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The Unemployment Insurance System: It Works for Alaskans When Alaskans Cannot Work

by Michael Hurst

The recession that began in late 1985 had a serious impact on almost every sector of the Alaskan economy. It was the individual Alaska worker, though, who was among the most gravely affected and also was among the first affected. More than 20,000 workers' jobs disappeared from the economy in two short years, 1986 and 1987. Average yearly earnings per job declined by 3% during the same period. Many workers were forced to move south. More than 10,000 properties went into foreclosure.

The 1980s recession eventually touched nearly every industry, occupation, and geographic area. Among industries, construction was hit first and hardest, actually starting to decline in 1984. The transportation, communications and utilities sector followed close behind. The services, trade, finance and real estate industries began to sustain losses in 1987 when the recession's secondary effects — loss of wages — were triggered. In all, over \$750 million in Alaska payroll was lost between 1985 and 1987.

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UI System: Alaska's 3rd Largest Employer' During Recession

If it hadn't been for Alaska's Unemployment Insurance (UI) system, the impact of the recession would have been much more severe on both unemployed workers and on Alaska's economy in general. Between 1985 and 1988 more than 138,000 unemployed workers received unemployment compensation totalling over \$578 million. Over \$111 million more was paid out in benefits between November 1985 and April 1988 than was collected in taxes and reimbursements in that same period. This provided a direct stimulus to the economy. If the UI system's benefits were considered payroll, the system would have been the third largest employer in the state during this period.

Why Employers' Tax Rates Are Fluctuating Drastically

Both employees and employers benefit from the UI system. It is self-financed, primarily through employer and employee taxes. The financing method is automatic and is designed to be countercyclical. The countercyclical design explains why average employer tax rates are still fluctuating drastically. Evidence of this wild fluctuation is the fact that in 1985 the average employer tax rate amounted to 2.17%. In the present calendar year, the average tax rate on employers will be 4.14%, the highest in history. What are the reasons for the hike? Alaska employers are paying in 1989 for the increased benefit payments disbursed during the past recessionary year, and they are rebuilding the UI savings account as a buffer against future recessions.

Purpose of the Unemployment Compensation System is Twofold

The Alaska Employment Security Act was enacted by the territorial legislature in 1937 because state lawmakers recognized that "...involuntary unemployment is a serious menace to the health, morale, and welfare of the people of the state." With this legislative mandate in mind, there is a twofold purpose of the unemployment compensation system. The system is designed to: 1) Ease the

steadiness of the claimant's work history during his base period. The maximum number of weeks that a claimant can receive regular benefits is 26 weeks, presuming he received his earnings equally over four quarters. The minimum number of weeks is 16, presuming he received all of his earnings in one quarter.

Extended Benefits Payable Only When Statewide Insured Unemployment Rate is 6%

When a claimant exhausts all of the regular benefits to which he is entitled, he becomes eligible for an additional benefit program called 'extended benefits'. He may claim up to one-half of the amount of regular benefits for which he was found eligible. There is an additional eligibility restriction, however. Extended benefits are only payable when Alaska's statewide unemployment is above a certain level. Specifically, the statewide 'Insured Unemployment Rate' (IUR) must be at least 6.0%. The statewide IUR is a weekly ratio of:

$$\frac{\text{Claims Actually Filed}}{\text{Average Employment}}$$

In Alaska, extended benefits are usually payable beginning in January; they usually end in July or August. Figure 1 shows the insured unemployment rates for 1986 and 1988. Note that in 1986 the IUR never fell below 6.0%. This means that extended benefits were payable year-round in 1986.

Benefit Adequacy: A Critical Measure of the UI System's Success

A critical function of the UI system is to partially replace an individual's lost income while he is unemployed. An important measure of the system's success is determined by the percentage of earned income replaced by UI. This is often referred to as 'benefit adequacy.' In 1988 the average weekly benefit amount for regular benefits was \$156.57. In that same year, the average weekly earnings for UI recipients were \$366. Thus, the average UI benefit replaced about 43% of the average earned income for UI claimants.

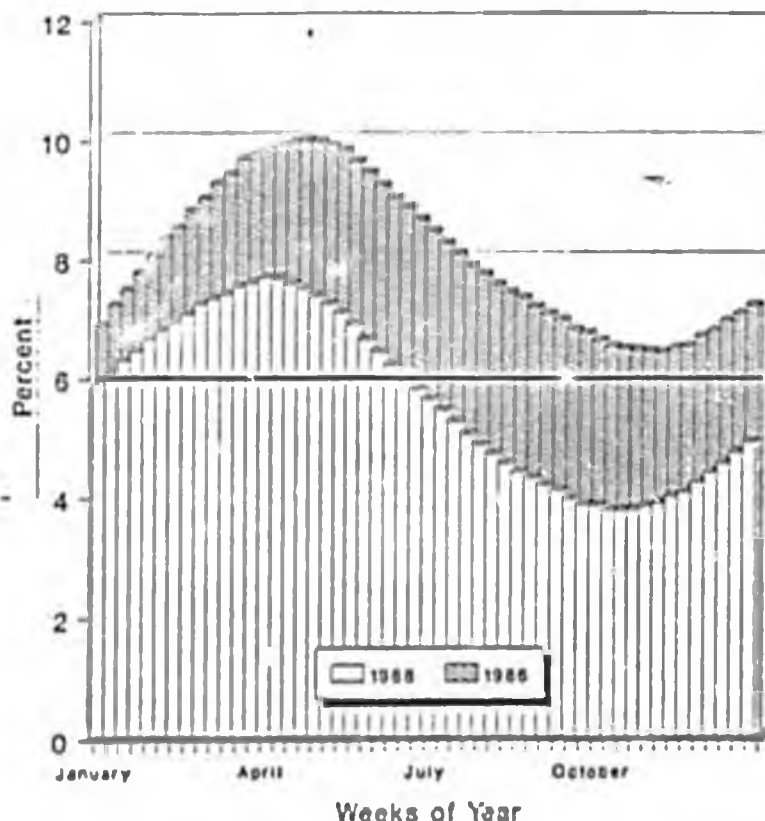
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Figure 1

Insured Unemployment Rate - 1986 and 1988



Extended Benefits payable when IUR is at least 6.0%

Source: Alaska Department of Labor Research & Analysis

CORRECTION

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

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financial distress of lost income to unemployed workers and their families, and 2) Maintain purchasing power to help stabilize the state's economy.

