H7



HB

74

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 9, 1989

FURTHER REFERRALS: STATE AFFAIRS
FINANCE

Date of Committee Action: _____

The HEALTH, EDUCATION & SOCIAL SERVICES Committee recommends that:

HOUSE BILL NO. 74 [SEWARD STUDENT SERVICE CENTER]
"An Act approving acquisition and refinancing of the Seward Student Service Center by the Alaska State Building Authority, and approving a lease-financing agreement for the project; and providing for an effective date."

be replaced with CS HB 74 (HESS) the same title
 a new title

have attached amendment(s)

- 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
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: 1/9/89
- 2 zero fiscal notes(s) published: 1/9/89

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

NOY HENRY / NO REC
Cheri Davis NO REC
Zita Jace NO REC
MARK BAYAN NO REC
J. Ellis NO REC

J. Ellis
Chairman's signature

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 74 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act approving acquisition and financing of the
7 Seward Student Service Center by the Alaska State
8 Building Authority, and approving the use of a
9 lease-financing agreement for the project; and
10 providing for an effective date."

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

12 * Section 1. The Alaska State Building Authority may acquire the Seward
13 Student Service Center in Seward and provide financing for the acquisition.

14 * Sec. 2. Section 1 of this Act gives the approval referred to in
15 AS 18.55.100(d).

16 * Sec. 3. The Department of Administration may enter into a lease-
17 financing agreement with the Alaska State Building Authority for the Seward
18 Student Service Center in Seward.

19 * Sec. 4. Section 3 of this Act gives the approval referred to in
20 AS 36.30.080(c).

21 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES



P.O. BOX V, JUNEAU 99811
(907) 465-3759

LETTER TO ACCOMPANY HB 74

The HESS Committee respectfully requests that the State Affairs Committee review the constitutional issue discussed in the Governor's transmittal letter and the wisdom of lease financing agreements as a method of financing.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1989

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

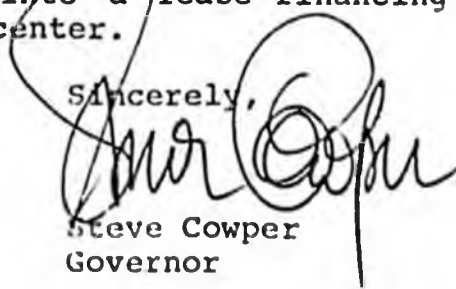
Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that gives legislative approval to a lease-financing project: the acquisition and refinancing of the Seward Student Service Center by the Alaska State Building Authority (ASBA). The terms of AS 36.30.080(c) and AS 18.55.100(d) require this legislative approval.

Provisions such as those in AS 18.55.100(d) and AS 36.30.-080(c), requiring specific executive-branch activities to be submitted to the legislature for approval before they may proceed, raise a substantial question of constitutionality under the separation-of-powers doctrine. It has long been the Administration's position that such provisions are invalid. However, like my predecessors, I am aware of the legislature's interest in projects such as these and am, as a courtesy to the legislature, submitting these projects for approval.

Under AS 18.55.100(d), the bill authorizes ASBA to acquire the Seward Service Center and to provide financing for the acquisition. Under AS 36.30.080(c), the Department of Administration may enter into a lease-financing agreement with ASBA for the student center.

Sincerely,



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: State Bond Committee
 Title: Authorizing Acquisition and BRU: _____
Refinancing of Seward Student Service Center
 Sponsor: _____ Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	(433.2)	(68.5)	(67.7)	(74.7)
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	(433.2)	(68.5)	(67.7)	(74.7)
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	(433.2)	(68.5)	(67.7)	(74.7)
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach separate page for analysis.

Prepared by: _____ arker *MD*
 Division: _____

Phone: 465-2350
 Date: 12-14-88

Approved by Commissioner: _____
 Agency: Department of Revenue

Date: 12/19/88

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

Fiscal Note Analysis

The projected annual savings on refinancing the Seward Student Service Center through its acquisition by the Alaska State Building Authority is estimated in the table below.

The present value of the savings on the Seward facility would be \$1,203,001, representing a savings of 21.5 percent of the amount of bonds issued. This is far above the State Bond Committee's criteria of 3 percent savings to justify a refinancing.

The Seward refinancing would reduce the required lease payments to be made by the State Bond Committee for Seward as detailed in the attached September 23, 1988 memo. However, because the actual interest rate on the refunding debt--and therefore the actual reduction in debt service--will not be known until the bonds are sold, no reduction should be made to the \$12,106,257.68 appropriation to the State Bond Committee for FY 90 lease payments. The FY 90 savings would lapse and future appropriations would be reduced.

Please see the attached letter of January 18, 1989 from John Andrews for additional information on the Seward refinancing.

Lease-Financing Costs (Savings)

<u>Fiscal Year</u>	<u>Seward Student Service Center</u>
1990	\$ (433,229)
1991	(68,476)
1992	(67,710)
1993	(74,661)
1994 to maturity	<u>(1,062,851)</u>
Total	\$(1,706,927)

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF REVENUE

TO: Alison Elgee
Director
Budget Review

DATE: September 23, 1988

FILE NO:

TELEPHONE NO: 465-2350

THRU:

SUBJECT: FY 90 Debt Service
and Front Sections

FROM: Milton B. Barker *MB*
Deputy Commissioner
Department of Revenue

The amounts required for debt service and trustee fees to be paid by the State Bond Committee during FY 90 are:

	<u>Debt Service</u>	<u>Trustee fees</u>	<u>Fund Source</u>
General Obligation Bonds	\$120,306,290	\$80,000	General Fund
International Airports Revenue Bonds	8,707,584	30,000	International Airports Revenue Fund

"Front sections" of the general appropriations bill also are needed to appropriate the lease rental payments that the State is required to make to

1. the Alaska State Building Authority for lease of facilities constructed with the proceeds of lease revenue bonds issued by that agency, at the time, the Alaska State Housing Authority;
2. the City of Seward for lease of the Spring Creek Correctional Center which was constructed with the proceeds of Certificates of Participation issued by the City;
3. Delta Fox, Ltd. for lease of the Seward Student Service Center which was constructed with the proceeds of Certificates of Participation issued by Delta Fox, Ltd.; and

4. the City of Palmer for lease by the Court System of a courthouse in Palmer which was constructed with the proceeds of revenue bonds issued by the City.

The State's lease payments are the security for the bond and certificates. As indicated by the attached letter from Standard & Poor's, failure to make these lease payments would have similar consequences for the State's credit standing and ability to borrow as a default on the State's general obligation bonds would have.

The "front section" should read:

- * Sec. . The sum of \$12,106,257.68 is appropriated from the general fund to the State Bond Committee for lease payments to the Alaska State Building Authority, City of Seward, Delta Fox, Ltd., and the City of Palmer.

This appropriation is not net of a \$39,115.40 rebate of Seward Student Service Center rent that the Department of Administration receives pursuant to Section 5.6 of the Seward Student Service Center Commercial Lease (attached). The rebate is deposited in the general fund as unrestricted revenue.

The amounts of lease payments to maturity of the lease revenue bonds and certificates are as follows:

	<u>ASBA Bonds</u>	<u>Spring Creek</u>	<u>Student Service Center¹</u>	<u>Palmer Courthouse</u>
FY 90	\$ 6,555,108.39	\$ 4,333,923.84	\$ 850,697.95	\$ 366,527.50
FY 91	6,550,775.90	4,333,923.84	850,697.95	365,577.50
FY 92	6,567,048.41	4,333,923.84	850,697.95	366,117.50
FY 93-94	9,096,153.75	8,667,847.68	1,701,395.90	726,545.00
FY 95-06	<u>1,536,107.50</u>	<u>53,090,568.18</u>	<u>4,295,603.52</u>	<u>5,008,528.75</u>
	\$30,305,173.95	\$74,760,187.38	\$8,549,093.27	\$6,971,072.50

¹ These amounts are not net of the \$39,115.40 rebate. The amounts for FY 90 through FY 94 are escalated per Section 5.2 of the Commercial Lease assuming a 10% increase in the CPI and escalated further for FY 95 - 99 assuming a further 10% CPI increase to \$859,120.70 per annum.

Like previous general appropriations acts, an additional "front section" for FY 90 is required which would read as follows:

Alison Elgee
Page 3
September 23, 1988

* Sec. . - The amount of the Rebate Requirement, as defined by Resolution No. 86-5 of the state bond committee, is appropriated from the International Airports Revenue Fund to the state bond committee for deposit in the Rebate Fund established by Resolution No. 86-5 of the state bond committee.

The section appropriates the arbitrage earned on International Airports Revenue Bonds, Series G, to a Rebate Fund for payment to the United States government. The arbitrage rebate is required by the Internal Revenue Code and regulations. The appropriation request from the International Airports Revenue Fund is required by section 16.09 of Resolution No. 86-5 of the State Bond Committee which authorizes the Series G bonds and which reads in part:

"Rebate Fund. There is hereby created and established with the Trustee a Rebate Fund. Notwithstanding anything in the Resolution to the contrary, amounts deposited in the Rebate Fund shall not constitute Revenues and are not pledged as security for payment of the Bonds of Series G or any other Bonds or obligations issued pursuant to the Resolution, but shall be held by the Trustee hereunder solely in trust for the benefit of the United States.

Prior to December 31 of each Fiscal Year, the State shall estimate the amount of the Rebate Requirement for the next succeeding Fiscal Year (including any deficiencies in the amounts deposited in the Rebate Fund with respect to any prior Fiscal Year), and shall include such amount in the budget for the Revenue Fund for such next succeeding Fiscal Year."

MBB/gb

Attachment

cc: Hugh Malone, Commissioner of Revenue
Bob Link, Director, Division of General Services and Supply,
Department of Administration

Standard & Poor's Corporation
25 Broadway, New York, New York 10004



December 29, 1983

RECEIVED

JAN 03 1984

Mr. Milt Barker
Deputy Commissioner
Department of Revenue
11th Floor State Office Bldg.
Pouch, SB
Juneau, Alaska 99811

ALASKA DEPARTMENT OF REVENUE
TREASURY DIVISION
JUNEAU

Dear Mr. Barker:

I would like to respond to your letter of December 13, regarding our views on lease obligations.

Lease Payments are viewed in essentially the same light as debt service on general obligation bonds; regardless of whether the obligation is cancellable due to non-appropriation. In fact, debt obligations secured by lease payments are included in our computations for overall debt burden.

Many states do not consider lease rental debt under debt limitation laws, primarily because legal interpretations view the obligations to pay rent as an annual budget item, and not a long term debt with a continuing appropriation. The fact remains, however, that the debt is still outstanding, and payable for as long as the property is being used by the lessee. While many leases permit non-payment of rent and cancellation of lease obligations, Standard & Poor's would be very concerned about an issuer's general obligation rating, in those cases where leases were cancelled as a ploy to avoid paying debt obligations.

I've enclosed some information regarding our approach to rating lease-rental debt obligations. If you have any further questions, feel free to contact Vladimir Stadnyk or myself at (212) 201-1767.

