

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5693 HOUSE HEALTH, EDUCATION & SOCIAL SERVICES

Representative Elli
March 21, 1990
Page Three

4. Reference to "treasurer": Representative Gruenberg pointed to the reference to the commissioner of revenue as the "treasurer" of the fund on page 2, line 2, and asked if that designation should not be "trustee" rather than "treasurer." I believe that Representative Gruenberg is correct, although I believe that the Department of Revenue would have a fiduciary obligation regardless of which term is used.

In conclusion, I very much appreciate the consideration that the House HESS committee has given to Senate Bill 136. Please let me know if I can provide any additional information. I hope that your time constraints will permit the bill appearing on the committee agenda soon.

JK:kh

Attachment

Internal Revenue Service
Index Nos.: 0061-0000
0115-0000
2503-0000

Department of the Treasury

MAR 29 1966

Washington, DC 20224

Robert A. Bowman, Treasurer
State of Michigan,
Department of Treasury
Treasury Building
P.O. Box 15128
Lansing, MI 48901

MAR 29 1966

- A = the purchaser of a tuition contract
- B = the individual designated to receive the educational benefits described in a tuition contract
- C = the individual designated to received the refund benefits described in a tuition contract
- State X = Michigan
- Trust = the Michigan-Education Trust

Dear Mr. Bowman:

This is in reply to a ruling request, submitted on behalf of State X, on the federal tax consequences of a college tuition prepayment program.

FACTS

State X has enacted legislation providing for a state-created corporation (Trust) to implement and administer a college tuition prepayment program. The program provides a choice of two plans for the payment of tuition. The substance of these two plans is described below.

Plan 1

Under the plan, A, an individual, makes a current payment to Trust, and in return, Trust contracts to arrange for four years of educational services at a State X public educational institution, or at a private educational institution within State X, for an irrevocably designated beneficiary, B, when B matriculates. The contract provides, however, that upon the occurrence of certain specified events a cash refund of the up-front payment, less an administrative fee, will be made to C, a person irrevocably designated by A at the time the contract is executed. B and C are related to A and the natural objects of A's affection. It is

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represented that under the law of State X a parent is not under a legal obligation to provide a college education.

A cash refund only will be made if (1) B dies, (2) B is denied admission to a State X public educational institution, (3) B certifies that he or she has reached the age of 18 and will not attend a college or university, or (4) the tuition prepayment program administered by Trust is determined to be actuarially unsound. Refunds generally will be paid in four equal, annual installments. No refund will be provided if a beneficiary has completed more than one half the credit hours required by a State X educational institution for a bachelor's degree.

Trust is operated autonomously by a board of directors, and the board's decisions, including those involving investment discretion, may not be overridden by any state agency. The board consists of the Treasurer of State X and eight other persons appointed by the Governor of State X and approved by its legislature. The State X enabling legislation provides that funds collected by Trust are not subject to the claims of the creditors of State X and are not considered the money or common cash of State X. State X may not loan, transfer, or use Trust's funds for any purpose. Trust's funds may only be used for the tuition payment or refund purposes expressly provided in the enabling legislation. Income earned and property held by Trust are exempt from taxation under the laws of State X.

Plan 2

The facts are the same as in Plan 1, except that the plan provides for a cash refund that may be substantially in excess of A's up-front payment. The amount of the excess will be determined by an index tied to the increase in tuition costs of various State X institutions of higher education. The beneficiary may also attend an out-of-state educational institution for which State X will make a payment based on the same index as the refund computation.

ISSUES

- (1) Is the excess of the fair market value of the educational services (or the cash refund) when received under the contract over the payment for the contract includable in the gross income of the beneficiary, B (or the refund designee, C), under section 61 of the Internal Revenue Code?
- (2) Is the income of Trust, earned during the administration of the program, excludable from gross income as income earned by an integral part of State X or as income derived from the exercise of an essential governmental function that accrues to a state under section 115 of the Code?

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(3) Has A made a completed gift of the up-front payment for federal gift tax purposes at the time the tuition contract is purchased? If the purchase of the contract results in a completed gift, is the transfer excluded from the application of the gift tax under section 2503(e)(2)(A) of the Code as an amount paid as tuition to a qualifying educational organization? If the purchase results in a completed gift and is not excluded from gift tax liability under section 2503(e)(2)(A), does the transfer nevertheless qualify as a gift of a present interest in property eligible for the \$10,000 annual exclusion provided in section 2503(b)?

LAW, RATIONALE AND CONCLUSIONS (Plan 1 and Plan 2)

ISSUE 1

Section 61 of the Code provides that gross income means all income from whatever source derived. Section 1.61-1 of the Income Tax Regulations, in part, provides that gross income includes income realized in any form, whether in money, property, or services. Gross income can be realized in the form of the receipt of educational services. See Fulton v. Commissioner, T.C.M. 1983-17.

Gross income is defined to encompass all "accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 431 (1955), 1955-1 C.F. 207, 209. Property rights will not become gross income subject to taxation until a gain is clearly realized. Eisner v. Macomber, 332 U.S. 189 (1920), 3 C.B. 25.

Section 102 of the Code provides that gross income does not include the value of property acquired by gift. A transfer of property is excludable from income by the recipient as a gift if the property is transferred out of a detached and disinterested generosity. Commissioner v. Eubenstein, 363 U.S. 278 (1960), 1960-2 C.B. 428.

When A executes the contract with Trust and designates B and C, both B and C realize an accession to wealth. Because the contract rights (property) are transferred out of a detached and disinterested generosity, however, the transfer constitutes a gift for income tax purposes and is thus excludable from B's and C's gross income. See section 102 and Eubenstein. Neither A nor B nor C will be considered actual or constructively to be in receipt of income at the time the contract is entered into between A and the Trust.

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Although the receipt of property by B and C is excludable from their gross income under section 102, that section has no application to income (including gain) realized from such property subsequent to its receipt. See section 1.102-1(a) of the regulations. Thus, to the extent that the fair market value of the educational services received by B, or any cash refund received by C, under the contract exceeds B's or C's basis in the property received by gift from A, either B or C will realize a further accession to wealth and thus gross income. Neither A nor B nor C, however, will be considered actually or constructively to be in receipt of income at any time between the date on which the contract is purchased by A and the date on which either B receives educational services or C receives a cash refund. A will not be considered actually or constructively to be in receipt of income when either B receives educational services or C receives a cash refund. Accordingly, A will not realize income as a result of his or her involvement in the program as the purchaser of a contract. (If A designates himself or herself as the beneficiary of the educational services or the cash refund, then the income tax consequences to A will be the same as the consequences to B or C).

To determine the amount of gross income realized by either B or C, the basis in the property must be determined.

Section 1012 of the Code provides that generally the basis of property shall be the cost of such property.

Section 1015(a) of the Code provides that generally the basis of property acquired by gift is the same as it would be in the hands of the donor (a substituted basis).

B's basis in the property is the substituted basis of A, which is A's cost of (payment for) that contract. Because the State X tuition prepayment program is generally designed to provide for educational services over a four-year period, B's basis must be recovered annually over the four-year period during which B receives educational services. See section 1.61-5 of the regulations. Thus, when Trust provides educational services for B at the beginning of a school year, B must recognize income to the extent that the fair market value of the educational services to be received for that school year exceeds one quarter of B's basis.

If a refund is received by C, C will realize gross income to the extent that the amount refunded exceeds the allocable portion of C's basis. C's basis in the property is the substituted basis of A. Thus, assuming a one-year tuition installment is refunded to C, then one quarter of C's substituted basis is subtracted from such refund to determine the amount of the refund includible in C's gross income.

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ISSUE 2

Income earned by an integral part of a state or a political subdivision of a state is generally not taxable in the absence of specific statutory authority for taxing such income. See Rev. Rul. 87-2, 1987-2 I.R.B. 4, holding that a trust account fund created, supervised, and controlled by a state Supreme Court is an integral part of a state and is therefore not subject to federal income tax.

Trust was created as a corporation to operate independently from State X under an appointed board of directors. Decisions by Trust's board of directors, including those involving investment discretion, may not be overridden by any state agency. Trust's funds are not derived from State X or one of its political subdivisions, and by statute are not subject to the claims of State X creditors and are not considered state money or common cash of the state. State X may not loan, transfer, or use Trust's funds for any purpose. Trust's funds may only be used by Trust for the tuition payment or refund purposes expressly provided in the enabling legislation. These factors indicate that Trust is not an integral part of State X or one of its political subdivisions. Therefore, Trust's income, unless otherwise excluded by statute, is subject to federal income tax.

Section 115(1) of the Code provides, in part, that gross income does not include income derived from the exercise of any essential governmental function that accrues to a state or any political subdivision of a state.

To qualify under section 115, it must be established that the income does not serve private interests such as designated individuals, shareholders of organizations, or persons controlled, directly or indirectly by such private interests. Thus, even if the income serves a public interest, the requirements of section 115 are not satisfied if the income also serves a private interest that is not incidental to the public interest. The basic principle underlying section 115 is that property (including any income thereon) must be devoted to purposes which are considered beneficial to the community in general, rather than particular individuals.

Trust provides B with a direct economic benefit in the form of education the value of which is expected to be substantially in excess of the up-front payment. Moreover, this benefit is available only to those persons such as B who are beneficiaries of a contract. Thus, the requirements of section 115 are not satisfied and the income of Trust, earned during administration of

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the program, is not excludable from its gross income. However, payments made under the contract entered into between A and Trust, and any contributions that State Z might make to Trust, are excludable from the gross income of Trust.

ISSUE 3

Section 2501(a)(1) of the Code imposes a tax on the transfer of property by gift.