Focuses of this article:

Having briefly sketched out an overview of the Alaska Unemployment Insurance system and its recent effects on the state's economy, it's now pertinent to outline where this article is going. This commentary will focus primarily on the recessionary years of 1985 through 1988, and this article will —

- Evaluate the support that UI gave to unemployed workers.
- Examine how the Unemployment Insurance system in Alaska successfully achieved its goals during the recent recession.
- Show how the UI trust fund helped stabilize the economy.
- Explain why UI employer tax rates are so high in 1989, and
- Explain why the rates will decline in 1990 and 1991.

**George and Jean —
A typical, fictitious case**

George had worked as a heavy equipment operator at a Fairbanks concrete plant since moving to Alaska in 1974. His wife Jean had been a loan officer at the local bank for six years. When the price of oil fell in late 1985, the concrete plant operation was closed and George was laid off. Jean was not affected immediately. But, eventually, the loss of wages in Fairbanks forced many residents to move south; many defaulted on their home loans. The bank began to lose assets and was forced to cut back. In late 1986 Jean was laid off.

George and Jean's story was a common one in Alaska between late 1985 and early 1988. About 20,000 jobs disappeared from the Alaska economy in 1986 and 1987. Many workers were indeed forced to move south. Home foreclosures and bankruptcies were a common occurrence.

Yet like many others who were laid off

during the recession, George and Jean chose to remain in Fairbanks. Luckily, George was rehired after a few months of being out of work. He went back to work at the Fairbanks concrete plant after new military-related construction projects allowed the plant to reopen. Jean also returned to work after a few jobless months, having been hired by owners of a local tourism business.

The Fairbanks couple survived financially and were able to remain in the state largely because of the unemployment insurance compensation they received while out of work.

In order to better understand how the UI system helped George and Jean during their time of joblessness, and how it has helped thousands of other couples like them, it's pertinent to briefly explain UI's major programs. The system has two major programs — regular and extended benefits. Also important in coming to understand the UI benefits program are questions regarding adequacy of the benefits, and how much compensation individual claimants are entitled to receive.

**Regular Benefits: \$260 Per
Week for 26 Weeks Is Maximum**

The chief type of unemployment insurance benefits paid in the U.S. is called simply 'regular benefits'. How much a claimant receives in total regular benefits is determined by two elements: the claimant's weekly benefit amount and the number of weeks that the claimant receives benefits.

In Alaska, the claimant's weekly benefit amount is determined by his earnings in his 'base period'. (The base period is defined as the first four of the prior five complete calendar quarters.) The minimum benefit amount is \$38 per week for total earnings of \$1,000. The maximum is \$188 per week for total earnings of \$19,750 and over. A claimant may also receive dependents benefits, allowing him \$24 for each dependent — up to three dependents. In all, therefore, it's possible for a claimant to receive up to \$260 per week in benefit payments.

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steadiness of the claimant's work history during his base period. The maximum number of weeks that a claimant can receive regular benefits is 26 weeks, presuming he received his earnings equally over four quarters. The minimum number of weeks is 16, presuming he received all of his earnings in one quarter.

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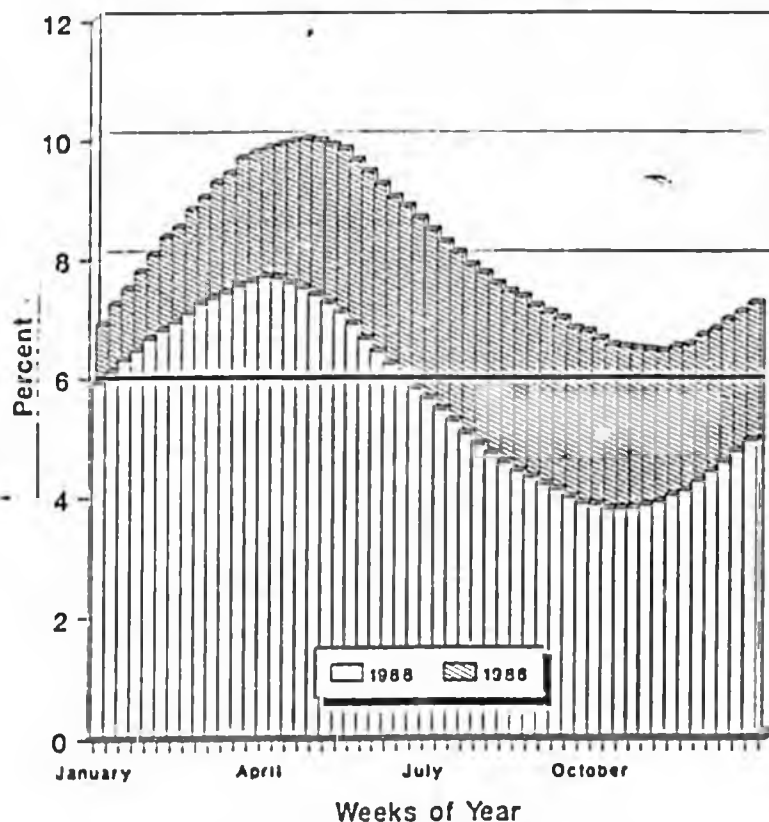
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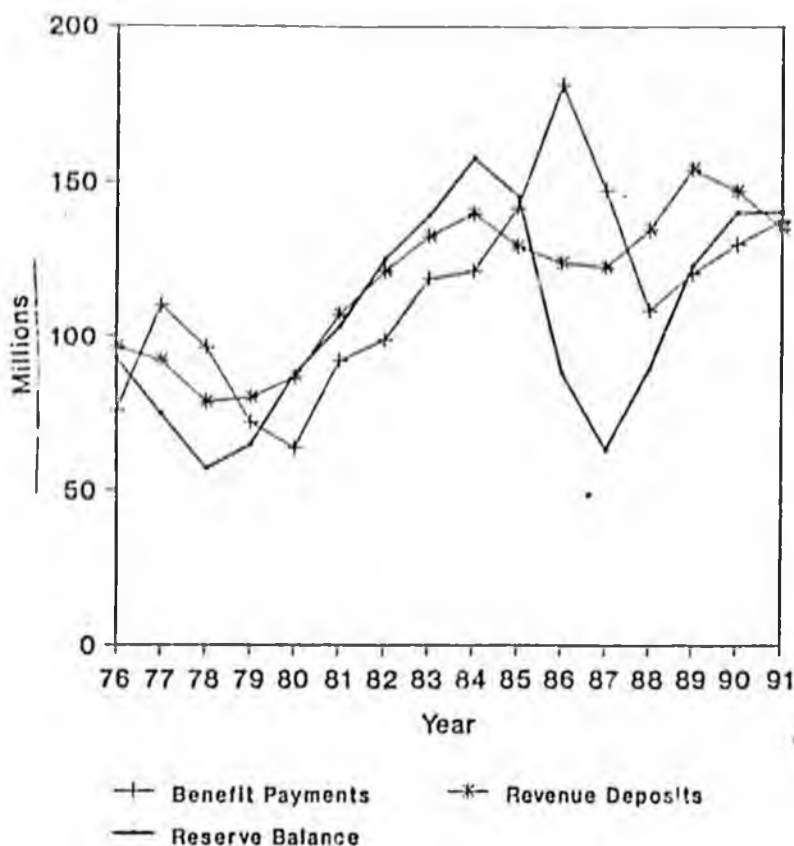