Very Truly Yours,

Richard P. Larkin
Managing Vice President
Municipal Finance Department

cc: V. Stadnyk
T. Arthur

issued for each July. The percentage increase, if any, in the CPI issued for July 1989 and July 1994 over the CPI issued for July 1984 will determine the maximum allowable adjustment of variable costs over the original Rent. The adjustment is not cumulative; it is to be computed from the base CPI, July 1984 for both the 1990 and the 1995 adjustment actions. Adjusted annual Rental Rate will be computed as follows:

$[(10\% \times \text{Rent}) \times \% \text{ of change in CPI}] + \text{Rent} = \text{Adjusted Annual Rental Rate}$

No retroactive adjustments will be allowed:

5.3. State's Obligations and Remedies

State's obligation to pay Rent due with respect to the Premises and to perform and observe all other covenants and agreements of State contained herein shall be absolute and unconditional except for the failure of the Legislature to appropriate funds; and the Rent due and payable hereunder shall be made without notice or demand and without set-off, counterclaim, abatement, deduction or defense except that State may offset against the Rent an amount not to exceed \$10,000 for claims due to State by Landlord under this Lease and the Ground Lease. However, nothing herein shall be construed to release Landlord from the performance of its obligation and State may institute such legal action against Landlord as State may deem necessary to compel the performance of such obligation.

5.4 Nonsubstitution

If this Lease is terminated by State in accordance with Section 3.1, State agrees for a period of one year that its Department of Education will not to construct, purchase, lease, operate, contract for or use any facilities which are functionally similar to the Premises or any of the uses which are functionally similar to any of the uses of the Premises, and agrees not to permit functions similar to those performed through the use of the Premises to be performed by an agency or entity affiliated with or hired by or for the Department of Education.

5.5 Budget Request and Appropriation

State will, prior to the commencement of each fiscal year for which this Lease is in effect, include the Rent due in such fiscal year in its annual budget request to the Legislature. State agrees to use any appropriation legally available for the Rent and to immediately encumber available appropriations for such payments prior to allocating or encumbering funds for the projects or costs for which no legal obligation to pay exists.

5.6 Consideration for Advance Rent

Concurrently with the payment by State of the Annual Rent, Landlord shall pay to State the sum of \$39,115.40 as consideration for payment of the Rent one year in advance, except that such payment shall be proportionately reduced to the extent that State exercises a right of offset pursuant to Section 5.3.



January 12, 1989

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

Dear Representative Cotten:

The assistance of the Alaska State Building Authority has been requested by the Alaska Department of Administration to provide lease-financing for a public building--the Seward Student Service Center. The project is being submitted for review by the legislature pursuant to AS 18.55.100(d).

The project is essentially a refinancing of an existing State lease-financed project. The refinancing would result in substantial savings in lease rental payments over the payment schedule to which the State is now committed. The refinancing contemplates a purchase by the Authority of the facility from the current lessor, Delta Fox, Ltd. (formerly Dick Fischer Development, Inc.). The Authority would issue financing in an amount sufficient to provide the \$4,988,016 needed for the purchase as well as a reserve fund and costs of issuance. The Department of Revenue has estimated an issuance of \$5,600,000 for the Student Center. The new lease of the facility to the State is estimated by the Department of Revenue to result in present value savings in State rental payments of \$1,203,001. The enclosed letter from Commissioner John Andrews contains information in more detail concerning this refinancing.

Under AS 18.55.100(d), approval by law of the project is a prerequisite to the undertaking of any public building project by the Authority.

The Alaska State Building Authority welcomes this opportunity to serve the State in realizing cost savings in the financing of public building projects.

Sincerely,

ALASKA STATE BUILDING AUTHORITY

Ray Price
Executive Director

Enclosure

jt:ss:c:\wp50\rp\1\rpsc.1

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX C
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200

January 18, 1989

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

Dear Mr. Speaker:

In compliance with AS 36.30.080(c), I wish to inform you that the Department of Administration intends to enter into a lease-financing agreement for the Seward Student Service Center which may have annual rent in excess of \$1,000,000 to be paid by the State. The agreement is expected to be with the Alaska State Building Authority (ASBA) as lessor. The State would assign its purchase option under an existing lease-financing agreement to ASBA. ASBA would issue debt and use the proceeds to exercise the purchase option. State lease rental payments under the new lease-financing agreements with ASBA would pay the debt service on ASBA debt. The reason for this undertaking is that the State's lease rental payments would decrease significantly under the new lease-financing agreement as a result of declines in interest rates. The current lessor's proceeds from sale of the leased facilities to ASBA will be used to payoff currently outstanding debt issued by the current lessor.

Under the proposed lease-financing agreement, ASBA would acquire the Seward Student Service Center from Delta Fox, Ltd. (formerly Dick Fischer Development, Inc.) at one of the prices listed below:

Seward Student Service Center

<u>Closing Date of Property Sale</u>	<u>Price</u>
July 1 - July 30, 1989	\$4,988,016.00
July 1 - July 30, 1990	\$4,717,860.00
July 1 - July 30, 1991	\$4,422,324.00
July 1 - July 30, 1992	\$4,094,640.00
July 1 - July 30, 1993	\$3,778,756.00
July 1 - July 30, 1994	\$3,360,876.00
July 1 - July 30, 1995	\$2,942,952.00
July 1 - July 30, 1996	\$2,474,832.00
July 1 - July 30, 1997	\$1,952,004.00
July 1 - July 30, 1998	\$1,370,520.00
July 1 - July 30, 1999	\$ 722,484.00

The Seward Student Service Center is a student lounge and recreation complex for the Alaska Vocational-Technical (Vo-Tec) Center at Seward. The Vo-Tec Center is the only State-operated adult vocational training facility in the State. The Center was completed and occupied by the State in April 1985.

Assuming the sale is closed during July 1 to July 30, 1989, the purchase price would be \$4,988,016. The anticipated amount of the ASBA financing for this project would be \$5,600,000 including the costs of issuance. The resulting anticipated annual lease rental payments by the State compared to existing payments would be:

Seward Student Service Center

<u>Fiscal Year</u>	<u>Anticipated Rent</u>	<u>Existing Rent^{1/2/}</u>	<u>Savings^{3/}</u>
1990	\$ 764,307	\$ 803,160	\$ 433,229
1991	737,872	806,348	68,476
1992	741,840	809,550	67,710
1993	738,102	812,763	74,661
1994	742,352	815,990	73,638
1995	738,915	819,230	80,315
1996	738,037	822,482	84,445
1997	739,337	825,747	86,410
1998	742,097	829,025	86,928
1999	<u>181,202</u>	<u>832,317</u>	<u>651,115</u>
TOTAL	<u>\$6,864,061</u>	<u>\$8,176,612</u>	<u>\$1,706,927</u>

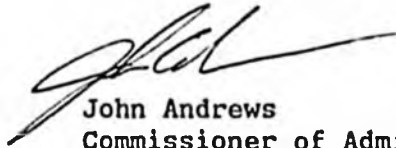
Notes to Seward Student Service Center Table:

1. 1990 and later existing rents are reduced by the credit for payment one year in advance.
2. 1991 and later existing rents have been escalated by the July 1984 to July 1986 increase in the Anchorage CPI pursuant to inflation adjustment provision of the lease.
3. 1990 savings includes \$394,375.80 rebate under existing lease calculated as follows: June 10, 1989 Existing Rent Payment of \$842,275.20 - \$39,115.40 credit for payment one year advance - (\$6,090,000 certificates outstanding + 2% call premium of \$121,800 - \$4,988,016 purchase price - \$815,000 reserve fund).

Page 3

The present value of the savings to the State is estimated at \$1,203,001 using the estimated 6.7542 percent true interest cost on the proposed ASBA financing.

Sincerely yours,

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

John Andrews
Commissioner of Administration

JA/MB/gb

8534H

30

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska State Building Auth
 Title: Refinance of Seward Student BRU: _____
 Center
 Sponsor: Rules Components: _____
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Julia Tucker *Julia Tucker* Phone: 562-2813
 Division: Legal Department Date: 12/23/88

Approved by Commissioner: *Ray Pen* Date: 12/23/88
 Agency: Alaska State Building Authority

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Acquisition and Refinancing of
the Seward Student Service Center
Sponsor: Rules
Requestor: Governor

Agency Affected: Education
BRU: Alaska Vocational Technical
Center
Components: Alaska Vocational Technical
Center

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Marv Hakala Phone: 465-2800
Division: Commissioner's Office Date: 12/12/88

Approved by Commissioner: Marv Hakala, for Date: 12/12/88
William G. Demmert
Agency: Education

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

HB

80

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 12, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/2/89

The HEALTH, EDUCATION & SOCIAL SERVICES Committee recommends that:

HOUSE BILL NO. 80 [INCREASE CIGARETTE TAX]

"An Act increasing the excise tax on cigarettes."

[X] be replaced with CS HB 80 (HESS) [] the same title
[X] a new title
[] have attached amendment(s)

- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [X] fiscal impact
- [] zero fiscal note
- [X] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published: _____
- [] zero fiscal notes(s) published: _____

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

W Farnace no rec

Mark Dyer No rec

[Signature]

 Chairman's signature

Original sponsors: Ellis, Koponen,
and M. Davis

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 80 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the excise tax on cigarettes, and
7 authorizing municipalities to levy and collect taxes
8 on the retail sale of cigarettes and tobacco products
9 without limitation."

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

11 * Section 1. AS 29.45.650(a) is amended to read:

12 (a) Except as provided in (f) and (g) of this section, a borough
13 may levy and collect a sales tax not exceeding six percent on sales,
14 rents, and on services provided in the borough. The sales tax may
15 apply to any or all of these sources. Exemptions may be granted by
16 ordinance.

17 * Sec. 2. AS 29.45.650 is amended by adding a new subsection to read:

18 (g) The limitation on the rate of levy specified in (a) of this
19 section does not apply to taxes imposed on sales of cigarettes and
20 tobacco products at retail. For purposes of this subsection,

21 (1) "cigarette" has the meaning given in AS 43.50.170;

22 (2) "tobacco product" has the meaning given in AS 43.50.-

23 390.

24 * Sec. 3. AS 43.50.190(a) is amended to read:

25 (a) There is levied an excise tax of 10 [FIVE AND ONE-HALF]
26 mills on each cigarette imported or acquired in this state.

AMERICAN LUNG ASSOCIATION of ALASKA

Dedicated to the prevention and control of lung disease

Fact Sheet

Smoking remains the single most important preventable cause of death in our society, killing 390,000 Americans each year.

The age at which children start smoking keeps falling. Of the 20% of high school seniors who admit to being steady smokers, most started by the 8th grade and 25% say they started smoking by the 6th grade.

A recent survey by the American Council on Education shows a dramatic increase in the number of college freshmen who smoke. From 1987 to 1988, the rate of smoking increased from 8.9% to 10.1%.