Section 2511(a) of the Code provides that the federal gift tax shall apply whether a transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-1(b)(3) of the Gift Tax Regulations provides the following example regarding the indirect transfer of property.

The payment of money or the transfer of property to [X] in consideration of [X's] promise to render a service to [Y] is a gift to [Y], or to both [X] and [Y], depending on whether the service to be rendered to [Y] is or is not an adequate and full consideration in money or money's worth for that which is received by [X].

Section 25.2511-2(b) of the regulations provides that a gift becomes complete, and thus subject to the gift tax, at such time as the donor has so parted with dominion and control as to leave the donor no power to change the disposition of the transfer.

A transfers money to Trust in consideration for Trust's promise to provide, at some future time, educational services on behalf of B or a cash refund to C. Because the designations of B and C are irrevocable, A parts with dominion and control over the money transferred to Trust. Thus, there is a completed gift for federal gift tax purposes at the time the contract is purchased. See section 25.2511-2(b) of the regulations.

Section 2503(e)(2)(A) of the Code excludes from the application of the gift tax any amounts paid on behalf of an individual as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual. An educational organization described in section 170(b)(1)(A)(ii) is an organization which normally maintains a regular faculty and curriculum and normally has a regular enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Section 25.2503-6(b)(2) of the regulations.

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Section 25.2503-6(c) of the regulations further provides that to qualify for the gift tax exclusion under section 2503(e)(2)(A), the payment must be made directly to an educational organization. The determination of whether a transfer constitutes a payment of tuition made directly to an educational organization is made when the gift became complete for gift tax purposes.

Section 25.2503-6(c) Example 3, of the regulations considers a situation where a donor makes a completed gift of property to a trust, the terms of which require the funds to be used for tuition expenses incurred by the donor's grandchildren. The example concludes that the completed gift is not a direct transfer to an educational organization and therefore does not qualify for the section 2503(e)(2)(A) exclusion.

Although the payment made by A to Trust is a completed gift, Trust is not an educational organization within the meaning of section 2503(e)(2)(A) of the Code. Thus, the payment by A to Trust is not excluded from the application of the gift tax under section 2503(e)(2)(A).

Section 2503(b) of the Code excludes from the application of the gift tax the first \$10,000 of gifts of present interests in property made to any person during the calendar year. An interest constitutes a present interest in the transferred property only if the beneficiary is entitled to an unrestricted right to the immediate use, possession, or enjoyment of the property under the terms of the transfer. See section 25.2503-3(b) of the regulations.

A's or C's use or enjoyment of the payment made to Trust by A will be delayed until such time as Trust provides educational services for B, or until such time as a refund is made to C. Therefore, A's payment does not constitute a gift of a present interest in property and is not eligible for the \$10,000 annual exclusion under section 2503(b) of the Code.

The above conclusions are based solely on the facts and the representation set forth above. Also, except as specifically ruled upon above, no opinion is expressed regarding the federal tax consequences of the transaction described above under any other provisions of the Code.

Robert A. Bowman

In accordance with the power of attorney on file in this office, we are sending a copy of this ruling to your authorized representative.

Sincerely,

Mario E. Lombardo

Mario E. Lombardo
Director, Individual Tax Division



Alaska State Legislature

Senator Mike Szymanski

While in Session:
PO. Box V
Juneau, Alaska 99811
(907) 465-4978

Interim:
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617
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165 E. Parks Highway
Wasilla, Alaska 99687
(907) 376-6453

REC'D MAR 1 1990

February 26, 1990

JIM

TO: Representative Johnny Ellis
Chairman, House HESS Committee

FROM: *Mike Szymanski*
Senator Mike Szymanski

SUBJECT: Senate Bill 136, Education Trust Fund

When Senate Bill 136 is heard in the House HESS Committee, I would like to offer the attached amendment for inclusion. The purpose of this amendment is to protect the fund from bankruptcy proceedings except for child support claims.

Thank you for your consideration of this request.

MS:pt
cc: Senator Kerttula
enclosure

Senate District E

Mat-Su Borough • Sitka • Anchorage • Bethel/Indian • Cordova • Nikiski • Cooper Landing • Hope • Seward • Prince William Sound

A M E N D M E N T

Sen. Szymanski

OFFERED IN THE HOUSE

TO: CSSB 136 (2d Rules)

Page 5, after line 25:

Insert new bill sections to read:

"* Sec. 2. AS 09.38.015 is amended by adding a new subsection to read:

(e) Contributions to the Alaska education trust fund under the terms of an advance tuition payment contract are exempt, except for child support claims.

* Sec. 3. AS 09.38.055 is amended to read:

Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a proceeding under 11 U.S.C. (Bankruptcy) only the exemptions under 09.38.010, 09.38.015(a) and (e), 09.38.017, 09.38.020, 09.38.025 and 09.38.030 apply.

* Sec. 4. AS 09.38.065(a) is amended to read: -

(a) Except as provided under AS 09.38.015(e), notwithstanding [NOTWITHSTANDING] other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(C) state or local taxes; and

(2) a creditor may make a levy against exempt property to

enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property."

Renumber the following bill sections accordingly.

Original sponsor(s): SEN. KERTTULA, Kelly, Sturgulewski, Eliason, Faiks, Rodey, Binkley, Duncan, Frank, Fischer, Jones, Pearce, Coghill, Zharoff, Szymanski

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 136 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska education trust fund
7 and authorizing advance tuition payment contracts."

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

9 * Section 1. AS 14.40 is amended by adding new sections to read:

10 ARTICLE 6. ALASKA EDUCATION TRUST FUND.

11 Sec. 14.40.803. ALASKA EDUCATION TRUST FUND ESTABLISHED. (a)

12 The Alaska education trust fund is established as an endowment trust
13 fund separate from the general fund. The fund may be divided into
14 separate accounts for accounting purposes.

15 (b) The fund consists of

16 (1) permanent fund dividend and cash contributions made
17 under AS 14.40.807 under the terms of an advance tuition payment
18 contract;

19 (2) gifts, bequests, and contributions of cash or other
20 assets from a person; and

21 (3) income and earnings of the fund.

22 (c) Assets of the fund shall be expended in the following order
23 of priority:

24 (1) to make payments to the university on behalf of quali-
25 fied beneficiaries;

26 (2) to make refunds upon termination of an advance tuition
27 payment contract;

28 (3) to pay the costs of administration of the fund.

29 Sec. 14.40.805. POWERS AND DUTIES OF THE COMMISSIONER OF

1 REVENUE. The commissioner of revenue is the trustee of the fund and
2 has the following powers and duties under this section:

3 (1) to act as official trustee of the cash and investments
4 belonging to the fund and to secure adequate and safe custodial facil-
5 ities;

6 (2) to receive all items of cash and investments belonging
7 to the fund;

8 (3) to collect the principal and income from investments
9 acquired by the trustee and deposit the amounts in separate principal
10 and income accounts for the fund;

11 (4) to invest and reinvest the assets of the fund as pro-
12 vided in this section and as provided for the investment of retirement
13 funds under AS 14.25.180;

14 (5) to exercise the powers of a trustee with respect to the
15 assets of the fund;

16 (6) to do all acts, whether or not expressly authorized,
17 that the commissioner of revenue considers necessary or proper in
18 administering, as a trustee, the assets of the fund;

19 (7) to maintain accounting records of the fund in accor-
20 dance with investment accounting principles and with distinction
21 between the principal and income accounts of the fund;

22 (8) to engage an independent firm of certified public
23 accountants to annually audit the financial condition of the fund's
24 investments and investment transactions;

25 (9) to enter into and enforce contracts or agreements
26 considered necessary for the investment purposes of the fund;

27 (10) to report to the university the condition and invest-
28 ment performance of the fund.

29 Sec. 14.40.807. CONTRIBUTION TO THE ALASKA EDUCATION TRUST FUND.

1 (a) Contributions to the fund under the terms of an advance payment
2 contract may be made by direct cash payments or by contributions from
3 the permanent fund dividend. The Department of Revenue shall

4 (1) prepare the permanent fund dividend application to
5 allow an applicant, or a parent, legal guardian, or other authorized
6 representative of an applicant who is an unemancipated minor to con-
7 tribute 50 percent of a dividend to the fund under the terms of an
8 advance tuition payment contract; and

9 (2) include with each application for a permanent fund
10 dividend an explanation of the trust fund, including the right of a
11 purchaser to receive a refund upon termination of an advance tuition
12 payment contract, and a statement that the tax liability of the fund
13 has not yet been determined; after the Internal Revenue Service deter-
14 mines the tax liability of the fund, a copy of the tax determination
15 shall be included with each application for a permanent fund dividend.

16 (b) The Department of Revenue shall pay contributions directly
17 to the fund.

18 Sec. 14.40.809. POWERS AND DUTIES OF THE UNIVERSITY OF ALASKA.

19 (a) The Board of Regents of the University of Alaska may contract
20 with a purchaser for the advance payment of tuition by the purchaser
21 for a qualified beneficiary of any age to attend a branch of the
22 university to which the qualified beneficiary is admitted, without
23 further tuition cost to the qualified beneficiary. A purchaser and a
24 qualified beneficiary may be the same person.

25 (b) The board shall

26 (1) make appropriate arrangements as necessary to fulfill
27 the board's obligations under an advance tuition payment contract;

28 (2) establish standard payment plans to be used under
29 advance tuition payment contracts;

1 (3) establish the circumstances under which an advance
2 tuition payment contract may be terminated and the amount of the
3 refund the person entitled to terminate the contract may receive.