Extended Benefits payable when IUR is at least 6.0%

Source: Alaska Department of Labor, Research & Analysis

Figure 2

UI Trust Fund Cash Flow Payments, Revenues, Reserve Balance



Source: Alaska Department of Labor, Research & Analysis

actual total claims began to decline after 1986, those who remained unemployed were out of work for a longer period of time. Even though there were fewer total recipients in 1987, the situation was worse in 1987 than 1986 for the individual UI recipient.

UI Disbursements Reduces Negative Income Multiplier Effect

When George lost his job his wages were not lost to just him. His wages were lost to the entire Fairbanks community because of his lost ability to purchase goods and services. This loss of demand for goods and services often results in further job layoffs. This turn of events is commonly known as a negative 'multiplier effect'. Using the multiplier effect, most economists estimate that no less than two jobs are lost for every initial layoff.

Part of UI's purpose is to diminish the negative multiplier's effect in causing additional lost jobs or wages. The UI system performed this function well during the past recession. More than \$750 million was lost in total payroll in Alaska in 1986 and 1987. Much of this loss had already been induced by the multiplier effect. Yet at the same time unemployment compensation was pumping back into unemployed Alaska workers' hands more than \$257 million.

Table 1

UI Recipients and Payments, 1984-1988

Year	First Payments	Weeks Paid	Amount Paid (\$)	Final Payments (Exhausts)	Exhaust Rate	Average Duration (Weeks)
<u>Regular Benefits</u>						
1984	45,453	662,704	96,612,962	20,704	0.46	14.6
1985	49,348	767,652	123,967,863	24,291	0.49	15.6
1986	55,514	911,807	147,359,435	30,148	0.54	16.4
1987	45,345	770,406	123,528,576	26,496	0.58	17.0
1988	36,090	579,422	92,974,600	18,670	0.52	16.1
<u>Extended Benefits</u>						
1984	9,736	52,056	7,403,330	2,712	0.28	5.3
1985	12,158	61,158	10,715,479	3,749	0.31	5.7
1986	20,678	136,130	21,946,702	8,486	0.41	6.6
1987	13,145	94,773	15,230,837	6,246	0.48	7.2
1988	8,281	51,385	8,158,738	2,806	0.34	6.2

Source: ETA 5-159 report to the U.S. Department of Labor.

(Another \$72 million was paid to former Alaska workers living outside of the state.) Altogether, the four years 1985-through-1988 the UI system accounted for over \$451 million of income in Alaska. (In those same years, another \$127 million was paid to former workers living out-of-state.)

UI Trust Fund Account Dropped Dangerously Low in 1987-88

The UI Trust Fund is designed to act as a savings account which can be drawn down during difficult economic times and built up when times have improved. As mentioned earlier the trust fund paid out \$111 million more in benefits than it received in revenue between November 1985 and April 1988. This very large outflow of funds would not have been possible without adequate reserves in the UI Trust Fund. At the end of November 1985 the balance in the state's trust fund account was \$157 million. The account hit bottom in late April 1988, falling to \$46 million. (Figure 2 shows benefit disbursements, revenue deposits, and the reserve balance of the trust fund from 1976 to 1988. Figure 2 also depicts forecasts for 1989-91.)

One of the main obligations of all states' financing mechanisms is maintaining the solvency of the trust fund. Alaska's system is designed to remain perpetually solvent by way of a formula that automatically raises tax rates when benefits are high or when the trust fund is low. Yet in 1987 it appeared that the system's solvency might fail. To cope with that unexpected possibility, legislation was passed that year enabling the state to borrow money (and pay interest on the borrowed funds) to maintain the fund's solvency. The main reason for the falling trust fund balance was a massive rise in benefit payment outlays — from \$121 million in 1984 to \$142 million in 1985 and \$182 million in 1986. In 1987, payments declined to \$147 million; that outlay, though, still amounted to \$25 million over revenues for 1987.