According to Dr. George Lundberg, Editor for the Journal of the American Medical Association:

Tobacco kills 1000 Americans each day
Alcohol kills 350 Americans each day
Sedatives & Depressants kill 5 - 20 Americans each day
Cocaine kills 2 - 10 Americans each day

Cigarette tobacco is considered one of the three "gateway drugs" for youth.

Among smokers born since 1935, more than 80% started smoking before they reached the age of 21. Ninety percent of ALL smokers start smoking during their teenage years.

Today there are fewer legal restrictions on children's access to tobacco products than in 1964.

The National Conference of State Legislators reports that excise taxes do deter use of alcohol and cigarettes, especially smoking among teenagers.

Cigarettes and other forms of tobacco are addicting.

Compiled by Rocky Plotnick-Weller
President-Elect
American Lung Association of Alaska
February, 1989

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1989

SUBJECT: Pertinency of National Bellas Hess, Inc. v. Illinois Department of Revenue to requirement of licensure of a "buyer" under AS 43.50.010(a) (Work order 6-0932A)

TO: Representative Max F. Gruenberg, Jr.
ATTN: Mark Handley

FROM: Jack Chenoweth
Legislative Counsel

copy in 11441 file

The United States Supreme Court decision is cited 386 U.S. 753, 18 L.Ed.2d 505, 87 S.Ct. 1389 (1967). It, as you probably know, establishes limitations on state and local government imposition of use taxes on otherwise taxable transactions that are completed outside the jurisdiction.

The Alaska licensure provision cited is AS 43.50.010(a). For purposes of the chapter, a "buyer" is defined as one who "imports or acquires cigarettes for his own consumption from any source other than a manufacturer, distributor, direct-buying retailer, or retailer. AS 43.50.170(1).

I do not see this as governed in any way by the holding of National Bellas Hess. If our statute had only said "imports or acquires," one might cite by way of example a Seattle-based importer of tobacco products to Alaska, claim the importer qualified as a "buyer," attempted to impose the tax, and encountered a potential interstate commerce problem. However, the statute in question limits the definition of buyer to one who imports or acquires for his own consumption," thereby obviating, in my judgment, any commerce clause problem: the "buyer" must, in fact, be a resident of the state, and the clear purpose of the inclusion of the term as it is defined is to avoid opportunity to evade payment of the tax due under a claim that the person is purchasing for personal consumption rather than for resale.

If you are considering an amendment to this statute, substitution of "the person's" for "his" would be in order.

JBC:kb
wkk2/073

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Revenue
 Title: An Act Increasing the Excise BRU: _____
Tax on Cigarettes
 Sponsor: Ellis and Koponen Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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	4324.1	4194.5	4194.5	4194.5	4194.5

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 for analysis.

See attached page.

Prepared By: David Tonkovich
 Division: Research

Phone: 465-2173
 Date: January 19, 1989

Approved by Commissioner: _____
 Agency: Department of Revenue

Date: 1/24/89

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

ANALYSIS

1. Assumes effective date of legislation is July 1, 1989.
2. Total cigarette consumption has fallen six percent per year for the three year period ending in FY88. Forecasts under present law assume consumption will drop three percent in FY89 and FY90, then remain level through FY94.
3. The increase in cigarette prices due to the higher tax will reduce consumption. It is estimated that the quantity of cigarettes sold will fall by three percent from the level presently forecast.
4. Revenues to the School Fund will decrease by about \$72,000 each year as that tax rate is not changed by the proposed legislation.

COMMENT

The latest information indicates that Alaska ranks somewhere in the bottom one-third among states that levy a tax on cigarettes. The highest tax is assessed by Minnesota at 38 cents per pack and the lowest by North Carolina at 2 cents per pack. The state of Alaska levies 16 cents per pack on cigarettes. There are thirty-five states that levy a higher rate than Alaska.

§ 43.50.190

or has ciga-
at least 75
te;
.50.010 —

ns, or pro-
;
ship, joint
e, corpora-
e, or polit-
unit;
re sold, or
ile or con-

ged in the

ther man-
2 ch 187
A 1988)

ed "depart-
paragraphs
hs (3)-(10),
receiver" in

There is
rette im-

levied by
and col-
.0.010 —
ed in the
the tax
113 SLA

The 1985
or "one" in

§ 43.50.300

REVENUE AND TAXATION

§ 43.50.320

Article 3. Excise Tax on Certain ~~Products~~

Section	Section
300. Excise tax levied	350. Disposition of proceeds
310. Exemptions	360. Annual report
320. Licensing	370. Regulations
330. Returns	390. Definitions
340. Records	

Sec. 43.50.300. Excise tax levied. An excise tax is levied on tobacco products in the state at the rate of ~~two percent~~ of the wholesale price of the tobacco products. The tax is levied when a person

(1) brings, or causes to be brought, a tobacco product into the state from outside the state for sale;

(2) makes, manufactures, or fabricates a tobacco product in the state for sale in the state; or

(3) ships or transports a tobacco product to a retailer in the state for sale by the retailer. (§ 4 ch 125 SLA 1988)

Sec. 43.50.310. Exemptions. (a) A facility operated by one of the uniformed services of the United States is exempt from the tax. In this subsection, "uniformed services" has the meaning given in 5 U.S.C. 2101.

(b) The tax does not apply to a tobacco product if the United States Constitution or other federal laws prohibit the levying of the tax on the product by the state. (§ 4 ch 125 SLA 1988)

Sec. 43.50.320. Licensing. (a) Except as provided in (g) of this section, a person must be licensed by the department if the person engages in business as a distributor for a tobacco product that is subject to the tax.

(b) The department, upon application and payment of a fee of \$50, shall issue a license for one year to a person who applies for a license under (a) of this section.

(c) The department may refuse to issue a license under this section if there is reasonable cause to believe the information submitted in the application is false or misleading and is not made in good faith.

(d) A license issued under this section must include the name and address of the licensee, the type of business to be conducted, and the year for which the license is issued.

(e) The department may renew a license issued under this section for a fee of \$50.

(f) The department may suspend or revoke a license issued under this section if the licensee violates a provision of AS 43.50.300 — 43.50.390 or a regulation adopted under AS 43.50.370.

(g) A license required by this section is in addition to any other license required by law, except that a person who is licensed under AS

Rep. Johnny Ellis

CONTENTS: HB 80 HOUSE HESS

FEBRUARY 9, 1989

-
- 1) HB 80: "An Act Increasing the Excise Tax on Cigarettes"
 - 2) Department of Revenue Fiscal Note
 - 3) Cigarette Taxes - Rates, Incidence, Payment, Reports (state-by-state analysis of tax rates)
 - 4) History of Alaska's Cigarette Tax
 - 5) Cigarette Tax Act, AS 43.50.101 - 190

ion indicates that Alaska ranks somewhere, third among states that levy a tax on highest tax is assessed by Minnesota at 38 the lowest by North Carolina at 2 cents per Alaska levies 16 cents per pack on are thirty-five states that levy a higher

11-15-86

279

CIGARETTE TAXES—RATES, INCIDENCE, PAYMENT, REPORTS

¶286 The main features of the state taxes on cigarettes are given in the chart below. If incidence of the tax is on consumer, tax will be deductible on income tax returns in some states (by law). It isn't deductible under IRC, nor in states in line with current Fed.

RATE PER PACK OF 20	INCIDENCE	PAYMENT METHOD	MONTHLY REPORT REQUIREMENTS (Who, when and to whom)
ALA. 16.5¢ (5)	Stamps	Consumer(13)	Wholesaler jobber, 20th. Dept. Rev.
ALASKA 16¢	Seller	Reports	Licensee, last day, Tax Commr.
ARIZ. 15¢	Seller	Report	Distributor, 1st. Dept. Rev.
ARK. 21¢	Seller	Stamps(1)	Distributor, 10th. Dept. Fin. & Adm.
CALIF. 35¢ (eff. 1-1-89; was 10¢)	Consumer(13)	Stamps(2)	Distributor, 25th. State Eq. Bd.
COLO. 20¢	Seller	Stamps	Wholesaler, 10th (eff 7-1-88; was 20th); Dept. Rev.
CONN. 26¢	Consumer	Stamps	Distributor (4), 15th. Commr. Rev. Serv.
DEL. 14¢	Consumer	Stamps	Wholesaler, agent, 20th. Dir. Rev.
D.C. 17¢	Seller(14)	Stamps	Wholesaler, retailer, 15th. Dept. Fin. & Rev.
FLA. 24¢ (11)	Seller	Stamps	Agent, 10th. Tax Dept.
GA. 12¢	Distributor	Stamps	Distributor, 10th. Commr. Rev.
HAW. 40% (6)	Seller	Stamps	Wholesaler, retailer, last day, Dept. Tax.
IDA. 15¢	Seller	Stamps	Wholesaler, 15th. Tax Comm.
ILL. 20¢ (16)	Seller	Report	Distributor (7), 15th. Dept. Rev.
IND. 15.5¢	Consumer	Stamps	Distributor, 15th (8), ABC
IOWA 34¢ (31¢ eff 7-1-89)	Seller	Stamps	Permittees, 20th. Dept. Rev. & Fin.
KAN. 24¢	Seller	Stamps	Wholesaler, 10th. Dir. Tax.
KY. 3¢	Consumer	Stamps	Wholesaler, 20th. Cabinet Rev.
LA. 16¢	Seller	Stamps	Dealer, 15th. Sec'y Rev. & Tax.
ME. 21¢	Consumer	Stamps	Distributor, 10th. Bur. Rev.
MD. 13¢	Seller	Stamps	Distributor, 20th. Commr.
MASS. 26¢	Consumer(13)	Stamps	Distributor, 20th. Commr. Rev.
MICH. 25¢	Seller	Report	Licensee, 20th. Dept. Treas.
MINN. 31¢	Seller	Report	Distributor, 25th. Dept. Rev.
MISS. 18¢	Consumer(13)	Stamps	Distributor (9), 15th. Tax Comm.
MO. 13¢ (5)	Consumer	Stamps	Wholesaler, 20th. Dept. Rev.
MONT. 16¢	Consumer	Stamps	Interstate Carriers, (no fixed dates), Dept. Rev.
NEB. 27¢	Consumer	Stamps	Retailer, wholesaler, 10th. Tax Comm.
NEV. 29¢ (15¢ eff 6-1-89)	Seller	Stamps	Wholesaler, 15th (15), Div. Tax.
N.H. 17¢	Consumer	Stamps	(Monthly reports not required)
N.J. 27¢	Consumer	Stamps	Distributor, 20th. Dir. Tax.
N.M. 15¢	Seller	Stamps	Distributor, 25th. Tax. & Rev. Dept.
N.Y. 21¢ (17)	Consumer	Report	Agent, 15th. Dept. Tax. & Fin.
N.Y.C. 8¢ (17)	Consumer	Stamps	Agent, 15th. Comm. Fin.
N.C. 2¢	Consumer	Stamps	Distributor, 20th. Sec'y Rev.
N.D. 27¢	Seller	Stamps	Distributor, quarterly (10), Tax Comm.
OHIO 16¢	Consumer	Stamps	Dealer, 1-31 & 7-31. Tax Comm.
OKLA. 23¢	Consumer	Stamps	Wholesaler, retailer, 10th. Tax Comm.
ORE. 27¢	Consumer	Stamps	Distributor, 20th (reports: payment, quarterly), Dept. Rev.
PA. 18¢	Consumer	Stamps	Dealer, 10th. Dept. Rev.
R.I. 27¢ (eff 7-1-88; was 25¢)	Consumer	Stamps	Dealer, distributor, 10th. Tax Admr.
S.C. 7¢	Seller	Stamps	(Monthly reports not required)
S.D. 23¢	Consumer	Stamps	Distributor, wholesaler, 15th. Dept. Rev.
TENN. 13¢	Consumer	Stamps	Distributor, 15th. Dept. Rev.