4 Sec. 14.40.811. ADVANCE TUITION PAYMENT CONTRACTS. (a) An
5 advance tuition payment contract must include

6 (1) the amount of payments required from the purchaser on
7 behalf of the qualified beneficiary;

8 (2) the terms and conditions for making the payments;

9 (3) provisions for late payment charges and for default;

10 (4) the name and age of the qualified beneficiary under the
11 contract and a statement that the purchaser, with the approval of the
12 board, may substitute another person for the qualified beneficiary
13 originally named in the contract;

14 (5) the number of credit hours to be provided to the quali-
15 fied beneficiary under the contract;

16 (6) the name of the persons entitled to terminate the
17 contract, the terms and conditions under which the contract may be
18 terminated, and the amount of the refund to which the person terminat-
19 ing the contract is entitled;

20 (7) the assumption of a contractual obligation by the board
21 to provide for credit hours of higher education at the university;

22 (8) the number of credit hours the qualified beneficiary
23 may receive if the qualified beneficiary is not entitled to in-state
24 tuition at the time of enrollment at the university;

25 (9) the period of time during which the qualified benefi-
26 ciary may receive the benefits of the contract; and

27 (10) other terms and conditions the board determines to be
28 appropriate.

29 (b) An advance tuition payment contract may be terminated

1 (1) if the qualified beneficiary dies or becomes so dis-
2 abled that the beneficiary cannot complete an education;

3 (2) if the qualified beneficiary is not admitted to a
4 branch of the university after making a proper application;

5 (3) if the qualified beneficiary certifies to the board,
6 after the contracted date of entrance to the university or after the
7 qualified beneficiary has received a high school diploma or reached
8 the age of majority, that the qualified beneficiary has decided not to
9 attend the university;

10 (4) if the board determines that the number of purchasers
11 is insufficient to maintain the fund on an actuarially sound basis; or

12 (5) under other circumstances determined by the board and
13 set out in the advance tuition payment contract.

14 Sec. 14.40.817. DEFINITIONS. In AS 14.40.803 - 14.40.817,

15 (1) "advance tuition payment contract" means a contract
16 entered into by the board and a purchaser to provide for the higher
17 education of a qualified beneficiary;

18 (2) "board" means the Board of Regents of the university;

19 (3) "fund" means the Alaska education trust fund estab-
20 lished under AS 14.40.803;

21 (4) "purchaser" means a person who makes or is obligated to
22 make advance tuition payments under an advance tuition payment con-
23 tract;

24 (5) "qualified beneficiary" means a resident who has rights
25 under an advance tuition payment contract;

26 (6) "university" means the University of Alaska, including
27 a community college affiliated with the university.
28
29

SB

1588

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See also SHESS Committee file on SB169 (1987).

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 3, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/18/89

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: SB 138am

SENATE BILL NO. 138 am [TRAINING OF FOSTER PARENTS]
"An Act relating to the training of foster parents."

RECOMMENDATIONS:

- be replaced with CSSB 138 (HESS) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) 2/7/89 DHSS
- zero fn/analysis _____

SIGNING DO PASS:

Peter Dan

Maureen

Cheri Dalis

Sence

BALEN

J. Ellis

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend

J. Ellis

 Chairman's signature

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269



State Senate

While in Juneau
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M E M O R A N D U M

MARCH 3, 1989

TO: Representative Jonny Ellis, Chairman
House Health, Education and Social Services Committee

From: Senator Paul Fischer *PF.*

Re: Foster Care Week

Thank you for scheduling SB 138 in such a timely manner before your committee. I am glad to see that this bill fits in with your foster care week in your committee. I think we all recognize the value of foster parent training as an important step towards reducing foster parent burnout. By helping to provide a stable environment for foster care recipients, we improve the quality of life for people receiving foster care. Foster care is the most cost effective and practical care available for displaced children. The only other alternative is some type of institutional care which does not provide the same nurturing of a home environment.

Again, thank you for your prompt action on this bill, and I hope that your committee will consider it for passage.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An act relating to the
 training of foster parents."
 Sponsor: Senator Fischer
 Requestor: _____

Agency Affected: Health and Social Services
 BRU: _____
 Components: _____

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

GENERAL FUND			-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
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)

Please see attached sheet.

Prepared by: Yvonne Chase Yvonne Chase, Director
 Division: Family and Youth Services Phone: 465-3170
 Date: 3/7/89
 Approved by Commissioner: Myra M. Munson, Commissioner
 Agency: Department of Health and Social Services Date: 3/8/89

Distribution (by preparer):

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

SB 138 am

The Department of Health and Social Services has sufficient funds in its FY 90 budget to fulfill the training mandate contained in SB 138 am. Should future funds be reduced, the mandate contained in SB 138 am would require the Department to shift funds from other services to meet this obligation.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to the training
of foster parents."
Sponsor: Senator Fischer
Requestor: _____

Agency Affected: Health and Social Services
BRU: _____
Components: _____

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	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: _____
Division: _____

Phone: 465-3170
Date: 1/27/89

Approved by Commissioner: Nickie M. Hanson
Agency: DEPT. OF HEALTH AND SOCIAL SERVICES

Date: 1/29/89

Distribution (by preparer):

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

POSITION PAPER

SENATE BILL NO. 138 am

For an Act entitled: "An Act relating to the training of foster parents."

The Division of Family and Youth Services (DFYS), within the Department of Health and Social Services, has primary responsibility for foster placements. On June 30, 1988, there were 1,056 children in foster care and 895 state licensed foster homes.

The Division believes that foster parent training is essential. Placement in out-of-home care is, unfortunately, a reality for many of Alaska's children, and if they are to receive not only the food, shelter and nurturance that they need, but an environment which will assist them in meeting their own special needs, training for foster parents is not only important, but essential.

The goal of foster parent training is to increase knowledge, and enhance skills of foster parents to work with children who usually enter foster care with a number of emotional and behavioral disturbances. These children often require specialized skills, and foster parents, as significant participants in the child welfare service delivery system, are better equipped to participate as an active member of the service team when appropriately trained. In addition, studies in other states have shown that foster parent retention is significantly lengthened when foster parents receive appropriate training.

In October 1988, the Division of Family and Youth Services awarded a contract to Northwest Resource Associates to establish the Alaska Foster Parent Training Center in its Fairbanks office and provide training services. During the first nine months of operation, the Center will provide training to at least half of the foster parents licensed by the State. The Training Center will:

- * Provide statewide training on "Issues in Foster Parenting" and "Discipline";
- * Develop seven new courses: "The Impact of Physical Abuse;" "The Impact of Sexual Abuse;" "Child Development Specific to Foster Parenting;" "Preparing Youth for Emancipation;" "and a self-instructional oriented course". Two additional courses will be selected for development within the next two months;
- * Research and catalogue alternative training resources which foster parents may wish to access; implement a data system to record information regarding the training that each foster parent completes;
- * Build a circulating library of books, articles, videos and periodicals specifically for foster parents;
- * Establish a toll-free phone number for foster parents to use to reach the center to learn of training opportunities and resource materials (the number is 1-800-478-7307);

Position Paper
Senate Bill No. 138 am
Page 2

- * Publish a bimonthly Foster Parent Training Bulletin, to announce training events and new resources, which will be included in the Division's newsletter and distributed to foster parents, child residential care providers, DFYS staff, grantees, and other human service agencies;
- * Thoroughly evaluate all Center training and activities. An internal evaluation is a requirement of every contractor.

The Department recommends one exception to the orientation requirement of section 1, lines 11-16, be added to the bill. The recommended change could be placed under subsection (a) page 1, line 9 and would read (a) Except for an initial emergency foster care license which shall not exceed 120 days, [A] a. There are situations where the Department has taken custody of a child and no foster home is available, particularly in village areas. In order to place that child in a home immediately, sometimes in the home of a relative of the child, the Department needs to issue an emergency license with no opportunity to fully orient the foster parents.

Under the Department's proposed new foster care regulations, a foster home can only be an emergency foster home once, and 120 days is the maximum period of time a home can maintain an emergency foster home license. As a result, there should be no danger of abusing this exception.

The present language in Senate Bill No. 138 am, as written, forces the child to move from an emergency placement (possibly with a relative) as soon as a trained licensee home is available, regardless of the best interest of the child. The amended bill would hinder the Department's utilization of the most desirable foster care placements in emergency situations, including the homes of relatives of the child, others in the child's community (or tribe, in the case of Native children) who are willing to care for a specific child but have not previously contemplated being foster parents. A recent analysis of DFYS case files in Southeast has shown that where children were placed with relatives as the first out-of-home placement, they had fewer subsequent placements. In addition, there are established preferences for these or similar types of placements in both Alaska and federal law (AS 47.10.230 and the Indian Child Welfare Act, respectively). The amended Senate Bill also would have a greater effect on Alaska Native children and would hinder the State's efforts to comply with the provisions of the Indian Child Welfare Act.

Department Position

The Department supports mandatory training for foster care providers. Training is an important means of improving the quality of care provided to children in state custody and retaining qualified foster parents, and the Department has committed substantial funds to foster parent training. The Department has drafted regulations which establish training requirements similar to but more specific than those contained in SB 138 am. While current law provides sufficient statutory authority to accomplish the

Position Paper
Senate Bill No. 138 am
Page 3

objectives of SB 138 am, the Department does not oppose the bill if the recommended amendment is accepted. However, without adequate language providing for exceptions to the orientation requirements contained in the bill, our efforts to place children in the best setting possible would be severely hampered, and the Department would find itself out of compliance with the Indian Child Welfare Act and other federal legislation.

RECOMMENDED: *Yvonne M. Chase*
Yvonne M. Chase, Director
Division of Family
and Youth Services

DATE: 3/7/89

APPROVED: *Myra M. Munson*
Myra M. Munson, Commissioner
Department of Health
and Social Services

DATE: 3/8/89

POSITION PAPER

SENATE BILL NO. 138

For an Act entitled: "An Act relating to the training of foster parents."