The trust fund did not go broke, though, and no money actually was borrowed to maintain its solvency. It was in April 1988 that the fund's steady negative momentum was finally halted. This past calendar year of 1988 saw a

continuing decline in benefit payment outlays (to \$108 million), and an increase in revenue (to \$137 million). The increase can be attributed to higher UI taxes. At the end of 1988 the fund had recovered to a balance of about \$89 million. By the end of 1989 it is expected to reach \$120 million. And by the end of 1990 it is expected to reach \$140 million. Alaska's UI trust fund hasn't been forced to borrow money since 1960. Barring any future recession of the same magnitude as that which occurred between 1985 and 1987, the fund should never have to borrow any funds. This likelihood is due to the state's automatic financing mechanism, which is the next subject of this article.

Current UI Rates: Why They Are Now So Historically High

George's employers were hard hit by the drop in oil prices just as were many other businesses throughout Alaska. They had to cut back to a skeleton crew, sell some of their equipment, and restructure some of their loans. For a couple of years they were constantly on the verge of bankruptcy. To make matters worse, the owners feared that George and their other best employees would leave the Fairbanks area. If those fears proved true, they would have had to pay additional expense to train new employees when their business revenues improved.

Fortunately, the concrete plant's unemployment insurance taxes were reasonably low during the time when the owners were on the verge of bankruptcy. In 1985 the owners' rates were 2.17% of each employee's taxable wages — about \$473 per year per employee. By 1986 taxes had increased to \$555 per employee. But in 1987 the taxes that the plant paid per employee rose to \$866. And in 1988 the UI taxes soared to \$1,097. Finally, the 1989 taxes that the concrete plant owners have been assessed are the highest they have ever been, \$1,137.

What caused the tax rates to rise so much? And why such a rapid increase over the past three years? Two factors influenced the rates for the concrete plant. First, the plant's unique unemployment problems placed them in a higher 'tax bracket'. Second, and more important, average rates for all Alaska employers rose over the past

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three years. All rates rose automatically to help the system recover from the 'benefits shock' of 1985 and 1986.

Before we examine in detail why rates are so high in this calendar year, it's relevant to understand how UI tax rates—both individual employers' and average UI tax rates — are calculated in the first place.

An Explanation of Individual Employers' Business Rates:

As Figure 3 shows, the greatest proportion of revenue flowing into the UI trust fund comes from employer and employee 'tax contributions'. In fact, tax contributions are the only source of revenue that significantly affects the balance of the trust fund; all other deposits are direct reimbursements. These revenues are tax contributions because they are assessed on employers by the state Department of Labor in advance of future UI payments to their employees.

Each employer is assigned to one of 21 different rate classes, each of which has a different tax rate. The assignment decision is linked to a couple of factors: If the employer has been operating a business for at least one year, the business' individual rate class is based

on the employer's own individual experience with unemployment. If the business has been in operation for less than one year, it is assigned the average rate class shared by other employers in the same industry. This process is termed 'experience rating'.

In Alaska, an employer's experience rating is first determined by measuring declines in payroll from one quarter to the next. This figure is averaged over three years' time. (This method of measurement is used because declines in payroll are primarily caused by reductions in the business' work force. Reductions in the work force cause a rise in UI payments.) Employers with a low payroll decline receive a more favorable UI tax experience rating than employers showing high declines in payroll.

Each of every 21 rate classes is assigned a tax rate that is a percentage of the 'average' — or base — tax rate. The percentages range from 40% (for Rate Class 1) to 165% (for Rate Class 21). (The percentage for the average rate — which comes in at rate classes 10 and 11 — is 100%.) These percentages are actually called 'experience factors'. Table 2 shows the 21 different rate classes, the experience factors, and the 1989 tax rates for each rate class.

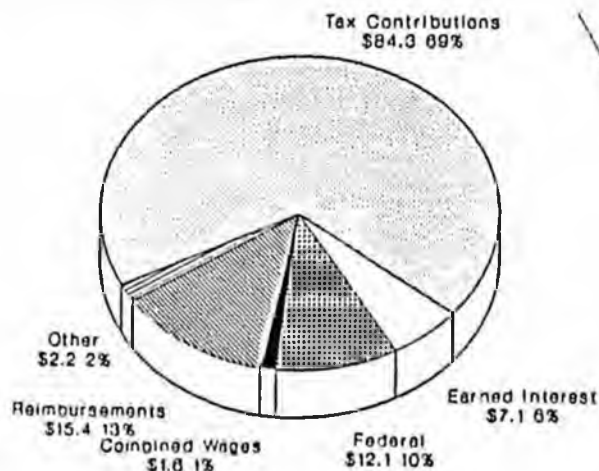
For the employer to determine the business' maximum UI contribution paid on each employee, the employer can take the business' assigned tax rate and multiply it by each employee's taxable wages. (Taxable wages are determined by each state's UI tax base; Alaska's UI tax base is equal to 75 percent of the statewide average annual wage.) For 1989, the state's tax base is \$20,900, down from \$21,800 in 1985. Thus, in 1989, the maximum tax an employer will be required to pay per employee — for an employer in the 'average rate class' (rate classes 10 or 11) — will be \$865.26, or 4.14% of \$20,900.

How Average UI Tax Rates Are Calculated:

Although this article has first addressed individual employers' business rates, it is the average tax rate which is first computed and determined by the Alaska Department of Labor according to Alaska statutes.

Figure 3

UI Trust Fund Revenue Sources 1987, Total and Percentage of Total (\$ = Millions)



Combined Wages are reimbursements from other states for shared UI, due to wages earned both in Alaska and other states.

Source: Alaska Department of Labor, Research & Analysis

Indeed, it is the average tax rate which is the real substance of Alaska's UI financing system. The level of the average tax rate determines how much total tax contributions are collected each year. Individual employers either pay lesser or greater percentages of this average rate.