RATE PER PACK OF 20	INCIDENCE	PAYMENT METHOD	MONTHLY REPORT REQUIREMENTS (Who, when and to whom)
TEX. 26¢ UTAH 23¢	Consumer Seller	Stamps Stamps	Distributor, 30th. Comptr. Pub. Accts. (Monthly reports not required)
VT. 17¢ VA. 2.5¢ (3)	Seller Seller	Stamps Stamps	Distributor, wholesaler, 15th. Comm. Taxes Wholesaler, storer, 10th. Dept. Tax.
WASH. 31¢ W.VA. 17¢	Consumer Consumer	Stamps Stamps	Wholesaler, retailer, 15th. Dept. Rev. Wholesaler, 15th. Tax Dept.
WIS. 30¢ WYO. 8¢	Consumer Consumer	Stamps Stamps	Mfg. wholesalers, 15th. Dept. Rev. Wholesaler, 20th. Dept. Rev. & Tax.

FOOTNOTES to chart (corresponding to numbers in parentheses in the chart)

- (1) Payment with report for stamps purchased on consignment.
- (2) Payment with report for tax not paid by stamp or meter.
- (3) City taxes are also in effect in some cities.
- (4) Machine dealer and operator with over 5 machines, report on 15th.
- (5) City and county taxes may be levied.
- (6) Wholesale price is basis.
- (7) Manufacturer reports on 5th.
- (8) Report drop shipment on 15th.
- (9) Wholesaler and manufacturers also report.
- (10) 10th of Jan., Apr., July, and Oct.; monthly reports may be allowed.
- (11) State tax is net after credit for 10¢ Fed excise tax.
- (12) (Reserved)
- (13) Not deductible on state return.
- (14) Deductible on state return.
- (15) Metered stamping machine report by 10th.
- (16) Cook City, Ill. added 5¢ tax per 20's.
- (17) Added 3 2/3¢ (1¢ on NYC) per 5 cigarettes of pack, 11¢ on 20's.

TABLE 1
CIGARETTE TAX RATE AND REVENUE, 1949 - 1987

YEAR	CIGARETTE TAX RATE (CENTS PER PACK)			CIGARETTE TAX REVENUE (\$1,000)			NOTES:
	DEDICATED TAX	ADDITIONAL TAX	TOTAL	DEDICATED TAX	ADDITIONAL TAX	TOTAL	
49	5	0	5	299.8	0.0	299.8	1949--Tobacco Tax Act enacted. Tax levied on all types of tobacco products at varying rates. Receipts deposited in the School Fund and dedicated to school construction.
50	5	0	5	442.6	0.0	442.6	
51	5	0	5	643.1	0.0	643.1	
52	5	0	5	808.6	0.0	808.6	
53	5	0	5	825.1	0.0	825.1	
54	5	0	5	825.5	0.0	825.5	
55	5	0	5	1,015.8	0.0	1,015.8	1955--Tobacco Tax Act repealed and replaced with the Cigarette Tax Act. Tax of 2.5 mills levied on cigarettes. Receipts deposited in the School Fund.
56	5	0	5	1,127.0	0.0	1,127.0	
57	5	0	5	1,041.6	0.0	1,041.6	
58	5	0	5		0.0		1959--Statehood. Dedicated taxes, except for those existing prior to ratification of the constitution, prohibited.
59	5	0	5		0.0		
60	5	0	5		0.0		
61	5	0	5		0.0		1961--Additional tax of 1.5 mills levied on cigarettes. Receipts deposited in the general fund.
62	5	3	8				
63	5	3	8				
64	5	3	8				
65	5	3	8	1,303.1	781.9	2,085.0	
66	5	3	8	1,638.1	982.9	2,621.0	
67	5	3	8	1,530.0	918.0	2,448.0	
68	5	3	8	1,576.3	945.8	2,522.0	
69	5	3	8	1,643.8	986.3	2,630.0	
70	5	3	8	1,694.4	1,016.6	2,711.0	
71	5	3	8	1,854.4	1,112.6	2,967.0	
72	5	3	8	2,015.0	1,209.0	3,224.0	
73	5	3	8	2,015.0	1,209.0	3,224.0	
74	5	3	8	2,143.8	1,286.3	3,430.0	
75	5	3	8	2,521.1	1,511.6	4,032.7	
76	5	3	8	2,883.7	1,733.6	4,617.3	
77	5	3	8	3,033.0	1,817.7	4,850.7	
78	5	3	8	2,886.6	1,740.6	4,627.2	
79	5	3	8	2,756.5	1,654.0	4,410.5	
80	5	3	8	2,679.7	1,602.8	4,282.5	
81	5	3	8	2,837.0	1,714.7	4,551.7	
82	5	3	8	3,067.0	1,827.0	4,894.0	
83	5	3	8	3,306.0	2,000.0	5,306.0	
84	5	3	8	3,391.0	2,000.0	5,391.0	
85	5	3	8	3,295.0	2,000.0	5,295.0	1985--Additional tax raised to 5.5 mills.
86	5	11	16	2,833.0	4,938.2	7,771.2	
87	5	11	16	3,239.0	6,657.2	9,896.2	

SOURCE: Alaska Department of Revenue.

1. Revenue from the dedicated portion of the tax are deposited in the "School fund" and are available for appropriation to the Department of Education for the exclusive purpose of school construction.
2. Revenue from the additional tax are deposited in the general fund and may be appropriated for any purpose.

Prepared by the House Research Agency, February 1988, (88-173).

ATTACHMENT D
Cigarette Tax Act, AS 43.50.010 - 190

(A) "user" means a person consuming or using motor fuel, who either
 (A) purchases the fuel out of the state and ships it into the state for personal use in the state;

(B) manufactures the fuel in the state; or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010. (§ 18-5-1 ACLA 1949; am § 1 ch 56 SLA 1949; am § 9 ch 47 SLA 1955; am § 26 ch 70 SLA 1964; am §§ 6, 7 ch 158 SLA 1970; am § 1 ch 74 SLA 1972; am § 5 ch 116 SLA 1977; am § 10 ch 83 SLA 1980; am §§ 10 — 12 ch 82 SLA 1982; am § 4 ch 87 SLA 1983)

Revisor's notes. — Paragraph (3) and (4) were renumbered in 1983 to achieve alphabetical order.

Effect of amendments. — The 1980 amendment added subparagraph (F) in paragraph (2).

The 1982 amendment, in paragraph (2), added subparagraphs (G)-(K); in paragraph (3) added the subparagraphs (A) and

(B) designations, substituted "personal use" for "his own use" and deleted "or" from the end, in subparagraph (A), added "or" to the end of subparagraph (B), and added subparagraph (C), and added paragraph (4).

The 1983 amendment added paragraph (2)(L).

Secs. 43.40.110 — 43.40.120. *Additional tax levy on transfers or consumption of motor fuel.* [Repealed, § 8 ch 158 SLA 1970.]

Chapter 43. Disaster Taxes.

Secs. 43.43.010 — 43.43.060. *Disaster relief tax.* [Repealed, § 1 ch 48 SLA 1969.]

Secs. 43.43.110 — 43.43.160. *Disaster Severance tax.* [Repealed, § 2 ch 247 SLA 1970.]

Chapter 45. School Tax.

[Repealed, § 3 ch 166 SLA 1976; § 2 ch 64 SLA 1980; § 46 ch 113 SLA 1980.]

Chapter 50. Tobacco Tax.

Article

1. Cigarette Tax Act (§§ 43.50.010 — 43.50.180)
2. Additional Cigarette Tax (§ 43.50.190)

Collateral references. — 51 Am. Jur. 2d, State and Local Taxation, § 615.
 2d, Licenses and Permits, §§ 5, 16, 71 Am. 53 C.J.S., Licenses, § 30.

Article 1. Cigarette Tax Act.

Section

10. License
20. Separate licenses
30. License fees
35. Wholesaler-distributor license
40. Expiration of licenses
50. Transfer of licenses
60. Refunds
70. Revocation of licenses

Section

80. Returns
90. Tax imposed
100. Civil penalties
130. Records
140. Disposition of proceeds
150. Administration
170. Definitions
180. Short title

Sec. 43.50.010. *License.* (a) No person may sell, purchase, possess, or acquire cigarettes as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer without a license.

(b) The department, upon application and payment of the fee, shall issue a license to each manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer. The department shall make reasonable regulations which it considers necessary in respect to the application for and the issuance of licenses.

(c) The department may refuse to issue a license if there is reasonable cause to believe that the applicant has wilfully withheld information requested to determine the applicant's eligibility to receive a license, or if there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

(d) A license required by this chapter is in addition to any other license required by law.

(e) A license issued under this chapter shall include

(1) the name and address of the licensee;

(2) the type of business to be conducted; and

(3) the year for which the license is issued. (§ 3 ch 187 SLA 1955; am § 38 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (e).

Sec. 43.50.020. *Separate licenses.* If a person operates more than one place of business, the person must obtain a separate license for each place of business, except that a person operating one or more cigarette vending machines is considered to have only one place of business for the purpose of a license under AS 43.50.010 — 43.50.180. A person licensed only as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer may not operate in another capacity unless the appropriate license for it is first secured. Each license shall be exhibited at the place of business for which it is issued and in the manner prescribed by the department. (§ 4 ch 187 SLA 1955)

Sec. 43.50.030. License fees. (a) For each license issued to a manufacturer, and for each renewal, the fee is \$5.

(b) For each license issued to a distributor or wholesaler-distributor, and for each renewal, the fee is \$50.

(c) For each license issued to a vending machine operator, and for each renewal, the fee is \$25.

(d) For each license issued to a direct-buying retailer, and for each renewal, the fee is \$25.

(e) For each license issued to a buyer, and for each renewal, the fee is \$25.