The Division of Family and Youth Services (DFYS), within the Department of Health and Social Services, has primary responsibility for foster placements. On June 30, 1988, there were 1,056 children in foster care and 895 state licensed foster homes.

The Division believes that foster parent training is essential. Placement in out-of-home care is, unfortunately, a reality for many of Alaska's children, and if they are to receive not only the food, shelter and nurturance that they need, but an environment which will assist them in meeting their own special needs, training for foster parents is not only important, but essential.

The goal of foster parent training is to increase knowledge, and enhance skills of foster parents to work with children who usually enter foster care with a number of emotional and behavioral disturbances. These children often require specialized skills and foster parents, as significant participants in the child welfare service delivery system, are better equipped to participate as an active member of the service team when appropriately trained. In addition, studies in other states have shown that foster parent retention is significantly lengthened when foster parents receive appropriate training.

In October, the Division of Family and Youth Services awarded a contract to Northwest Resource Associates to establish the Alaska Foster Parent Training Center in its Fairbanks office and provide training services. During the first nine months of operation, the center will provide training to at least half of the foster parents licensed by the State. In addition the Training Center will provide the following:

- A confidential opinion survey of all foster parents which will compile information on foster parents' attitudes about foster parenting and training, as well as the kinds of training in which foster parents are most interested.
- Statewide training on, "Issues in Foster Parenting" and "Discipline."
- The development of seven new courses: "The Impact of Physical Abuse;" "The Impact of Sexual Abuse;" "Child Development Specific to Foster Parenting;" "Preparing Youth for Emancipation;" "and a self-instructional orientation course". Two additional courses will be selected for development within the next two months.
- Researching and cataloging alternative training resources for foster parents, and implementing a data system to record information about training that each foster parent takes.
- Establishment of a circulating library of books, articles, videos and periodicals specifically for foster parents.

- * Establishment of a toll-free phone number for foster parents to use to reach the center to learn of training opportunities and resource materials. The number is 1-800-478-7307.
- * Publishing of a bimonthly Foster Parent Training Bulletin, to announce training events and new resources, which will be included in the Division's newsletter and distributed to foster parents, child residential care providers, DFYS staff, grantees, and other human service agencies. (e.g. domestic violence programs)
- * Thorough evaluation of all Center training and activities.

The Department suggests that one exception to the orientation requirement of section 1, lines 11-16, be added to the bill. The suggested change could be placed under subsection (a) page 1, line 9 and would read (a) Except for an initial emergency foster care license which shall not exceed 120 days, [A] a. There are situations where the Department has taken custody of a child and no foster home is available, particularly in village areas. In order to place that child in a home immediately, sometimes in the home of a relative of the child, the Department needs to issue an emergency license with no opportunity to fully orient the foster parents. Under the proposed new foster care regulations, a foster home can only be an emergency foster home once, and 120 days is the maximum period of time a home can maintain an emergency foster home license. As a result, there should be no danger of abusing this exception.

The Department is supportive of required training of all foster parents. However, the Department believes that its regulations requiring foster parent training are sufficient to insure that mandatory training occurs. The Department does not disagree with the intent of the legislation but believes that it may not be necessary. The Division of Family and Youth Services has developed foster care regulations which require that foster parents receive annual training. These regulations will be available for public comment on February 1st. Through the regulations, levels of training for different types of care and for different geographical areas of the State will be established.

RECOMMENDED:

Juvonne M. Chase
 Juvonne M. Chase, Director
 Division of Family
 and Youth Services

DATE:

1/27/89

APPROVED:

Myra M. Munson
 Myra M. Munson, Commissioner
 Department of Health
 and Social Services

DATE:

1/29/89



Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



POSITION PAPER SB138 FOSTER PARENT TRAINING

Alaska Foster Parent Association is in strong support of SB138 as passed by the Senate. To provide quality foster care services to Alaskan youth, we must have trained and experienced foster parents. They must be aware of all facets of fostering including working with natural parents, confidentiality, behavior management, agency policy and procedure, treatment issues, and additional special topics that relate specifically to the types of children/youth they foster.

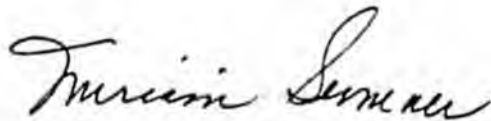
The orientation component of SB138 is vital to insure that those recruited for foster parenting are knowledgeable about the expectations, joys, problems, and realities of fostering BEFORE they have contact with children in need of care. This component alone will insure quality care, retention of foster homes recruited, and less moves of children between placements.

The ongoing training component should build on skills possessed by foster parents to allow them to reach their maximum potential in providing care and treatment for foster children/youth.

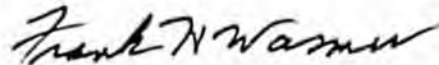
We suggest the addition of language specifying hours of annual training required to maintain a licensed foster home (possibly 15 hours). Foster parents are diverse not only in their personal and professional experience and training before becoming foster parents, but in the types and ages of children they serve. As annual, generic or specific training cannot meet these diverse needs and levels required, we also feel a priority is keeping training community-based and utilizing services already provided rather than duplication. By setting required numbers of hours, foster parents can access community training opportunities that relate to their needs, skill levels, expertise, and interest.

Based on our experience as foster parent trainers and training coordinators for 10 years, and the experience of foster parent trainers nationally, we highly recommend the inclusion of foster parents as foster parent trainers whenever possible, and at a minimum, foster parents utilized as co-trainers. We also recommend the inclusion of training by local experts in fields related to foster care in regular and consistent workshops or training opportunities to enhance the knowledge and skills of foster parents, as well as keep them abreast of new knowledge and practises that may not be included in specific curriculums.

There should be a clarification of what training is approved or disapproved by the department. We would suggest that a person in each field office be designated as approving official of training resources in their locale. This would provide a real time response to local foster parents and foster parent associations who would like to use community based organizations and persons who can contribute their expertise as guest speakers or training facilitators. Broad parameters should be furnished these officials by the department to meet the diverse needs of foster parents and foster children.



Miriam Sumner
President



Frank H. Wasmer
Vice President

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 2, 1989

SUBJECT: State's Civil Liability under SB 138
TO: Senator Paul Fischer
FROM: Terri Lauterbach *TML*
Legislative Counsel

You have asked whether the provisions of SB 138, a bill relating to the training of foster parents, expands the state's potential civil liability in the area of foster care. You ask, in particular, whether putting into statute the training requirements that might already be in regulations affects the state's potential liability.

The state's potential civil liability is not affected by whether foster parent training requirements are in statutes or in regulations. The nonwaiver aspect of SB 138 might affect the type of proof offered by a plaintiff against the state in a damages action but would not alter the state's existing responsibility to be nonnegligent when licensing foster parents.

AS 47.35 gives very broad authority to the Department of Health and Social Services to adopt regulations that set licensing requirements for foster parents. If SB 138 merely put into statute a regulation of the department requiring orientation and training, the legal effect of enacting SB 138 with respect to potential state liability for negligence in relation to the training would be insignificant. Regulations properly adopted under statutory authority have the force of law. Enactment of a statute with the same content does not change the legal force of a regulatory requirement in this context.

However, SB 138 does not merely put into statute an existing regulation. AS 47.35.035(c), as enacted in sec. 1 of the bill and as amended on the floor March 1, 1989, makes the training requirement of SB 138 nonwaivable by the department except in emergency situations. If there are existing

Senator Paul Fischer
Page 2
March 2, 1989

training requirements in regulations, they are waivable under AS 47.35.040(c), amended in sec. 2 of the bill. So, SB 138 would differ from the regulations in this respect.

However, this difference does not significantly affect the state's potential liability related to improper licensing of foster parents. Waiver of training under current law is proper only if the department finds that an "acceptable alternative is established . . . that reasonably assures the well-being of persons in care." AS 47.35.040(c).

It might, as a practical matter, be easier for a plaintiff to prove that a foster parent was not trained as required by SB 138 than it would be to show that the department chose an unacceptable alternative under current law. However, in either case, the plaintiff would have to show also that the lack of training or choice of alternative was the cause of the harm for which the state should be liable.

In essence, with or without a training requirement, and whether or not that requirement is waivable, the state is required to exercise due care in its licensure of foster parents. SB 138 does not alter that duty. Therefore, I see no significant adverse effect of SB 138 on the potential civil liability of the state. With or without SB 138, the state's judgement in licensing a particular person would be at issue.

SB 138 might in fact, have a beneficial effect from the state's perspective. Just as a plaintiff would be free to show in some cases that there might be state negligence if an untrained foster parent was improperly licensed, the state would be free in other cases to show that there was lack of state negligence by proving that a particular foster parents had completed a training program.

I hope you find this discussion helpful. If I can be of further assistance, please let me know.

TL:gc
WKG7/079



Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



February 17, 1989

Senator Paul Fischer
Alaska State Legislature
Pouch V, MS 3500
Juneau, Alaska 99801

Senator Fischer,

The following information is provided to address issues raised during testimony on SB-138 in the senate finance committee, February 16, 1989.

Training of foster parents who specialize in adult placements:

These families have no association of their own, they rely on the Alaska Foster Parents Association. The training requirements meet their need and we would adopt any special needs they might generate into our programs. The adults fostered are often mentally disadvantaged and although their chronological age may place them in adult status, their mental and emotional age puts them in a more juvenile category.

Concerning the remarks of Senator Frank pertaining to making the training more responsive to the needs of foster parents:

I would welcome any language that would give foster parents the means to provide input into scheduling and content. As I stated before the committee, the foster parent community is quite diverse and the program must be flexible so that the training has value and accomplishes its goal. This could be accomplished at no additional cost to the state by utilizing the volunteer resources of AFPA.