Guts of the UI: Benefit Costs and the Benefit Cost Ratio

In order to understand how the average UI tax rates are calculated, it is first important to understand the 'guts' of the UI system, benefit costs and the 'benefit cost ratio'. Benefits paid to claimants are called 'benefit costs' because they are a cost to the system. (UI benefits have also been considered a cost of doing business to all U.S. employers ever since the Social Security Act was enacted in 1935.) Benefit costs

do not include all benefits paid; instead, benefit costs are that portion of benefits paid to employees by taxable employers.

Benefit cost data alone are insufficient to determine the financial condition of the UI system. Wages paid are also a critical element because the total amount of wages paid in the state determines the amount of taxes being collected and the amount of potential future benefits for which the system might be liable. The fundamental driving force, then, of average UI tax rates, is what is known as the 'benefit cost rate' (BCR). The BCR is computed as: benefits paid in the current year divided by wages paid in the prior year.

Since the Unemployment Insurance system is self-financing, taxes collected in the long run must be equal to benefits paid in the long run. This is achieved when the long-run average tax rate is

equal to the long-run benefit cost rate. (In 1980, the Alaska Legislature recognized the need to balance these two factors. As a result, lawmakers adopted it as the prime equation for determining tax rates.) Average UI tax rates are designed to be — in their most fundamental form — equal to the benefit cost rate.

Alaska UI System Designed to be Countercyclical and to Respond Rapidly to Economy's Changes

However, Alaska's UI system is not so simple. The design of this state's system has been devised so that it can respond quickly to changes in the economy and so that it can work in a countercyclical fashion. The system is designed to delay tax increases so that employers are not hit by the tax hikes during the worst part of a recession.

Table 2

UI Employer and Employee Contribution Rates, 1989

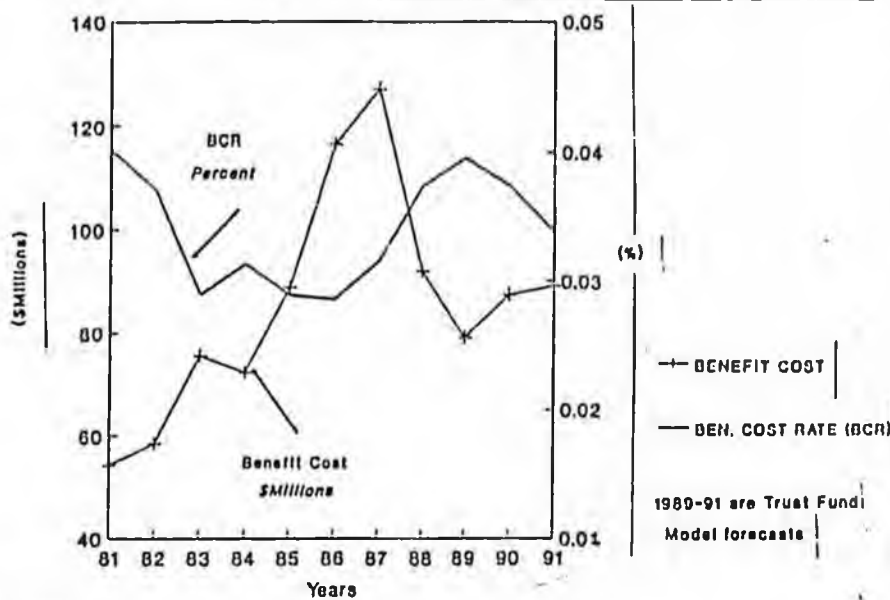
Rate Class	Experience Factor	Employee Contribution Rate	Employer Contribution Rate	Total Contribution Rate
1	0.40	0.7%	2.20%	2.90%
2	0.45	0.7	2.36	3.06
3	0.50	0.7	2.52	3.22
4	0.55	0.7	2.68	3.38
5	0.60	0.7	2.85	3.55
6	0.65	0.7	3.01	3.71
7	0.70	0.7	3.17	3.87
8	0.80	0.7	3.50	4.20
9	0.90	0.7	3.82	4.52
10	1.00	0.7	4.14	4.84
11	1.00	0.7	4.14	4.84
12	1.10	0.7	4.47	5.17
13	1.20	0.7	4.79	5.49
14	1.30	0.7	5.12	5.82
15	1.35	0.7	5.28	5.98
16	1.40	0.7	5.44	6.14
17	1.45	0.7	5.60	6.30
18	1.50	0.7	5.77	6.47
19	1.55	0.7	5.93	6.63
20	1.60	0.7	6.09	6.79
21	1.65	0.7	6.25	6.95

Average Benefit Cost Rate (ABCR) = 0.039558
 $.82 \times \text{ABCR} = 0.032438$
 Trust Fund Solvency Adjustment (TFSA) = 0.009
 Employee Tax Rate = 0.18 (ABCR) = 0.7%
 Average Employer Tax Rate = 0.82 (ABCR)
 + TFSA = 4.14%
 Individual Employer Tax Rates = 0.82 (ABCR) (Experience Factor) + TFSA

Sources: Alaska Statutes 23.20.290. Alaska Department of Labor, 1988. Table 1, UI Tax Rate Calculations, 1989.

Figure 4

UI Benefit Costs and Rate (BCR) State Fiscal Years 1981 - 1991



Source: Alaska Department of Labor, Research & Analysis

In theory, a system that is strictly countercyclical is one which has a single tax rate year after year. In contrast, a system that is not countercyclical — but instead responds rapidly to changes — computes rates according to benefit payments of the prior year.

Alaska's UI system, as mentioned beforehand, is a compromise between a state's need to respond quickly to changes in its economy and the need for the system to work in a countercyclical fashion. Rather than using a one-year formula to compute the benefit cost rate, Alaska uses an average of the three prior years. (Figure 4 depicts benefit costs and the three-year benefit cost rate for state fiscal years 1981 through 1988. Figure 4 also depicts forecasts for 1989 through 1991).