(f) No license may be issued except upon the payment of the fee notwithstanding a statute or exemption to the contrary. (§ 5 ch 187 SLA 1955; am § 1 ch 47 SLA 1964)

Sec. 43.50.035. Wholesaler-distributor license. A person may qualify for a wholesaler-distributor license by furnishing a good and sufficient surety bond in an amount equal to twice the average monthly return and in no case less than \$5,000, payable to the department and approved by the Department of Law. If a wholesaler-distributor fails to pay the cigarette tax when due, the bond may be forfeited and the license revoked. The department may issue permits in place of bonds to resident holders of wholesaler-distributor licenses doing business wholly in the state who pay the tax before shipment. (§ 2 ch 47 SLA 1964)

Sec. 43.50.040. Expiration of licenses. A license issued under AS 43.50.010 expires on June 30, following the date of issue. If a license is revoked, or the business for which the license is issued changes ownership or the licensee changes the place of business from the premises covered by the license, the licensee shall immediately return the license to the department. If the licensee moves the business to another location in the state, the license shall, upon the payment of a fee of 50 cents, be reissued for the new location for the balance of the unexpired term. The licensee, on application to the department accompanied by the renewal fee, may, before the expiration of the license, renew the license for one year from the expiration date of the license. (§ 6 ch 187 SLA 1955)

Sec. 43.50.050. Transfer of licenses. A license is not assignable or transferable. However in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if the business of the licensee is transferred to another by operation of law, the department may extend the license for a limited time to the executor, administrator, trustee, receiver, or the transferee. (§ 7 ch 187 SLA 1955)

Sec. 43.50.060. Refunds. The department may not refund the license fee upon the surrender or revocation of a license. The department may refund a license fee that is paid or collected in error. If a

license is lost, destroyed, or defaced, the department may issue a duplicate license upon payment of a fee of 50 cents. (§ 8 ch 187 SLA 1955)

Sec. 43.50.070. Revocation of licenses. The department may suspend or revoke a license issued under AS 43.50.010 — 43.50.180 (1) for violation of AS 43.50.010 — 43.50.180 or a regulation of the department adopted under AS 43.50.010 — 43.50.180, or (2) if a licensee ceases to act in the capacity for which the license was issued. No person whose license is suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of the suspension or revocation on the premises occupied or controlled by that person. No disciplinary proceeding or action is barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under AS 43.50.010 — 43.50.180. The department shall comply with the provisions of the Administrative Procedure Act (AS 44.62). (§ 9 ch 187 SLA 1955)

Sec. 43.50.080. Returns. (a) On or before the last day of each calendar month a licensee shall file with the department a return, under penalty of perjury, for each place of business. The return shall state the number of cigarettes manufactured, imported, or acquired by the licensee during the preceding calendar month, and other information which the department requires. If a licensee ceases to import or acquire cigarettes, the licensee shall immediately file with the department a return for the period ending with the cessation.

(b) A person holding a wholesaler-distributor license under AS 43.50.035 shall file a return with the department on or before the last day of each calendar month. The return shall state the number of cigarettes sold, including those cigarettes exempt from tax, and remit the tax due by the wholesaler-distributor for the preceding calendar months and other information which the department may require. (§ 10 ch 187 SLA 1955; am § 3 ch 47 SLA 1964)

Sec. 43.50.090. Tax imposed. (a) There is levied an excise tax of two and one-half mills on each cigarette imported or acquired in the state. Each licensee shall, at the time of filing the return required by AS 43.50.080, pay to the department the excise for the calendar month covered by the return, deducting one per cent of the total tax due, which the licensee shall retain to cover the expense of accounting and filing returns. Cigarettes upon which the excise is imposed are not again subject to the excise when acquired by another person.

(b) It is the intent and purpose of this section to provide for the collection of this excise from the person who first acquires the cigarettes in this state.

(c) The tax imposed under (a) of this section does not apply to cigarettes imported or acquired in the state by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States as defined in 5 U.S.C. 2101. (§ 11 ch 187 SLA 1955; am § 5 ch 94 SLA 1977)

NOTES TO DECISIONS

Constitutionality of 1977 act. — Chapter 94, SLA 1977, relating to both state and local taxation, does not violate Alaska Const., art. II, § 13, which requires every bill to be confined to one subject. *North Slope Borough v. Sohio Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659; 585 P.2d 534 (1978)).

Sec. 43.50.100. Civil penalties. (a) *(Repealed, § 45 ch 113 SLA 1980.)*

(b) *(Repealed, § 3 ch 166 SLA 1976.)*

(c) *(Repealed, § 45 ch 113 SLA 1980.)*

(d) A person or licensee who is in control or possession of cigarettes contrary to AS 43.50.010 — 43.50.180, or who offers to sell or dispose of cigarettes to others for the purpose of resale without being licensed to do so is considered to have possession of the cigarettes as a consumer and is personally liable for the tax, plus a penalty of 100 per cent.

(e) *(Repealed, § 45 ch 113 SLA 1980.)* (§ 12 ch 187 SLA 1955; am § 4 ch 47 SLA 1964; am § 3 ch 166 SLA 1976; am § 45 ch 113 SLA 1980)

Cross references. — For present provisions concerning civil penalties, see AS 43.05.220. **Effect of amendments.** — The 1980 amendment repealed subsections (a), (c), and (e).

Sec. 43.50.110. Taxpayer's remedies. *(Repealed, § 3 ch 166 SLA 1976. For current law, see AS 43.05.240.)*

Sec. 43.50.120. Lien. *(Repealed, § 4 ch 94 SLA 1976. For current law, see AS 43.10.035.)*

Sec. 43.50.130. Records. (a) Every licensee shall keep a complete and accurate record of all cigarettes manufactured, purchased, or acquired. The records, except in the case of a manufacturer, shall include a written statement containing the name and address of the seller and the purchaser, the date of delivery, the quantity of cigarettes, the trade name and brand, and the price paid for each brand of cigarettes purchased. The licensee shall keep such other records as the department prescribes. All statements and records required by this section shall be in the form prescribed by the department, shall be preserved for three years, and shall be offered for inspection upon demand by the department.

(b) No licensee may issue or accept a written statement which falsely indicates the name of the customer, the type of merchandise, the price, the discounts, or the terms of sale.

(c) Where an invoice is given or accepted by a licensee (1) a statement which makes the invoice a false record of the transaction may not be inserted in the invoice; and (2) a statement which should be included in the invoice may not be omitted from the invoice if the invoice does not reflect the transaction involved without the statement.

(d) An invoice for the sale of cigarettes given or accepted by a licensee under AS 43.50.010 — 43.50.180 shall state whether the tax imposed by AS 43.50.010 — 43.50.180 has been paid. (§ 16 ch 187 SLA 1955)

Sec. 43.50.140. Disposition of proceeds. The proceeds derived from the payment of taxes, fees, and penalties, provided for under AS 43.50.010 — 43.50.180, and the license fees received by the department shall be paid into a state fund entitled "School Fund," and shall be used exclusively to rehabilitate, construct, and repair the state's school facilities, and for costs of insurance on buildings comprising school facilities during the rehabilitation, construction, and repair, and for the life of the buildings. (§ 16 ch 187 SLA 1955)

Opinions of attorney general. — In order to insure that tobacco tax funds are used most effectively in being a part of major rehabilitation, construction and major repair projects, the law requires that expenditures from such funds be made only after study and concurrence by the city school board, the city council, and the commissioner of education (now Department of Education). 1962 Op. Att'y Gen., No. 24. **It is necessary for the city council to concur by resolution in any expenditure of tobacco tax funds.** 1962 Op. Att'y Gen., No. 24. In addition to the approval of the city council, any disbursement of tobacco tax funds must be made with the authorization of the local school board. 1962 Op. Att'y Gen., No. 24.

Sec. 43.50.150. Administration. (a) The department shall (1) administer this chapter, and (2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter. (§ 17 ch 187 SLA 1955; am § 39 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment in subsection (a), substituted "this chapter" for "AS 43.50.010 — 43.50.180," deleted "and penalties" following "the collection of taxes," and substituted "this chapter and penalties as provided in AS 43.05.010 — 43.05.290" for "AS 43.50.010 — 43.50.180"; in subsection (b), substituted "adopt" for "publish," and "AS 43.05" for "AS 43.50.010 — 43.50.180, (1) to enforce AS 43.50.010 — 43.50.180, and (2) to collect the taxes, fees, and penalties imposed by AS 43.50.010 — 43.50.180."

Sec. 43.50.160. Criminal penalties. *(Repealed, § 46 ch 113 SLA 1980. For current law, see AS 43.05.290.)*

Sec. 43.50.170. Definitions. In this chapter, unless the context otherwise requires,

(1) "buyer" means a person who imports or acquires cigarettes for his own consumption from any source other than a manufacturer, distributor, direct-buying retailer, or retailer;

(2) "cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco;

(3) "department" means the Department of Revenue;

(4) "direct-buying retailer" means a person who is engaged in the sale of cigarettes at retail in this state, and who brings or causes to be brought cigarettes into the state;

(5) "distributor" means a person who brings cigarettes, or has cigarettes brought into the state, and who sells or distributes at least 75 per cent of the cigarettes to others for resale in the state;

(6) "licensee" means a person licensed under AS 43.50.010 — 43.50.180;

(7) "manufacturer" means a person who makes, fashions, or produces cigarettes for sale to distributors or other persons;

(8) "person" includes an individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver or trustee, syndicate, or political subdivision of this state, or combination acting as a unit;

(9) "place of business" means a place where cigarettes are sold, or where cigarettes are brought or kept for the purpose of sale or consumption, including a vessel, vehicle, airplane, or train;

(10) "retailer" means a person in the state who is engaged in the business of selling cigarettes at retail;

(11) "sale" includes a sale, barter, exchange, and every other manner of transferring the ownership of personal property. (§ 2 ch 187 SLA 1955; am § 27 ch 70 SLA 1964)

Sec. 43.50.180. Short title. AS 43.50.010 — 43.50.180 may be cited as the Cigarette Tax Act. (§ 1 ch 187 SLA 1955)

Article 2. Additional Cigarette Tax.

Section

190 Additional tax levy on cigarettes

Sec. 43.50.190. Additional tax levy on cigarettes. (a) There is levied an excise tax of one and one-half mills on each cigarette imported or acquired in this state.

(b) The tax levied by this section is in addition to the tax levied by AS 43.50.010 — 43.50.180. The tax shall be administered and collected in the same manner as the tax levied by AS 43.50.010 — 43.50.180, except that receipts from the tax shall be deposited in the general fund. The penalties provided in AS 43.05 apply to the tax levied in this section. (§§ 1, 2 ch 53 SLA 1961; am § 40 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "provided in AS 43.05" for "established in AS 43.50.010 — 43.50.180" in the third sentence of subsection the

Chapter 55. Oil and Gas Properties Production Tax.

Section

- 11. Oil production tax
- 12. Adjustment in tax rates
- 13. Economic limit factor
- 16. Gas production tax
- 17. Relation to other taxes
- 20. Payment of tax
- 30. Filing of statements
- 40. Powers of Department of Revenue

Section

- 50. Incorrect returns
- 60. Delinquency
- 80. Collection and deposit of revenue
- 90. Refunds
- 110. Administration
- 135. Measurement
- 140. Definitions
- 150. Determination of gross value

Collateral references. — 71 Am Jur 2d, State and Local Taxation, § 218 — 220.