You might consider amending section 1 as follows:

Change paragraph (c) to (d) and add paragraph (c)

(c) To assure that training programs meet the needs of foster parents, the department will rely on the advice of the governing body of the Alaska Foster Parent Association, a non profit organization.



Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



Another means to the same end might be intent language to the effect that the department will make maximum utilization of the resources of AFPA through grants to support the training process.

As I stated yesterday, AFPA could do a more effective job of training foster parents and do it at half the cost. Federal funds are available under title IV-E for training as well as additional resources for foster parent support and networking, which PL 96-272 mandates, which could further reduce the cost to the state.

We'll rely on your good judgement on how this might best be addressed, our main concerns are quality and effectiveness of training as well as expense. We are just as concerned with getting the most value from the states dollars as you.

Sincerely,

Frank H. Wasmer
Frank H. Wasmer
Vice President

Arrived 2/15/89 9:25 am



Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



February 15, 1989

Senate Finance Committee
Alaska State Legislature
Juneau, Alaska 99801

Subject: SB-138, Training of Foster Parents

The Alaska Foster Parent Association supports, as it has for several years, mandatory training for foster parents. The benefits of training are well known. High quality training results in superior knowledge, which in return generates superior performance. If you want a task completed properly, you must assure that the people who are to perform that task have the level of training required to accomplish the responsibilities you assign to them.

Foster parents are given a difficult task, and for them to perform adequately, they must have training to equip them to meet a variety of challenges. The children that they receive into their families are not coming from loving and nurturing backgrounds. They have been neglected, abused and mistreated in ways that often affect them for the remainder of their lives. They often have learning disabilities, behavioral problems and sometimes severe emotional impairment. Foster parents must be able to recognize indications of other than normal behavior so that they may bring them to the attention of their social worker and assist in delivery of services to address the child's need. While there may be professional counseling or other services on a recurrent basis, it is the foster parent who is there for that child twenty-four hours a day. They need to know what they can do to help that child overcome obstacles to growth and development.

The training needs of foster parents are varied. We have some foster parents who do not have a high school diploma, and others who have Phd's. Some have years of experience while others have been foster parents only a few days. Some have attended training here or in other states, while some have had no training at all. Foster parents have busy schedules and time to attend training may be difficult



Alaska Foster Parents Association

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to arrange during normal business hours. The best possible training would be community based and flexible enough to allow participation. It should be interesting, informative, and provided at various skill levels. To force an experienced foster parent to sit through 16 hours of basic parenting 101 is not only wasteful, but also frustrating in that the foster parent gives up personal time with expectations of learning something helpful to themselves and the children they foster.

We support SB-138 wholeheartedly and thank the sponsor, Senator Fischer, and all of you for your continued support of children in need.

Frank H. Wasmer
Frank H. Wasmer
Vice President

ALASKA STATE LEGISLATURE

Representative Eileen Panigo MacLean
P.O. Box 290
Barrow, Alaska 99723



Chairman
Community & Regional Affairs
Committee

Vice-Chairman
State Affairs Committee
Bush Caucus

Member Finance Subcommittee
Community & Regional Affairs
Education
Corrections

WHILE IN JUNEAU

Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

MEMORANDUM

District 22

Ambler
Anaktuvik Pass
Atkasuk
Barrow
Buckland
Deering
Kaktovik
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
North Slope
Borough
Northwest Arctic
Borough
Nulqsu
Point Hope
Point Lay
Selawic
Shungnak
Wainwright

TO: Representative Johnny Ellis, Chairman
House HESS Committee

FROM: Representative Eileen MacLean *epm*

DATE: March 7, 1989

SUBJ: SB 138 Relating to the training of foster
care parents

Attached please find copies of ³~~two~~ letters I
received from constituents in my district regarding
SB 138. Your consideration of their concerns would
be appreciated as you review the bill in committee.

For your information, I have also requested that
Kotzebue and Barrow be added to the sites scheduled
for teleconferencing to review foster care bills
this week.

Thank you for your assistance.

attachment



KOTZEBUE IRA



P.O. Box 296
Kotzebue, Alaska 99752
(907) 442 - 3467

TO: Representative Eileen P. MacLean
FROM: Emma Snyder, ICWA Coordinator/
Rights Protection Officer
SUBJECT: Foster Care Programs - SB 138
DATE: February 24, 1989

Emma Snyder

I would like to comment on SB 138, "an act relating to the training of foster parents".

I agree that foster parents should be required to have training in foster care regulations, procedures, etc., because so many out in the villages get criticized on how a foster child should be taken care of.

I tried talking to some of my relatives and friends out in the villages that I know would be a good foster home for children in need, but they are hesitant due to other members of the village criticizing them and watching them closely and making reports to the Department of Family & Youth Services (DFYS). I would be worth while if the foster parents can learn to handle situations like that and avoid accusations as much as possible.

Thank you for your support on children's issues.

cc: file
LIO

NORTH SLOPE BOROUGH

DEPT. OF HEALTH AND SOCIAL SERVICES

P.O. Box 69

Barrow, Alaska 99723

Matsunani Building
Phone: (907) 852-3999

FEB 22



*Please forward to
O.E. Roper's office ASAP
Lolks' gain for Eileen to answer, correct.*

TO : Dennis Roper, Government Affairs
THRU: Mayor George Ahmaogak
FROM: Cindy Young, N.S.B. Health Director
DATE: February 16, 1989
SUBJ: Foster Care Programs

C. Young
610. 1st St
22 Feb. 1989

I have reviewed Senate Bill No. 138 relating to the training of foster parents in Alaska and find that it raises some serious concerns in my mind - especially for the more remote locations in our state.

My reading of this bill leads me to believe that the orientation and training requirement cannot be waived for any reason (Sec. 47.35.035.(c)). It also makes clear that the training must be renewed every year. The only concession - or acknowledgement - of the remote areas of the state comes in paragraph (b) where it states that training need not be done in a class room setting.

This all leads me to have the following concerns about the impact of this bill on our ability to recruit and license foster homes in the bush areas.

1. Many of the homes available in our smaller villages - especially many of the native homes - are composed of older people who have a very limited comprehension of the written language. How would this training be provided to them? What good would written material sent to them be in actually teaching them about rules and regs, etc.? Many times the best foster home we can find is with the child's grandparents and they do not read or write English. But they could not afford to take the child without the financial assistance provided through foster care payments.

2. When it comes to the practical realities of parenting a foster child, will there be sensitivity to the native culture of the area and their traditional methods of child rearing or will a white middle class model be adopted? Again, we are often dealing with very traditional families in our smaller villages. Can we

really expect them to understand and abide by a strange set of rules that may or may not be any better than the traditional rules they have always lived by?

3. How will this affect emergency licensing procedures?

4. Who will develop the training materials? Will there be a statewide standard training program or will individual areas be allowed to make the training relevant to their needs.

5. We have been promised training on the North Slope for years and have yet to see routine training become a reality. I see no money appropriated on the budget page to make this training a reality. How will the state provide this training to all areas? Who will do the training? Will this be one more chore placed on the already overworked shoulders of Social Workers in bush areas?

6. What standard will be used to decide someone has "passed" the training and can be a foster parent? Who will apply the standard?

7. If the state cannot get to an area to provide the training, does that mean no one can be licensed till they can bring the training in? Will those already licensed see the license lapse through no fault of their own?

In summary, I have some very serious concerns about the implications of the Bill as currently written. While I strongly support the need for trained, competent foster parents, I also feel that a state as diverse as Alaska must admit that there are many ways those standards can be achieved and many factors to be taken into account in achieving them.

I hope this is of some use to you in working on this Bill. Please feel free to contact me if you have any further questions.

Maniilaq Association

March 2, 1989

P.O. Box 256
Kotzebue, Alaska 99752
(907) 442-3311

Representative Eileen P. MacLean
Alaska House of Representatives
Box V
Juneau, AK 99811

RE: Foster Home Legislation

Dear Representative MacLean:

Thanks for this opportunity to comment on SB 138 and other bills relating to foster care services. We certainly share your concern and feel that there are a number of improvements that can be made and a number of issues that need to be continually examined.

SB 138 Foster Home Training- In the event of an emergency placement, prior foster home training as required by SB 138 may not be feasible. Some provision for emergency licensing and deferral of some of the training is necessary. Currently, emergency placements receive an orientation to the rules and regulations of State custody; however, the complete training must come at a later time.

The expectation that a specific and comprehensive training program is without cost is not realistic to us. Often training sessions can be provided within the existing staff travel schedule, but some foster parents (for a variety of valid reasons) will not be available to that scheduled training session. If the training is mandatory, then some cost must be expected. For a modest training program for our region, presented by Maniilaq staff, we expect additional costs to be at least \$5,000. We would assume that considerable guidance would be available from the Department in developing the training program including training materials.

"An Act Relating To Programs and Proceedings Concerning Children
Our fundamental purpose in delivering Social Services is the strengthening and reunification of the family. We agree with the existing statutes that termination of parental rights is a last resort. We also feel that the failure of parents to participate in appropriate programs should be a consideration in the termination decision. However, we want to be sure that this is also treated as a "last resort" measure, and that every effort will be made to assist the parents to be successful in receiving these services. (For example, voluntary placement of dependent children in State custody while the parent(s) are attending a residential alcoholism program.)

Also in reference to this proposed bill, it is our experience and belief that services to children beyond the age of 19 is appropriate and necessary in many cases.