Employers Pay 82% of Benefit Cost Rate, Employees 18%

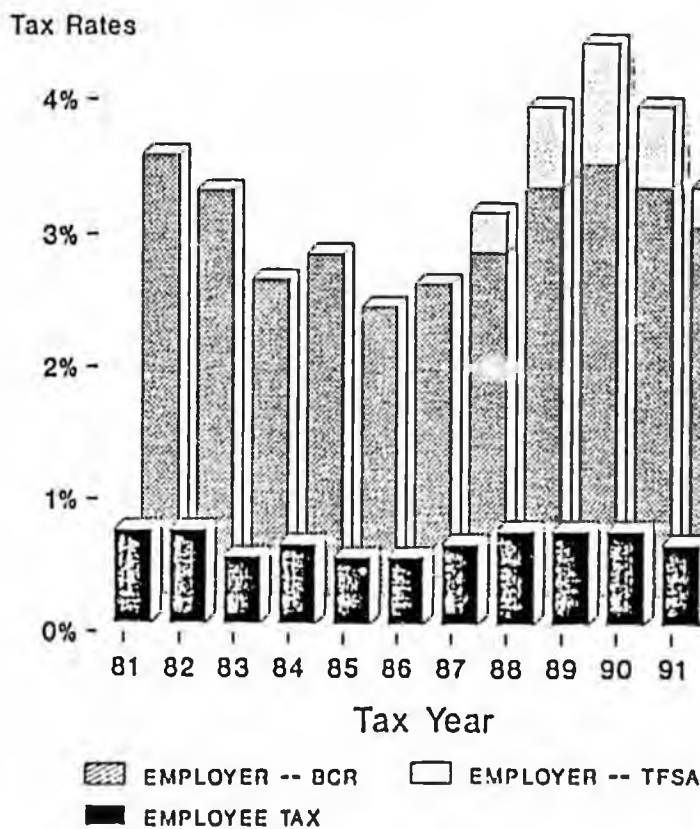
Once the three-year benefit cost rate is determined, employers are assigned 82% of that rate, employees the other 18%. All employees' taxes are equal. The average employer tax varies, however. The employer's tax rate is a result of the average employer tax multiplied by the individual employer's experience factor. In a stable economy, this is all there is to the computation of tax rates.

Additional Surtax Ensures Trust Fund's Solvency

However, in a severe recession like the state has experienced over the past few years, this system — as designed so far — is unlikely to recover quickly enough to ensure a solvent trust fund. In order then to ensure trust fund solvency during recessionary years, an additional 'surtax' is added to employer tax rates. This surtax is called the Trust Fund Solvency Adjustment (TFSA). The TFSA is determined by a schedule dictated by Alaska statutes. It ranges from -0.4% (when the trust fund balance is excessively high) to 1.1% (when the trust fund balance is dangerously low). The TFSA also acts in a countercyclical fashion; it cannot rise or drop by more than 0.3% from one year to the next. In 1985 the TFSA

Figure 5

Components of Average UI Tax Rate Employer and Employee Taxes



Employer taxes are sum of BCR and TFSA

Source: Alaska Department of Labor, Research & Analysis

was -0.2%. In 1987 and 1988, it was 0.3% and 0.6%. In this calendar year, 1989, the TFSA is 0.9%.

Altogether, George's employers' tax rate is calculated this way: It is the total of two computations; that is, 82% of Alaska's three-year benefit cost rate is multiplied by the plant's own experience factor. And added to this sum is the Trust Fund Solvency Adjustment.

Now, after having gained a basic understanding of the formula which determines the UI tax rate, it's possible to comprehend why the tax rates were so high in 1988 and continue to be high in 1989. It's also possible to perceive why UI tax rates in Alaska are expected to decline in 1990 and 1991.

Average Tax Rates Tracked Between 1981 and 1991

Figure 5 illustrates the components of employee and employer tax rates; the rates are depicted as a percent of taxable wages. The employer tax rates include both portions attributable to the benefit cost rate, as well as the Trust Fund Solvency Adjustment.

(The sum of these two elements is the total average employer tax rate.) These employer rates are the average tax rates for each year listed. The figure includes data as far back as 1981, the first year of Alaska's current financing system. The 1989 tax rates are actual rates, having already been assigned. The 1990 and 1991 rates are forecasts generated by DOL Research & Analysis economists using the department's UI Trust Fund Model.

We can see from Figure 5 that tax rates declined steadily through the early 1980s, then began to rise in 1986. Over the last 20 years, the average tax rate has been about 3.2%. This tells us that the rates between 1983 and 1986 were substantially lower than average. Figure 5 also points out, though, that benefit costs were actually increasing during these same years, and that they nearly peaked in 1986. During this time, benefit cost rate were declining while benefit costs were rising. This apparent contradiction can be explained via two factors: total wages were rising faster than benefit costs, and the benefit cost rate is a three-year average.

The Surtax (TFSA) and Rising Benefit Costs Are the Causes of Higher UI Taxes

It is pertinent to note in Figure 5 that the benefit cost rate portion of employer taxes is about the same for SFY 1989 as it was for SFY 1981. The reason that total taxes are higher is due to the TFSA. Figure 2 demonstrates the fact that rising UI Trust Fund revenues (caused by lower tax rates, coupled with higher employment and payroll) kept pace with rising benefits until 1984. Between 1985 and 1987 trust fund reserves plunged sharply. This sudden plunge caused the first positive TFSA — amounting to +0.3% — to be added to 1987 tax rates. Through this calendar year, 1989, the TFSA has risen to 0.9%

By adding together the two portions of employer tax rates — the benefit cost rate and the TFSA — it's possible to come to two conclusions: 1) That the higher tax rates of 1987 through 1989 represent a delayed reaction to the rapidly rising benefit costs amassed between 1984 and 1987, and 2) That the higher tax rates of 1987 through 1989 represent a move to recapture UI trust funds lost during the precipitous decline of its reserve balance between 1985 and 1988.