84 CJS, Taxation, ¶ 404, 410.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase, 4 ALR2d 244.

Constitutional exemption from taxation as subject to legislative regulation respecting conditions of its assertion, 4 ALR2d 744.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 ALR2d 1350.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 ALR2d 1031.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 ALR2d 550.

Expenses and taxes deductible by lessee in computing lessor's oil and gas royalty or other return, 73 ALR2d 1056.

Sec. 43.55.010. Gross production tax. [Repealed, § 9 ch 136 SLA 1977.]

Sec. 43.55.011. Oil production tax. (a) There is levied upon the producer of oil a tax for all oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation. The tax is equal to either the percentage-of-value amount calculated under (b) of this section or the cents-per-barrel amount calculated under (c) of this section, whichever is greater, multiplied by the economic limit factor determined for the oil production of the lease or property under AS 43.55.013. If the amounts calculated under (b) and (c) of this section are equal, the amount calculated under (b) of this section shall be treated as if it were the greater for purposes of this section.

(b) The percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced on or before June 30, 1981, from the lease or property and 15 percent of the gross value at the point of production of taxable oil produced from the lease or property after June 30, 1981; except that for a lease or property coming into commercial oil production after June 30, 1981, the percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced from the lease or prop-

§ 43.40.035

15.260. (§ 2 ch 24

ces and

,030)

Gaming Devices.

tor of coin-operated

artment, to be depos-

citizen of the United
ast one year, and has
corporation an affida-
vee of the corporation.
); am § 118 ch 6 SLA

e year" for "and a bona fide
e state for more than three
agraph (2).

l Tax.

ts. (a) A person who re-
(a) or (b) was previously
x if (1) the resold fuel is
43.40.010(l) have been
paid exceeds the tax due
und under this section is
n the resold fuel less the
(a) or (b).
is written consent of the
dit or refund under this

§ 43.50.140

REVENUE AND TAXATION

§ 43.50.190

section directly from the supplier rather than by filing a claim for the credit or refund with the department. When an election is properly made under this subsection, the supplier may claim the credit or refund from the department. To be effective an election under this subsection must be signed in quadruplicate by the reseller and by the supplier. The reseller and the supplier shall each file one copy of the election, with original signatures, with the department. The reseller and supplier shall each retain a copy of the election with original signatures for audit review by the department. If an election is made under this subsection, it may not be revoked without the express written consent of the supplier. (§ 6 ch 82 SLA 1982; am § 3 ch 87 SLA 1983)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Chapter 50. Tobacco Tax.

Article

2. Additional Cigarette Tax (§ 43.50.190)

Article 1. Cigarette Tax Act

Sec. 43.50.140. Disposition of proceeds.

NOTES TO DECISIONS

Distribution to particular recipients not required. — There is no express requirement in this section that school fund proceeds be distributed to any particular recipient and, in the view of the Alaska

Supreme Court, there are no grounds for implying such a requirement. Southwest Region School Dist. v. Department of Educ., Sup. Ct. Op. No. 3099 (Filo No. S-1030), P.2d (1986).

Article 2. Additional Cigarette Tax.

Section

190. Additional tax levy on cigarettes

Sec. 43.50.190. Additional tax levy on cigarettes. (a) There is levied an excise tax of five and one-half mills on each cigarette imported or acquired in this state.

(b) The tax levied by this section is in addition to the tax levied by AS 43.50.010 — 43.50.180. The tax shall be administered and collected in the same manner as the tax levied by AS 43.50.010 — 43.50.180, except that receipts from the tax shall be deposited in the general fund. The penalties provided in AS 43.05 apply to the tax levied in this section. (§§ 1, 2 ch 53 SLA 1961, am § 40 ch 113 SLA 1980; am § 2 ch 24 SLA 1985)



Alaska State Legislature

Please enter into the record my testimony to the House Health, Ed & S.S.
 committee name
 committee on House Bill #80, dated 2/9/89
 bill/subject

As a teacher of "Freedom From Smoking Classes" and as an ex-smoker I am aware of the agony that smokers go through in the process of quitting this habit/addiction. This bill with a minor increase in the excise tax can produce moneys which can be vital to the health of our State. I would hope that at least some of these additional revenues can be used to counter the billions of dollars spent by the tobacco industry in promoting their products. Specifically ^{money could be use to fund} ~~a targeting of~~ tobacco education ^{for} ~~for~~ our youth. Either in traditional Educational

Signed: *John Margyets*
 Testifier

Representing (Optional)
Route 2, Box 318 Ketchikan
 Address
225-3401
 Phone No.



ALASKA DIVISION, INC.

bill file

REC'D FEB 16 1989

Roland Gower, M.D.
President

Michael Franklin, M.D.
President Elect

Daniel R. Cooper, Jr.
Chairman of the Board

February 14, 1989

Veva Becker
Chairman, Executive Committee

Leslie Holden
Secretary

Eldon Ulmer
Treasurer

Diana Kuhns
Executive Vice President

Rep. Johnny Ellis
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ellis,

The American Cancer Society, Alaska Division Public Issues Committee recommended to the Board of Directors on January 28, 1989, the following resolution:

Whereas the Surgeon General of the United States has determined that there is a direct link between cancer and tobacco products and

Whereas cancer in its many faces exacts both a personal toll and financial toll on the citizens of Alaska and indeed the world and

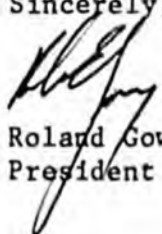
Whereas an increase in the tax of cigarette products will provide revenues which will help offset the economic tolls exacted by tobacco from the people of the state of Alaska

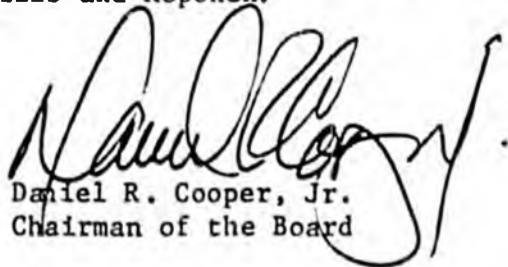
Now therefore be it

Resolved that the American Cancer Society, Alaska Division, Inc. supports the passage of H.B. 80.

This resolution was unanimously passed and we request your support of House Bill 80 introduced by Ellis and Koponen.

Sincerely,


Roland Gower, M.D.
President


Daniel R. Cooper, Jr.
Chairman of the Board

CORRECTION

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



Alaska State Legislature

Please enter into the record my testimony to the House Health, Ed & S.S.
committee name

committee on House Bill #80, dated 2/9/89
bill/subject

As a teacher of "Freedom From Smoking Classes and as an ex-smoker I am aware of the agony that smokers go through in the process of quitting this habit/addiction. This bill with a minor increase in the excise tax can produce moneys which can be vital to the health of our State. I would hope that at least some of these additional revenues can be used to counter the billions of dollars spent by the tobacco Industry in promoting their products. Specifically ~~a targeting of~~ ^{money could be use to fund} tobacco education ~~toward~~ ^{for} our youth. Either in traditional Educational

Signed:

John W. Kharuyto
Testifier

Representing (Optional)

Route 2, Box 318 Ketchikan

Address

225-3401

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____
committee name

committee on _____, dated _____
bill/subject

*settings of our public schools; or media
advertising graphically depicting the hideous
health consequences of long term tobacco
use.*

Signed:

[Handwritten Signature]

Testifier

Representing (Optional)

Address

Phone No.



ALASKA DIVISION, INC.

bill file

REC'D FEB 16 1989

Roland Gower, M.D.
President

Michael Franklin, M.D.
President Elect

Daniel R. Cooper, Jr.
Chairman of the Board

Veva Becker
Chairman, Executive Committee

Leslie Holden
Secretary

Eldon Ulmer
Treasurer

Diana Kuhns
Executive Vice President

February 14, 1989

Rep. Johnny Ellis
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ellis,

The American Cancer Society, Alaska Division Public Issues Committee recommended to the Board of Directors on January 28, 1989, the following resolution:

Whereas the Surgeon General of the United States has determined that there is a direct link between cancer and tobacco products and

Whereas cancer in its many faces exacts both a personal toll and financial toll on the citizens of Alaska and indeed the world and

Whereas an increase in the tax of cigarette products will provide revenues which will help offset the economic tolls exacted by tobacco from the people of the state of Alaska

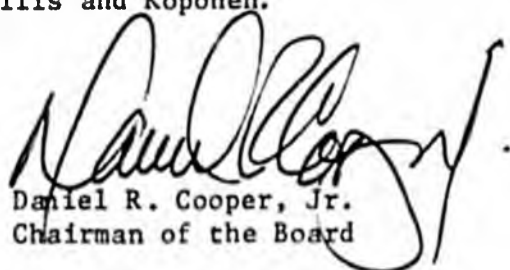
Now therefore be it

Resolved that the American Cancer Society, Alaska Division, Inc. supports the passage of H.B. 80.

This resolution was unanimously passed and we request your support of House Bill 80 introduced by Ellis and Koponen.

Sincerely,


Roland Gower, M.D.
President


Daniel R. Cooper, Jr.
Chairman of the Board

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

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

H. HESS 2-9-89

HB

89

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 18, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 2/21/89

The HEALTH, EDUCATION & SOCIAL SERVICES Committee recommends that:

HOUSE BILL NO. 89 [TEACHERS RETIREMENT ELIGIBILITY]
"An Act relating to eligibility for retirement under the teachers' retirement system."

[X] be replaced with CSHB 89 (HESS) [X] the same title
[] a new title

[] have attached amendment(s)

- [X] 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
- [] zero fiscal note
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published: _____
- [] zero fiscal notes(s) published: _____

SIGNING DO PASS:

J. Ellis
Mark Boyer
Cheri Davis
W. H. ...
Peter ...
W. Furnace

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

J. Ellis
Chairman's signature

House Bill 89

"An Act relating to eligibility for retirement under the teachers' retirement system"

Justification Summary

PURPOSE:

HB 89 was introduced to correct a glaring inequity in the current statute which sets out eligibility requirements for teachers' retirement under the "20 years of membership service" option. This option was designed for teachers wishing to retire before age 55 (a teacher with at least 8 years of membership service is eligible for retirement at age 55).

Here are some examples of how the eligibility statute currently works:

■ Teacher "A" has taught for twenty years as a full-time teacher, and is eligible for retirement.

■ Teacher "B" has taught for twenty years as a part-time teacher, teaching for at least 1/2 year for each of those twenty years, and is eligible for retirement. The benefits reflect the actual time spent teaching.

■ Teacher "C" has taught for twenty years, the first 10 as a part-time teacher (teaching for at least 1/2 year for each of those ten years), the second 10 as a full-time teacher. Teacher "C" is **NOT** eligible for retirement.