MEMBER VILLAGES

Ivissappaat, Nunatchiq, Ipnatchiq, Kotyask, Kivulliq, Lougruk, Qikiqtagrak, Nauaaq, Nuurvik, Akuligaq, Isinnuq
Ambler, Buckland, Deering, Kiana, Kvalina, Kohuk, Kotzebue, Noatak, Nonvik, Selawik, Shungnak

1
"An Act Establishing an Advisory Council on Foster Care" We support the establishment of this Council.

"An Act Relating to Civil Liability and Uninsured Property Loss" We support the proposed legislation and would like to add that the Department establish and distribute procedures to foster parents for making claims for such losses.

"An Act Relating to the Pre-Emancipation Services for Certain Minors" We agree with the intent of the amendments to existing statutes.

"An Act Relating to Citizen Review Boards" We have past experience in our region for such review boards. If properly established and supported, a local review board can work well. We recommend language which would allow city and village councils to act as such bodies when practical.

MSW Program We agree that the State needs an MSW program with a curriculum that will adequately address rural and Native needs and social issues.

Other Suggestions, Recommendations:

1. Rural Standards for Foster Care: We often encounter impractical or inappropriate requirements for foster home licensure in our villages. For example, the requirements for individual rooms for foster children, family size or specific types of housing. Although waivers may be available, some standards should be reviewed to determine their applicability in our villages. It seems wrong to overlook a standard because the particular family is in a "village" and "noone expects you to comply with all the standards". Often our position toward licensure leans toward a loving, caring environment for the child rather than a strict following of the standards. We would like to see some direction given to the Department to examine the applicability of these standards in our villages.

2. Allegations of Misconduct/Abuse by Foster Parents: In the event that we hear of a situation or have a suspicion of misconduct toward a child, that child would be moved from the foster home. Too often then the matter is dropped and not pursued to determine all the facts. A dilemma is presented when the "accused" family is scheduled for re-licensing. Instead of ignoring or "hushing" the situation, we would like to see a prompt and comprehensive investigation by the State to eliminate uncertainty. Perhaps this could be a task of the Citizen Review Boards.

3. Respite Care for Parents: A prevention service to intervene before State custody (or worse) is necessary. I cited an example earlier of how a voluntary placement could be beneficial, but many times parents need a "cooling off" period to avoid abuse and to re-establish a family perspective. During this period valuable counseling by friends, pastors, Elders, or professionals could be obtained to get the family

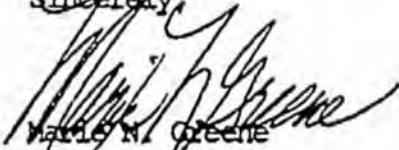
back on track. Some kind of program (even if only a demonstration) should be within the capability of the Department for FY90.

4. Emotional Abuse: Although included in the statutes, the guidelines and practical efforts toward protection from emotional abuse are insufficient. We see some cases of emotional abuse, but feel a great many more are unobserved and unprotected. Victims of emotional abuse often require long-term treatment. Special emphasis should be given toward developing guidelines for professional training to identify and serve victims of emotional abuse.

5. Foster Parent Participation in Case Conferences: We try to include natural parents in our casework, but foster parents often know the needs of the child better than anyone. We suggest changes in statutes or direction to the Department to include foster parents in case conferencing when feasible.

Again, thanks for the opportunity to comment of these important issues. If you have any questions please feel free to contact our staff who will give you their full cooperation. Taikuu!

Sincerely,


Marie M. Greene
President

cc: Senator Al Adams
Bruce Kovarik, Vice-President, Operations
Jackie Hill, Administrator, Social Services
Bea Mills, Social Services Program Manager

FOSTER/TXTBRUCE

Original sponsor: Fischer

1 IN THE SENATE

BY THE HEALTH, EDUCATION
AND SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 138 (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 relating to the training of foster parents."

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

8 * Section 1. AS 47.35 is amended by adding a new section to read:

9 Sec. 47.35.035. FOSTER PARENT TRAINING. (a) A person may not
10 be licensed under this chapter to maintain or conduct a foster home
11 unless the person has completed an orientation for foster parents
12 approved by the department. An orientation required under this sub-
13 section must provide information about foster care regulations, poli-
14 cies, and procedures; practical instruction about the realities of
15 caring for a child who is placed in a foster home; and other appro-
16 priate information.

17 (b) To maintain a license issued under this chapter for the
18 maintenance or conduct of a foster home, a licensee shall complete
19 annual foster parent training approved by the department. Training
20 under this subsection need not be conducted in a classroom setting,
21 but must include methods of instruction that meet the varying needs of
22 foster parents, the department and recognized foster parent asso-
23 ciations.

24 (c) The requirements for training under this section may not be
25 waived except that, in an emergency situation, the department may
26 place a child with an untrained person who has an emergency license.
27 The department shall by regulation establish the terms and conditions
28 under which an emergency license may be issued under this subsection
29 and the time period for which an emergency license is valid.

1 * Sec. 2. AS 47.35.040(c) is amended to read:

2 (c) Except as provided in AS 47.35.035, the [THE] department may
3 waive compliance with a standard set out in regulations adopted under
4 AS 47.35.010 - 47.35.080 if an acceptable alternative is established
5 that meets the purpose of the provision and reasonably assures the
6 well-being of persons in care.

7 * Sec. 3. Notwithstanding the provisions of AS 47.35.035, as enacted by
8 sec. 1 of this Act, and AS 47.35.040(c), as amended by sec. 2 of this Act,
9 a licensee shall be considered to have completed annual training if the
10 licensee completes the training during either fiscal year 1990 or fiscal
11 year 1991. The Department of Health and Social Services may schedule
12 training so that approximately one-half of licensees receive training
13 during each of the fiscal years 1990 and 1991.

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HOUSE COMMITTEE REPORT

(7)

Date Referred: April 18, 1989

FURTHER REFERRALS: LABOR & COMMERCE
FINANCE

Date of Committee Action: 4/26/89

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: SB 155

SENATE BILL NO. 155 [TRANSFER OF CERTAIN LIQUOR LICENSES]
"An Act relating to the transfer of certain alcoholic beverage licenses;
and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] a new title
[] have attached amendment(s)
[] do pass
[] do not pass
[X] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

- [] fiscal impact: _____ [] fiscal note(s) _____
[] zero fiscal note _____ [X] zero fiscal note(s) 2/3/89 Revenue
[] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Cheri Davis</i>		X	
<i>Leah Kolbe</i>		X	
<i>Mark Sawyer</i>		X	
<i>J. Ellis</i>		X	

J. Ellis
Chairman's Signature

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that makes changes in existing law to eliminate an inconsistency, and resultant confusion, regarding transfer of certain alcoholic beverage licenses.

AS 04.11.360(11) and AS 04.11.400(j) relate to "restaurant or eating place licenses," which are the licenses permitting restaurants to dispense beer or wine. These exception licenses are issued without regard to the population of a given locality if the Alcoholic Beverage Control (ABC) Board determines that new licenses are necessary for the public convenience.

Because restaurant or eating place licenses issued under AS 04.11.400(j) are not subject to population limitations, there is no "quota" that limits the number that may be issued in a given locality. Accordingly, the licenses do not have an inherent "market value"; and as many restaurant or eating place licenses may be issued in a locality as the board finds are necessary for the public convenience. There is, therefore, no recognizable interest of a licensee in being able to market a license in conjunction with the sale of a restaurant or eating place. A person purchasing or starting a restaurant can, under strict board regulation, apply for a new beer and wine license without regard to the population levels at the time of the application. There is, therefore, no reason to permit the transfer of these licenses. Additionally, under AS 04.11.330(9), the board is required to deny renewal of a license issued under AS 04.11.400(j) if the public convenience does not require renewal.

Currently, AS 04.11.360(11) prohibits the transfer of such licenses. AS 04.11.400(j), however, creates confusion by permitting the board to approve the issuance or transfer of ownership of a restaurant or eating place license when it

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Transfer of alcoholic beverage licenses
Sponsor: Sen. rules by Governor request
Requestor: Sen. C & RA Committee

Agency Affected: Department of Revenue
BRU: Alcoholic Beverage Control Board
Components: _____

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

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: March 1, 1989
 Approved by Commissioner: Hugh Malone Date: 3/6/89
 Agency: Revenue

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

CORRECTION

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

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

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

Dear Mr. President:

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AS 04.11.360(11) and AS 04.11.400(j) relate to "restaurant or eating place licenses," which are the licenses permitting restaurants to dispense beer or wine. These exception licenses are issued without regard to the population of a given locality if the Alcoholic Beverage Control (ABC) Board determines that new licenses are necessary for the public convenience.

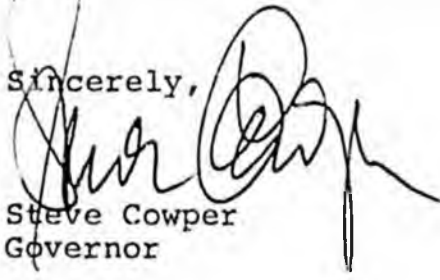
Because restaurant or eating place licenses issued under AS 04.11.400(j) are not subject to population limitations, there is no "quota" that limits the number that may be issued in a given locality. Accordingly, the licenses do not have an inherent "market value"; and as many restaurant or eating place licenses may be issued in a locality as the board finds are necessary for the public convenience. There is, therefore, no recognizable interest of a licensee in being able to market a license in conjunction with the sale of a restaurant or eating place. A person purchasing or starting a restaurant can, under strict board regulation, apply for a new beer and wine license without regard to the population levels at the time of the application. There is, therefore, no reason to permit the transfer of these licenses. Additionally, under AS 04.11.330(9), the board is required to deny renewal of a license issued under AS 04.11.400(j) if the public convenience does not require renewal.