It's worthy to again note that if a countercyclical financing system did not exist, the highest tax rates would have occurred in 1986 and 1987, the two worst years of the recession.

Thus, higher tax rates are being levied this year so that prior benefit payments can be adequately covered. Further, the higher tax rates are being levied so that the trust fund can be rebuilt to cover any possible, future recession.

UI Tax Rates To Drop In 1990 and 1991, and Possibly in 1992

It's encouraging to point out that the same elements that have caused tax rates to increase (benefit costs and TFSA) will combine to produce lower tax rates in 1990 and 1991. It's likely, too, that 1992 will also be a year marked by lower UI taxes. Here are the reasons: Benefit costs began to decline in the

If the countercyclical financing system did not exist, the highest tax rates would have occurred in 1986 and 1987, the two worst years of the recession.

go0559hE
Cramer
3/22/89

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 147 (Judiciary)

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 unemployment insurance and unem-
7 ployment insurance contribution overpayments; estab-
8 lishing a priority for payment; and providing for an
9 effective date."

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

11 * Section 1. AS 16.10.290(a) is amended to read:

12 (a) A person applying for a license as a fish processor or
13 primary fish buyer shall file with the commissioner of labor a surety
14 bond running to the State of Alaska conditioned upon the promise to
15 pay (1) all persons furnishing labor to a fish processor or primary
16 fish buyer, including contractual employee benefits; [AND] (2) in-
17 dependent registered commercial fishermen for the price of the raw
18 fishery resource purchased from them; and (3) unemployment insurance
19 contributions. If the surety bond is insufficient to satisfy all
20 obligations under this subsection, the obligations to persons furnish-
21 ing labor and to independent registered commercial fishermen shall be
22 paid before unemployment insurance contributions are paid. The surety
23 or sureties must [SHALL] be satisfactory, in the determination of the
24 commissioner.

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

26 (k) Upon request, the department shall disclose to the United
27 States Department of Housing and Urban Development and to representa-
28 tives of a public housing agency the following information: (1) wage
29 information; and (2) whether an individual is receiving, has received,

1 or has applied for, unemployment compensation, and the amount of
2 compensation that the individual is receiving or will receive. This
3 information may be released only with respect to an individual apply-
4 ing for or participating in a housing assistance program administered
5 by the United States Department of Housing and Urban Development, and
6 only if the individual has signed a consent form approved by the
7 department.

8 * Sec. 3. AS 23.20.145(f) is amended to read:

9 (f) Money credited to the account of this state in the unemploy-
10 ment trust fund by the Secretary of the Treasury of the United States
11 under 42 U.S.C. 1103 (Sec. 903, Social Security Act) may not be requi-
12 sitioned from this state's account or used except for the payment of
13 benefits and for the payment of expenses incurred for the adminis-
14 tration of this chapter. This money may be requisitioned under (b) of
15 this section for the payment of benefits. This money may also be
16 requisitioned and used for the payment of expenses incurred for the
17 administration of this chapter but only under a specific appropriation
18 by the legislature and only if the expenses are incurred and the money
19 is requisitioned after the enactment of an appropriation law that
20 [WHICH]

21 (1) specifies the purpose for which the money is appropri-
22 ated and the amount appropriated;

23 (2) limits the period within which the money may be ob-
24 ligated to a period ending not more than two years after the date of
25 the enactment of the appropriation law; and

26 (3) limits the amount that [WHICH] may be obligated during
27 a fiscal year to an amount that [WHICH] does not exceed the amount by
28 which [(A)] the aggregate of the amounts credited to the account of
29 this state under 42 U.S.C. 1103 (Sec. 903, Social Security Act) during

1 that fiscal year and the 34 [24] preceding fiscal years exceeds [(B)]
2 the aggregate of the amounts obligated for administration and paid out
3 for benefits and charged against the amounts credited to the account
4 of this state during those 35 [25] fiscal years.

5 * Sec. 4. AS 23.20.145(g) is amended to read:

6 (g) Amounts credited to this state's account in the unemployment
7 trust fund under 42 U.S.C. 1103 (Sec. 903, Social Security Act) that
8 [WHICH] are obligated for administration or paid out for benefits
9 shall be charged against equivalent amounts that [WHICH] were first
10 credited and that [WHICH] are not already so charged. However, an
11 amount obligated for administration during a fiscal year specified in
12 this section may not be charged against any amount credited during
13 [SUCH] a fiscal year earlier than the 34th [24TH] preceding fiscal
14 year.

15 * Sec. 5. AS 23.20.195(a) is amended to read:

16 (a) If the contributions are unpaid after 30 days from the date
17 of mailing or personal delivery of a written demand for payment, the
18 department may [SHALL] assess and collect in the same manner as con-
19 tributions a penalty equal to the greater of 10 percent of the contri-
20 butions due or \$10. [IN NO EVENT MAY THE PENALTY BE LESS THAN \$1.]

21 * Sec. 6. AS 23.20.205(c) is amended to read:

22 (c) Unless an appeal is filed under AS 23.20.220, if [IF] the
23 amount assessed is not paid within 30 days after [PERSONAL] service or
24 mailing of the notice, the department may ,, SUBJECT TO AS 23.20.220,]
25 collect the amount stated in the assessment by the distraint, seizure,
26 and sale of the property, goods, chattels, and effects of the delin-
27 quent employer. Goods and property exempt from execution under the
28 laws of this state are exempt from distraint and sale under this
29 section.