Here are some of the options available if teacher "C" wishes to retire:

- Teach full-time for 5 more years*
[10 yrs. part-time + 15 yrs. full-time = 20 yrs. membership service]
- Teach part-time for 10 more years*
[20 yrs. part time + 10 yrs. full-time = 20 yrs. membership service]
- Wait until age 55.

Unless the statute is changed, teacher "C" **must** teach considerably more than 20 years to be eligible for retirement, yet teacher "B", with 20 years of strictly part-time service **IS** eligible for retirement. **This is inconsistent and unfair.**

* Actually, there are several combinations of part-time and full-time years of additional teaching that teacher "C" could use. The above examples were used for purposes of clarity.

HB 89, Justification Summary (cont'd)

COSTS:

According to the Department of Administration, Division of Retirement and Benefits, HB 89 has a zero fiscal impact to the department.

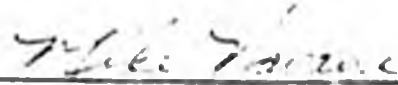
Also according to the division, an actuarial analysis indicates that the effect of HB 89 on the viability of the Teachers Retirement Fund would be negligible, but there would be a required increase of 0.06 percent in employer contributions. Based on FY 90 estimated payrolls, the division outlined an increase in these personnel costs approximately as follows:

- Dept. of Education-----\$ 3,000
- University of Alaska-----\$ 30,000
- All school districts combined----\$ 203,500

My staff contacted Mr. Bob Warren, Director of Human Services (personnel) for the University of Alaska, to get his reaction to both the purpose of the bill, and the increased contribution cost to the University. Mr. Warren agreed with the logic and purpose of HB 89. Regarding the increase in the employer's contribution rate, Mr. Warren pointed out that the rate has some fluctuation anyway, and he did not consider a potential increase of \$30,000 substantial enough to be a problem.

To see what the effect on individual school districts may be, my staff contacted Mr. Dale Sandahl, Asst. Superintendent in charge of personnel at the Kenai Peninsula Borough School District. Like Mr. Warren, Mr. Sandahl also agreed with the logic and purpose of HB 89, and did not see the increased contribution rate as a problem (Kenai has a payroll of approximately \$25 million, so an contribution increase of 0.06 % would equal roughly \$15 thousand).

Additionally, Mr. Sandahl felt certain that some of the teachers made eligible for retirement by HB 89 would opt to retire immediately. New replacement teachers would then be hired at a lower "entry level" salary, so the overall increase in personnel costs would likely be negligible.



Rep. Mike Navarre
prime sponsor HB89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to eligibility BRU: Retirement and Benefits
for retirement under the TRS.
 Sponsor: Navarre Components: Retirement and Benefits
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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)

This bill will not result in increased operational costs to the Division.
 THIS BILL IS ESTIMATED TO COST THE DEPARTMENT OF EDUCATION AND THE UNIVERSITY OF ALASKA \$33.0
 IN INCREASED PERSONAL SERVICES COSTS IN FY 90. THIS BILL IS ESTIMATED TO COST SCHOOL DISTRICTS
 \$203.5 IN INCREASED PERSONAL SERVICE COSTS IN FY 90. Please refer to page 2 for a detailed
 discussion of these costs.

Prepared By: R.2. Stalvaker Phone: 465-4470
Sally Smith, Director Date: 1/25/89
 Division: Retirement and Benefits

Approved by Commissioner: John M. Andrews Date: 1/26/89
 Agency: Department of Administration

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

House Bill 89
 Analysis of the Fiscal Implications to the Retirement Fund
 Prepared by Division of Retirement & Benefits
 Department of Administration
 January 20, 1989

Analysis: This bill would enable members of the TRS to receive full credit for part-time and 1/2 year teaching to establish eligibility for benefits. Benefits would continue to be calculated at half-credit. Passage of this bill is estimated to increase the state TRS contribution rate for FY90 by .06%. The FY90 state TRS payroll is estimated to be \$55,085,786 (Department of Education, \$5,025,700; and University of Alaska, \$50,060,086) and remain level for each year thereafter.

The cost to the state of \$33.0 is calculated as follows:

Estimated U of A FY90 payroll	\$ 50,060,086
TRS contribution rate increase	X <u> .06%</u>
 Total U of A cost.....	 \$ 30,000
 Estimated D.O.E. FY90 payroll	 \$ 5,025,700
TRS contribution rate increase	X <u> .06%</u>
 Total D.O.E. cost.....	 \$ 3,000

In addition to the state cost, there would also be an increase in the school districts' contribution rate of .06%, resulting in a total contribution increase of \$203.5 for FY90 and for each year thereafter.

Estimated School District FY90 payroll	\$ 339,201,043
TRS contribution rate increase	X <u> .06%</u>
 Total School District cost....	 \$ 203,521

There would not be an adverse impact on the actuarial soundness of the TRS fund. The increase in unfunded liability and the decrease in funding ratio would be negligible.



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3040

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

February 3, 1989

TO: Representative Johnny Ellis & Members of the HESS Committee

FROM: Judy Salo, President *Judy*

RE: HB 89

After listening to the overview of TRS services and issues I feel compelled to add to our existent position on H.B. 89. The phrase "to attract and retain teachers" used as a guiding light for policy can be interpreted in more than one way. My interpretation certainly varies from that presented by the TRS administrator. But, whatever the interpretation, I think the importance of that mission statement was highly overrated in the discussion of H.B. 89 and H.B. 24.

H.B. 89 is an equity issue. The teachers who have contacted us cannot understand why part-time and full-time service cannot be combined, especially since twenty years of part-time service does make a person eligible for retirement. Under the provisions of H.B. 89 benefits are computed based on the actual work time.

H.B. 89 and H.B. 24 are separate issues. What is most imperative to deal with is the equity issue involved.

We continue our strong support of the bill and are available to answer any questions that may arise.

Thank you.

JS01/Hb89/dl



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

January 31, 1989

To: Rep. Johnny Ellis, Chair
Members; House HESS Committee

Re: House Bill No. 89; "An Act relating to
eligibility for retirement under the teachers'
retirement system."

NEA-Alaska supports and encourages passage of HB 89. This bill correctly addresses an equity concern for part-time teachers in the public schools in Alaska.

It is only reasonable that part-time teachers should be able to use the combination of full-time and part-time service to establish eligibility for retirement as full-time teachers.

In some districts part-time teachers would prefer to have full-time employment but different combinations of circumstance preclude that from being available to them. Funding cuts have necessitated part-time positions in some districts and in others it has been the decision of administration or the board to utilize part-time rather than full-time teachers.

We encourage your favorable response to HB 89.

Thank you for your consideration of our position.

Respectfully submitted,

Bob Manners
Executive Secretary

cc: Rep. Mike Navarre

m31jan1

Alaska State Legislature



WHILE IN SESSION
PO BOX 169
JUNEAU, ALASKA 99801
(907) 262-9366

HOUSE MAJORITY LEADER

HOME ADDRESS
PO BOX 169
JUNEAU, ALASKA 99801
(907) 262-9366

DISTRICT 5

Representative Mike Navarre

Date: January 31, 1989

MEMORANDUM

TO: All members
House Health, Education and Social Services Committee

FROM: Rep. Mike Navarre

SUBJECT: House Bill 89.

Attached is some back-up information on HB 89.

This bill was introduced to correct an inequity in the statutes concerning retirement eligibility for certain types of teachers.

Currently, if a teacher has 20 years of full-time service, that teacher is eligible for retirement. In a similar vein, if a teacher has 20 years of part-time service, that teacher is also eligible for retirement (with lesser benefits, naturally). However, if a teacher has a combination of the two (i.e., 10 years full-time and 10 years part-time), that person is not eligible for retirement.

There seems to be an inconsistency in the application of even this method of establishing eligibility, however. Investigation by the House Research Agency (see attached) seems to indicate that if the membership service is weighted heavily toward full-time, combination of the two may be allowed by the department. If this is correct, it lends itself to a subjective determination of retirement eligibility, which is poor policy.

HB 89 rectifies this situation, and makes it clear that the 20 year career of a teacher who combines part and full-time teaching is no less valid than that of a person who makes the career choice of one or the other.

I urge the committee's favorable consideration of this measure.

Thank you.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P. O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

December 28, 1988

MEMORANDUM

TC: Representative Mike Navarre

ATTN: Pat Malone

FROM: Tom McKenna *TM*
Legislative Analyst

RE: Effect of Combining Full-time and Part-time Service Credit in the
Teachers' Retirement System
Research Request 89.102

You asked us to determine the effect of allowing members of the Teachers' Retirement System (TRS) to combine credit for full- and part-time service in qualifying for the 20-year retirement provision. You wanted to know how many teachers would be affected if these retirement criteria were applied, and what the financial effect on the TRS would be.

As you know, the current statute (AS 14.25.110, Attachment A) allows for retirement after 20 years of membership service, or 20 school years that each involve at least one-half year of membership service as a part-time teacher. According to Bob Stalnaker, Deputy Director of the Division of Retirement and Benefits, Department of Administration, full- and part-time service credit is currently combined in determining membership service. A person with 19 years of full-time teaching service, for example, would need 2 years of half-time service in order to qualify for retirement with 20 years of membership service.

The attached memorandum from Bob Stalnaker (Attachment B) summarizes findings of the state's actuarial consultant for the Division of Retirement and Benefits. The actuary's calculations represent the effects of a change that would allow each year spent teaching, in full- or part-time capacity, to count for a year of credit toward the 20-year requirement. The average amounts of part-time service cited in that memorandum are reported in terms of the number of school years spent part-time teaching, and would denote years of credit toward the 20-year requirement under the proposed change. The benefit costs used in the actuarial analysis, however, are based on actual calculated service; a year of half-time service equals one-half year of calculated service.

Representative Navarre
December 28, 1988
Page 11

According to the report, the proposed change would affect 947 people, the number of active TRS members who currently have some part-time service. An unfunded liability of \$150,000 would result over the 25-year period of the actuarial analysis. The liability would require employer contributions to be increased by 0.06 percent, and would have a negligible effect on the accrued benefit funding ratio, the measure of the TRS fund's viability.¹

The majority of projected costs arise from an increase in benefit payments resulting from extended periods of retirement eligibility, according to Mr. Stalnaker. Although members who combine full- and part-time service in order to qualify for the 20-year requirement would receive smaller individual benefit payments, benefits would be paid to these people for longer periods of time. A smaller fraction of the unfunded liability comes from major medical benefit costs, which are automatically awarded to all TRS retirees. Other assumptions used in this actuarial analysis are standard system assumptions, as outlined in the Annual Financial Report of the PERS and TRS funds.²

Please call me if you have any questions.

Attachments

¹The accrued benefit funding ratio equals: fund valuation assets (\$)/ present value of accrued benefits (\$).

²Bob Stalnaker, personal communication, December 27, 1988.