Currently, AS 04.11.360(11) prohibits the transfer of such licenses. AS 04.11.400(j), however, creates confusion by permitting the board to approve the issuance or transfer of ownership of a restaurant or eating place license when it

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is necessary for the public convenience. This inconsistency would be resolved by deleting the provision in AS 04.11.400(j) which permits the board to approve transfer of ownership of such a license. This amendment will eliminate confusion and conflicting direction in present law.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name below.

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Transfer of alcoholic beverage licenses
Sponsor: Sen. rules by Governor request
Requestor: Sen. C & RA Committee

Agency Affected: Department of Revenue
BRU: Alcoholic Beverage Control Board
Components: _____

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
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REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: March 1, 1989
 Approved by Commissioner: Hugh Malone Date: 3/6/89
 Agency: Revenue

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

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STEVE COWPER
GOVERNOR



156

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will authorize the Board of Nursing in the Department of Commerce and Economic Development (DCED) to adopt regulations that establish a program for certifying nurse aides.

A recent federal law requires states to certify the education and competency testing, and to register, nurse aides. Without this certification program, the state's long-term-care facilities will no longer qualify for medicare and medicaid money.

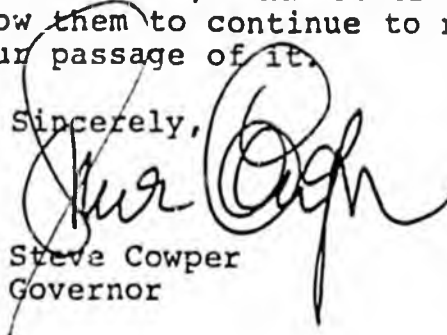
The division of medical assistance, in the Department of Health and Social Services, and the division of occupational licensing in DCED are jointly developing the education and competency testing components of this program. These agencies have agreed that the licensing and certification aspects should be in the division of occupational licensing, and the Board of Nursing has agreed to assume responsibility for the regulation of nurse aides.

The effective date of the requirement that a person be certified and registered before practicing as a nurse aide is delayed until January 1, 1990, to allow persons currently practicing as nurse aides to continue doing so until they have a reasonable opportunity to meet the standards and requirements that will be developed under sec. 2 of this bill.

The divisions understand that the federal government will provide approximately 90 percent of the costs of running this program in FY 89 and FY 90. After that, the state will have to assume the cost of the program.

Because this bill will advance the quality of care that is provided by long-term-care facilities, and other health care facilities, and will allow them to continue to receive federal assistance, I urge your passage of it.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

(a)
BILL VERSION:cs SB 156 (Finance)
PUBLISH DATE: 4/6/89

FISCAL NOTE

REQUEST: _____

REVISION DATE: _____
TITLE: Regulation of nurse aides
by Board of Nursing
SPONSOR: Rules/Governor
REQUESTOR: _____

AGENCY: Commerce & Econ Development
BRU: Occupational Licensing
COMPONENTS: Administration

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERS. SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND/BUILD.						
GRANTS/CLAIMS						
MISCELLANEOUS		96.1	96.1	96.1	96.1	96.1
TOTAL		96.1	96.1	96.1	96.1	96.1
CAPITAL						
REVENUE						

FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER I-A Rects		96.1	96.1	96.1	96.1	96.1
TOTAL		96.1	96.1	96.1	96.1	96.1

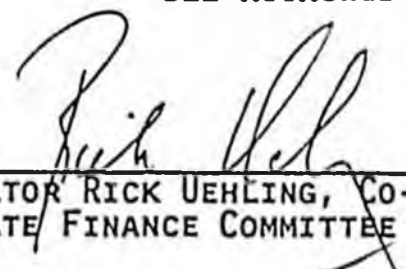
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS:

SEE ATTACHED

PREPARED BY:


SENATOR RICK UEHLING, CO-CHAIRMAN
SENATE FINANCE COMMITTEE

DATE:

April 5, 1989

PHONE NO.: 465-4821

Page 1 of 2

CS FOR SENATE BILL NO. 156 (Finance)

"An Act relating to the regulation of nurse aides by the Board of Nursing; and providing for an effective date."

ANALYSIS

Under the Nursing Reform Act of 1987 (PL 103-200), the federal government requires each state to create a nurse aide training and certification program and to begin implementation of the program at the start of 1989. As a result, funding of \$96.1 is being provided to the Division of Occupational Licensing by interagency receipts from the Division of Medical Assistance in the Department of Health and Social Services. The federal government is funding a portion of the \$96.1 for FY 89 and FY 90 after which the costs to run the program will be built into the occupational licensing operation budget. Therefore, new funds are not required at this time.

04/05/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the regulation of nurse aides
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Health & Social Services
BRU: Medical Assistance Administration
Components: Certification & Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-				
TRAVEL	-0-	-0-				
CONTRACTUAL	-0-	128.2				
SUPPLIES	-0-	-0-				
EQUIPMENT	-0-	-0-				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	128.2	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	64.1	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	64.1				
OTHER						
TOTAL	-0-	128.2	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) An increment has been included within the Governor's FY90 budget request to pay for expenditures associated with the nurse aid registry in FY90. Of this request, one-half or 64.1 are general funds and an equal amount are federal funds.

Prepared by: Kim Busch, Director
Division: Medical Assistance

Phone: 465-3355
Date: _____

Approved by Commissioner: Nyra H. Hanson, Commissioner
Agency: Department of Health and Social Services

Date: February 1, 1989

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

SFC: 4/6/89

REC'D APR 24 1989



April 20, 1989

Representative John Ellis
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear John:

Senate Bill 156, an act related to regulation of nurse aides by the Board of Nursing, is before the House, Health, Education and Social Security Committee.

I would like to request that you hold this bill until next legislative session. The bill is premature and unnecessary at this time. As you know, there have been a large number of Medicare and Medicaid changes in requirements for Long Term Care facilities due to the Omnibus Budget Reconciliation Act of 1987. (See attached proposed regulations). At present, these changes are in final rule form but are still subject to change by the Health Care Financing Administration.

One of the provisions within this "nursing home reform package" is found at 483.75(g) page 5371 (highlighted in attached) entitled "Required Training of Nurses Aides."

These regulations in coordination with the State of Alaska's Medicaid State Plan (contract) makes up the authority that the State of Alaska requires in order to acquire the 50% Federal matching funds for the implementation of training and competency testing for nurses aids. Through its agreement with the Federal government the Department of Health and Social Services is termed the "single State agency" and therefore is responsible to the Health Care Financing Administration for operation of the Medicaid program.

It is the Department of Health and Social Services responsibility to see that a:

- a) Training of nurse aids is available.
- b) Competency evaluation programs for current employees are in effect.
- c) Regular in-service education is provided.
- d) A competency registry is in place to register those aids that demonstrate incompetence.

All of these actions can be accomplished by the Department of Health and Social Services through an inter-agency contract with the Division of Occupational Licensing, Department of Commerce without loss of State or Federal funds. S.B. 156 does not effect Federal financial participation and does not enhance State or Federal funding.

As you can imagine, the training and competency testing for nurses aids established in the State of Alaska must be carefully thought out and implemented after public education and careful consideration. The outcome will effect the lives of many key, essential providers of health services. These individuals are the back-bone of direct care services within nursing homes.

We would like to see the Department of Health and Social Services, the Department of Commerce and the long term care providers work together between sessions in getting a nurse aid training and competence program in place. At present, the program is in its very beginning stages and has much to be debated before finalized. In this process, we would determine whether a statute is needed and if needed what should be in the statute. I do not believe we have enough experience, at this time, to know what should be in the statute and most importantly whether nurse aid training and competency should rest within the control of the Board of Nursing.

If SB 156 passes this session, I predict health care interest will be back to you in a year or two to amend the statute to be in line with the program that develops.

Please be assured I and other nursing home administrators are committed to the development of an excellent nurse aid training and competency program and will work with the Departments in planning, developing and implementing such a program. We are supportive of the Board of Nurses and have always had an excellent working relationship. However, in this situation, the legislation is premature and may be incomplete.

Thank you in advance for all consideration given to holding this legislation until next session.

Sincerely,


Robert G. Ogden
Administrator

cc: Sam Cotton
Gail McGuill

section 1122(b) of the Act, or if no such agency is designated, to the appropriate health planning agency in the State, except when a facility is exempt from section 1122 review under section 1122(j) of the Act (see 42 CFR Part 100):

(4) Is reviewed and updated by the facility at least annually; and

(5) Is prepared, under the direction of the governing body of the institution by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff of the institution.

(g) *Level B requirement: Required training of nurse aides*—(1) *General rule.* Effective January 1, 1990, a facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other basis, unless:

(i) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State, and

(ii) That individual is competent to provide nursing and nursing related services.

(2) *Competency evaluation programs for current employees.* Effective July 1, 1989, a facility must provide, for individuals used as nurse aides, a competency evaluation program approved by the State, and preparation necessary for the individual to complete the program by January 1, 1990.

(3) *Competency.* Effective January 1, 1990, a facility must permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when—

(i) The individual is in a training and competency evaluation program or a competency evaluation program approved by the State; and

(ii) The facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

(4) *Required retraining.* Effective January 1, 1990, when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the individual to complete a new training and competency evaluation program.

(5) *Regular in-service education.* Effective January 1, 1990, the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing-related

services to residents with cognitive impairments.

(6) *Definition of nurse aide.* For purposes of this section, the term "nurse aide," means any individual providing nursing or nursing-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(h) *Level B requirement: Proficiency of Nurse aides.* The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(i) *Level B requirement: Staff qualifications.* (1) The facility must employ on a full time, part time, or consultant basis those professionals necessary to carry out the provisions of these conditions of participation.

(2) Professional staff must be licensed, certified or registered in accordance with applicable State laws.