ATTACHMENT A
AS 14.25.110

led, § 25 ch 91

rrearrages /Re-

l forces. (a) A
ed forces of the
system up to a
vice equals one
ained for credit
credited service
discharge other
forces shall be
e service in the
14.25.060. The
ncluded in the
14.25.060, ex-
ded by Alaska
ued by Alaska
ce may not be
of the 10-year

a public school
lization, reha-
med forces, or
nine the allow-
ces.

ed of service in
ilitary service
t system (AS
ed under this
l ch 145 SLA
am §§ 5, 7 ch
13 SLA 1980)

of the Terri-
f membership
ed service for
re January 3,
agency of the
nder this sec-

(b) A teacher may not be credited with service under this section if credit for service as an employee of the Territory of Alaska was granted for the same period under the public employees' retirement system (AS 39.35).

(c) A teacher who elects to receive credited service under this section for service to the Territory of Alaska shall make a retroactive contribution under this system for the period of territorial employment following June 30, 1955. (§ 1 ch 146 SLA 1980)

Sec. 14.25.107. Credit for Alaska BIA service. A member who joins the system on or after July 1, 1978, who has Alaska BIA service may claim all of that service as credited service. A retirement benefit payable under this chapter for Alaska BIA service shall be reduced by an amount equal to the retirement benefits paid to the member by the United States government for the same service. (§ 8 ch 137 SLA 1982)

Sec. 14.25.110. Retirement benefits. (a) Subject to AS 14.25.167, a member is eligible for a normal retirement benefit if the member

(1) was first hired before July 1, 1975, has attained the age of 55 years, and has at least 15 years of credited service, the last five of which have been membership service;

(2) has attained the age of 55 years and has at least eight years of membership service;

(3) has attained the age of 55 years, has at least five years of membership service, and has at least three years of Alaska BIA service;

(4) has at least 25 years of credited service, the last five of which have been membership service;

(5) has at least 20 years of membership service;

(6) has at least 20 years of combined membership service and Alaska BIA service, the last five of which have been membership service; or

(7) has at least one-half year of membership service as a part-time teacher for each of 20 school years.

(b) Subject to AS 14.25.167, a member is eligible for an early retirement benefit upon completing any one of the service requirements in (a)(1), (2), or (3) of this section and attaining the age of 50 years.

(c) The burden is on the applicant to prove eligibility for retirement benefits to the full satisfaction of the administrator.

(d) The monthly amount of a retirement benefit for a member who has paid the full amount of any indebtedness is two percent of the member's average base salary during any three school years of membership service times the years of credited service, including credited fractional years, divided by 12. An actuarial adjustment must be made for early retirement.

(e) The monthly amount of a retirement benefit must be determined in accordance with (d) of this section as it is in effect on the date of termination of the retiring member's last segment of employment.

(f) The annual amount of retirement benefits for a retiring member who was a member of the retirement system established by the Retirement Act of 1945 may not be less than \$975 plus 10 percent of the total contribution made by the member to the retirement fund of 1945.

(g) A member who is eligible for a service retirement salary under this chapter or under the Retirement Act of 1945 is entitled to a benefit of at least \$25 per month for each year of credited service, excluding adjustments made under AS 14.25.142 or 14.25.143. If the member elected option two under AS 14.25.063(b)(2) for payment of any indebtedness when the member initially applied for a retirement benefit, or if the member elected to receive an early retirement benefit under (b) of this section, the resulting benefit reduction continues in effect.

(h) The monthly retirement benefit for a member who was receiving a retirement benefit on July 1, 1955, is \$50 a month if the member was at least 55 years of age on July 1, 1955.

(i) Benefits payable under this section accrue from the first day of the month after which all of the following requirements are met: (1) the member meets the eligibility requirements of this section; (2) the member terminates employment; and (3) the member applies for retirement. Benefits are not payable under this section during a school year in which credit for a full year of service is granted. The benefits are payable the last day of the month. If payment is delayed, a retroactive payment must be made for the month in which a benefit is payable under this section. The last payment shall be for the month in which the member dies or is no longer eligible for a benefit under this section. (§ 12 ch 145 SLA 1955; am § 4 ch 142 SLA 1957; am § 9 ch 89 SLA 1960; am § 4 ch 86 SLA 1963; am § 6 ch 151 SLA 1966; am § 2 ch 85 SLA 1971; am § 8 ch 66 SLA 1973; am § 1 ch 77 SLA 1973; am § 2 ch 57 SLA 1974; am §§ 1 — 3 ch 173 SLA 1975; am § 5 ch 169 SLA 1976; am § 14 ch 13 SLA 1980; am § 2 ch 146 SLA 1980; am § 9 ch 137 SLA 1982; am § 1 ch 81 SLA 1986; am §§ 1, 2 ch 117 SLA 1986)

Effect of amendments. — The first 1986 amendment added paragraph (i) of subsection (a) and made minor, related word and punctuation changes.

The second 1986 amendment added "Subject to AS 14.25.167" at the beginning of subsections (a) and (b) and made related grammatical changes.

Editor's notes. — The 1982 amendment of AS 14.25.063(b), which is referred to in subsection (g), deleted the language in that section concerning options

The reference to AS 14.25.063(b)(2) in subsection (g) is incorrect in light of the 1982 amendment of that section, which rewrote subsection (b).

Opinions of attorney general. — The legislature did not intend such a strict interpretation as to require a teacher to work the last 5 school years for the full 140-day year. 1966 Op. Att'y Gen. No. 2.

A teacher satisfies the requirement of subsection (a) by working any five creditable years or combination of fractional

ATTACHMENT B
Memorandum from Bob Stalnaker to Tom McKenna
Summarizing an Acturial Analysis of the Proposed
Changes to the TRS

MEMORANDUM

STATE OF ALASKA

TO: Tom McKenna
Legislative Analyst
House Research Agency

DATE: December 21, 1988

TELEPHONE: 465-4470

FROM: *Bob* Robert F. Stalnaker
Deputy Director
Division of Retirement
& Benefits
Department of Administration

SUBJECT: Request for
information regarding
part-time service credit
in the TRS.

Your request for information for an actuarial analysis was forwarded to our consulting actuary, William M. Mercer Meidinger Hansen, for consideration. Your questions were as follows:

1. How many teachers would be affected by allowing part-time teaching service to be used the same as full-time teaching service for qualifying for the 20 year retirement provision, and
2. What would the effect be on the financial stability of the Teachers' Retirement System (TRS).

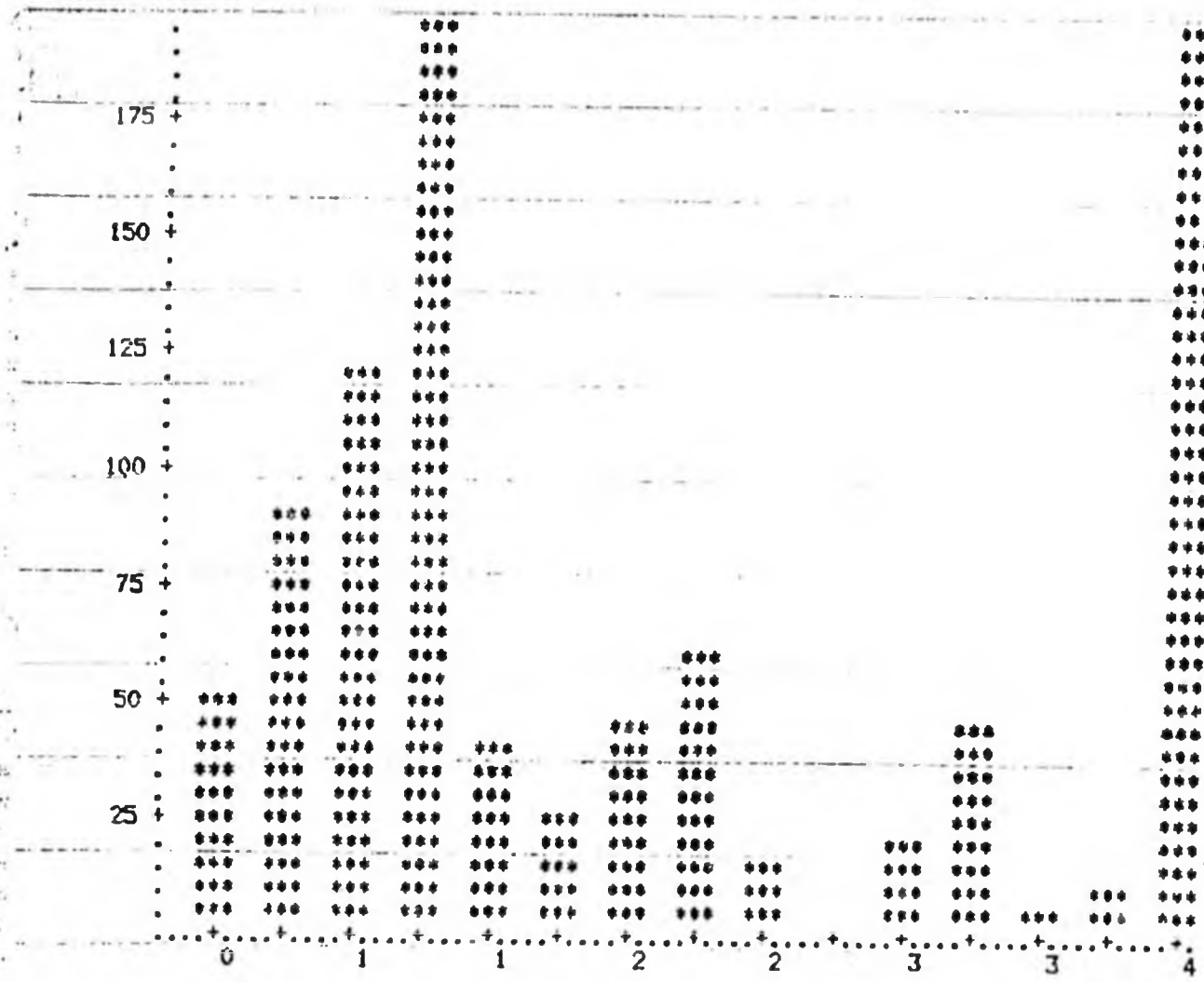
There are currently 947 active members in the TRS who have some part-time service and could therefore possibly benefit by this change. The average amount of part-time service for this group is approximately 2.29 years. There are 257 teachers with three or more years of part-time service.

The estimated increase in TRS contribution rate is .06% of the FY90 estimated TRS payroll. The State FY90 estimated TRS payroll is \$ 55,085,786 and the School District FY90 estimated TRS payroll is \$ 339,201,043. This change would result in an increase of the TRS unfunded liabilities of approximately \$150,000. There would be a negligible effect on the funding ratio.

I have also attached a copy of a chart identifying the breakdown of members having any part-time service. I hope that this information is helpful in your deliberations.

cc: Sally Smith, Director
Division of Retirement &
Benefits

Dean Gottehrer
Special Assistant
Department of Administration



TOTAL EES 50 93 123 195 42 26 49 61 18 4 23 49 6 13 195

TOTAL EMPLOYEES READ 947

AVERAGE VALUE 2.29

LOWEST VALUE 0.01

HIGHEST VALUE 50.71