(j) *Level B requirement: Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or an agreement described in paragraph (j)(2) of this section.

(2) Arrangements or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(k) *Level B requirement: Medical director.* (1) The facility must designate a physician to serve as medical director.

(2) The medical director is responsible for—

(i) Implementation of resident care policies; and

(ii) The coordination of medical care in the facility.

(l) *Level B requirement: Laboratory services.* (1) The facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by independent laboratories specified in Subpart M of Part 405 of this chapter;

(ii) If the facility provides blood bank and transfusion services, it must meet the applicable conditions for—

(A) Independent laboratories specified in Subpart M of Part 405 of this chapter; and

(B) Hospitals specified in § 482.27(d) of this subchapter;

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved for participation in the Medicare program either as a hospital or an independent laboratory;

(iv) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory.

(2) The facility must—

(i) Provide or obtain laboratory services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

(iv) File in the resident's clinical record signed and dated reports of clinical laboratory services.

(m) *Level B requirement: Radiology and other diagnostic services.* (1) The skilled nursing facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in § 482.28 of this subchapter.

(ii) If the facility does not provide diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(n) *Level B requirement: Clinical records.* (1) The facility must maintain

SB

157

STATE OF ALASKA
THE LEGISLATURE

POUCH Y . STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY
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Mary Van Nimwegen

SB 157

H. HESS

3/22/90

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

157

February 3, 1989

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that gives the Alcoholic Beverage Control (ABC) Board the authority to assess a civil fine against a liquor licensee or permittee if the board finds that the licensee violated a statute, a regulation, or a local ordinance relating to alcoholic beverage.

Under AS 04.11.370, the board currently must suspend or revoke a liquor license or permit for certain reasons, including violation of provisions of AS 04, regulations adopted under AS 04, and local ordinances pertaining to liquor. The ABC Board does not, however, have the authority to assess a fine against a liquor licensee or permittee who is found to have violated a provision of the law, either personally or through an agent or employee. Many instances have arisen where the ABC Board has felt that a fine would be an appropriate, additional sanction.

Under the bill, the board may impose a fine following the suspension/revocation hearing under AS 04.11.510(c). The due process rights of licensees and permittees are thus protected.

This bill should have an overall beneficial effect on state finances in that it does not require an additional appropriation and could potentially result in the generation of additional revenue through the assessment of fines. The added regulatory flexibility through the assessment of

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Revenue
 Title: Impose civil fines for violation of liquor laws related to alcoholic beverages by: Alcoholic Beverage Control Board
 Sponsor: Governor Components: _____
 Requestor: Sen. Finance Comm.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: 12/15/89
 Approved by Commissioner: Hugh Malone Date: 12/14/89
 Agency: Department of Revenue

Distribution (by preparer):

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

Changes in CS SB 157 (Fin)
 have no fiscal impact.
 This fiscal note is
 appropriate. 2/2/90 -new

CORRECTION

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

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

157

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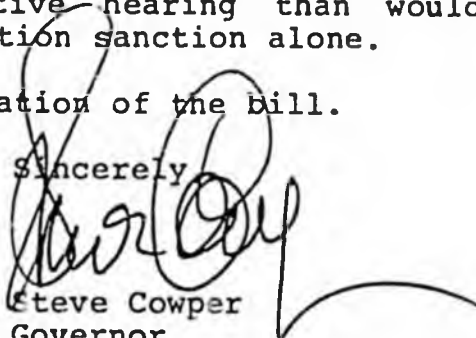
Under the bill, the board may impose a fine following the suspension/revocation hearing under AS 04.11.510(c). The due process rights of licensees and permittees are thus protected.

This bill should have an overall beneficial effect on state finances in that it does not require an additional appropriation and could potentially result in the generation of additional revenue through the assessment of fines. The added regulatory flexibility through the assessment of

finer could also reduce administrative expense in that that sanction would be less likely to result in a lengthy, and often expensive, administrative hearing than would the existing suspension or revocation sanction alone.

I ask your favorable consideration of the bill.

Sincerely,



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Revenue
 Title: Impose civil fines for violation of liquor laws related to alcoholic beverages Alcoholic Beverage Control Board
 Sponsor: Governor Components: _____
 Requestor: Sen. Finance Comm.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Patrick L. Sharrack, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: 12/14/89
 Approved by Commissioner: Hugh Malone Date: 12/14/89
 Agency: Department of Revenue

Distribution (by preparer):

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

Changes in CSSB 157 (Fin)
 have no fiscal impact.
 This fiscal note is
 appropriate. 2/2/90

CORRECTION

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TO ASSURE LEGIBILITY**

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Revenue
 Title: Impose civil fines for violation of liquor laws related to alcoholic beverages BRU: Alcoholic Beverage Control Board
 Sponsor: Governor Components: _____
 Requestor: Sen. Finance Comm.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Patrick L. Sharrack, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: 12/15/89
 Approved by Commissioner: Hugh Malone Date: 12/14/89
 Agency: Department of Revenue

Distribution (by preparer):

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

Changes in CS SB 157 (Fin)
 have no fiscal impact.
 This fiscal note is
 appropriate. 2/2/90 new

S B

166

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 17, 1999

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/20/89

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: CSSB 166 (Hess)

CS FOR SENATE BILL NO. 166 (HESS)

[MEDICAID PAYMENTS TO HEALTH FACILITIES]

"An Act relating to conformance between actual payments and approved payment rates to health facilities for medical care under certain state medical assistance programs; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] have attached anendment(s) [] a new title
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): _____
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

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

- [X] fiscal note(s) 3/7/89 DHS
[] zero fiscal note(s) _____
[] zero fn/analysis _____

SIGNING DO PASS:

J. Ellis

Mr. Gwendy

W. Turner

Opp. Rep. Boyer

Rep. Baker

Chris Davis

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend

J. Ellis

Chairman's signature

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

PO BOX V
JUNEAU, ALASKA 99811
(907) 465-3822

PO BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7612

February 2, 1989

MEMORANDUM

To: Senator Fischer, Chairman
HESS Committee

From: Senator Kelly *TK*

Re: Introducing a committee bill to correct a problem with health facility medical rate reimbursement.

I have attached a draft of legislation that would correct a problem inadvertently caused by a Medical Rate Commission action this last summer. In this action the commission repealed one of their own regulations that had a dramatic and unanticipated effect on certain health facilities year-end conformance determinations. I have talked with Commissioner Munson and everyone is in agreement that it was an unfortunate slip up. Last week the commission re-established the particular regulation (see attached regulation sequence A, B, and C).

The problem is that there appears to be no way for the commission itself to make this regulation retroactive, causing a disparate rate setting for those facilities whose conformance determination happened to occur in the time interval of the regulation's repeal. Humana hospital is particularly affected.

The proposed draft seems to be the only avenue for redress. It essentially puts the regulation language into law and retroactively applies the law. I have tried to make the title as tight as possible so that the bill does not attract other considerations. I would appreciate your consideration to introduce the bill as a committee bill.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to Medicaid Facility:
Patient
 Sponsor: Senate HESS
 Requestor: _____

Agency Affected: Health & Social Services
 BRU: Medical Assistance

Components: Medical Facilities

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	250.0					
MISCELLANEOUS						
TOTAL OPERATING	250.0	-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	125.0					
FEDERAL FUNDS	125.0					
OTHER						
TOTAL	250.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

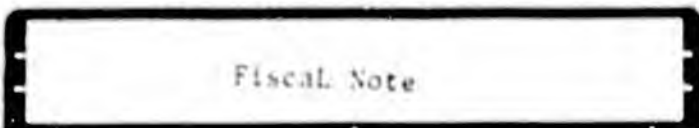
Fiscal impact is calculated based on impact to one identified facility.

Prepared by: ^{FHA} Kim Busch, Director *Kim Busch* Phone: 465-5355
 Division: Medical Assistance Date: 3/6/89

Approved by Commissioner: Walter M. Murman *Walter M. Murman* Date: 3/6/89
 Agency: Health and Social Services

Distribution (by preparer):

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



MAR 15 1989

REVISED ADDENDUM TO FISCAL NOTE ON CSSB 166

Although Sitka General Hospital has also been identified as a facility which could have year end conformance waived under SB 166, the financial impact to the Department of Health and Social Services from this waiver will not significantly impact the FY 89 budget.

Other facilities may be eligible to have year end conformance waived in accordance with SB 166, however, these facilities have not contacted either the Medicaid Rate Commission or the Department of Health and Social Services requesting such a waiver. Consequently, the potential financial impact from these facilities seeking a waiver has not been included in the fiscal note. If waiver is extended to the other possibly eligible facilities, the maximum anticipated fiscal impact in FY 89 would be ^{AN ADDITIONAL} \$250.0 total funds, \$125.0 general fund match and \$125.0 federal funds.

Approved:

Myra H. Munson
Myra H. Munson, Commissioner
Department of Health
and Social Services

Dated:

March 15 1989

REQUEST: _____ **FISCAL NOTE**

Revision Date: _____ Agency Affected: Dept. of Health & Social S
 Title: An Act relating to conformance between BRU: Medical Assistance
 actual payments and approved rates to facilities.
 Sponsor: _____ Components: Medicaid Facilities
 Requestor: Senate HESS Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	583.3					
MISCELLANEOUS						
TOTAL OPERATING	583.3	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	458.3					
FEDERAL FUNDS	125.0					
OTHER						
TOTAL	583.3					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by: Kim Busch, Director *Kimberly Busch* Phone: 465-3355
 Division: Medical Assistance Date: 3-9-89
 Approved by Commissioner: Myra M. Munson *Myra M. Munson* Date: 3-10-89
 Agency: Department of Health & Social Services

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