1 * Sec. 7. AS 23.20.220(a) is amended to read:

2 (a) When a notice of assessment is delivered or mailed to a
3 delinquent employer, the employer may within 30 days file an appeal [A
4 PETITION] in writing with the department, stating that the assessment
5 is unjust or incorrect and requesting a hearing on it. The period for
6 filing an appeal may be extended for a reasonable period for good
7 cause. The appeal must [PETITION SHALL] set out the reasons the
8 assessment is objected to and the amount of contributions that [WHICH]
9 the employer admits is due, and must be accompanied by a bond or
10 deposit of other security in the amount of the assessment to ensure
11 [INSURE] collection. The department may waive the security require-
12 ment if the employer submits proof of solvency or reasonable assur-
13 ance, as prescribed by regulations, that the contributions, interest,
14 and penalties due are not in jeopardy. If [NO PETITION IS FILED
15 WITHIN THE TIME PRESCRIBED, OR IF] the employer fails to provide the
16 required security, the collection under AS 23.20.205(c) is not stayed
17 [THE ASSESSMENT IS PRIMA FACIE CORRECT]. The department shall adopt
18 regulations for procedures for an appeal under this subsection
19 [HOWEVER, THE DEPARTMENT MAY ENTERTAIN A SUBSEQUENT APPLICATION FOR
20 REFUND, AND, IF DENIED A REFUND, A HEARING ON THE APPLICATION IN
21 ACCORDANCE WITH AS 23.20.225].

22 * Sec. 8. AS 23.20.220(b) is amended to read:

23 (b) If the appeal is accompanied by the required security or the
24 department has waived the security requirement, filing an appeal
25 [FILING A PETITION] on a disputed assessment with the department stays
26 the sale provided for in AS 23.20.210 until a final decision on the
27 assessment is made. However, the filing of an appeal [A PETITION]
28 does not affect the right of the department to perfect a lien as
29 provided in AS 23.20.200.

1 * Sec. 9. AS 23.20.220(c) is amended to read:

2 (c) After granting the appellant [PETITIONER] reasonable oppor-
3 tunity for fair hearing, the department shall make a decision on the
4 appeal [PETITION]. The department's decision is final unless the
5 appellant [PETITIONER] initiates a proceeding for judicial review in
6 the manner provided by AS 23.20.445.

7 * Sec. 10. AS 23.20.225 is amended by adding a new subsection to read:

8 (e) The department shall adopt regulations providing for the
9 disposition of excess contributions paid to the unemployment compen-
10 sation fund under AS 23.20.130. The regulations must be substantially
11 similar to the provisions of AS 34.45.110 - 34.45.430.

12 * Sec. 11. AS 23.20.240(a) is amended to read:

13 (a) If after notice an employer defaults in the payment of
14 contribution or interest, the amount due may be collected by a person
15 authorized by law and authorized by the department, by civil action in
16 the name of the state, or by both methods. The department shall
17 include in the amount due the fees or costs charged the department by
18 the person for the collection of the delinquent amount. An [AND THE]
19 employer who is [IF FOUND] liable shall pay the cost of the collec-
20 tion, including collection fees charged, and the costs of legal
21 action.

22 * Sec. 12. AS 23.20 is amended by adding a new section to read:

23 Sec. 23.20.242. APPEALS BY OFFICER, MEMBER, OR EMPLOYEE. The
24 department shall permit each officer or employee of a corporation or a
25 member or employee of a partnership who is required to pay the contri-
26 butions and interest owed by the corporation or partnership under
27 AS 23.20.165 - 23.20.278 to appeal individually their duty to pay
28 under those sections.

29 * Sec. 13. AS 23.20.277(b) is amended to read:

1 (b) At the end of each calendar quarter, or at the end of any
2 other period as determined by the department, the department shall
3 bill each government entity, nonprofit organization, or group of
4 nonprofit organizations that [, WHICH] has elected to make payments in
5 place of contributions, for benefits paid during the quarter or other
6 prescribed period that are attributable to service in the employ of
7 the government entity, nonprofit organization, or group. In the case
8 of nonprofit organizations and groups of nonprofit organizations, the
9 amount billed is an amount equal to the full amount of regular bene-
10 fits plus [ONE-HALF OF] the state share [AMOUNT] of extended benefits.
11 In [AND IN] the case of a government entity the amount billed is
12 [WHICH HAS ELECTED TO MAKE PAYMENTS UNDER THIS SECTION] an amount
13 equal to the full amount of the regular benefits plus the full amount
14 of the extended benefits paid [DURING THE QUARTER OR OTHER PRESCRIBED
15 PERIOD THAT IS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF THE NONPROFIT
16 ORGANIZATION].

17 * Sec. 14. AS 23.20.277(e) is amended to read:

18 (e) At the end of each taxable year, the department shall deter-
19 mine whether the total of payments for the year made by a nonprofit
20 organization or group of nonprofit organizations is less than, or in
21 excess of, the total amount of regular benefits plus the state share
22 [ONE-HALF OF THE AMOUNT] of extended benefits paid to individuals
23 during the taxable year based on wages attributable to service in the
24 employ of the nonprofit organization or group. In [; AND IN] the case
25 of a government entity that has elected to make payments under this
26 section, the department shall determine whether the total of payments
27 for the year is less than, or in excess of, the total amount of regu-
28 lar benefits plus the total amount of extended benefits as determined
29 in this subsection. Each organization or group whose total payments

1 for the taxable year are less than the amount so determined is liable
2 for payment of the unpaid balance to the fund in accordance with (f)
3 of this section. If the total payments exceed the amount so deter-
4 mined for the taxable year, all or part of the excess may, at the
5 discretion of the department, be refunded from the fund or retained in
6 the fund as part of the payments that [WHICH] may be required for the
7 next taxable year.

8 * Sec. 15. AS 23.20.277(1) is amended to read:

9 (1) Each employer that is liable for payments in place of con-
10 tributions shall pay to the department for the fund the amount of
11 regular benefits plus the state share [AMOUNT OF ONE-HALF] of extended
12 benefits paid that are attributable to service in the employ of that
13 employer. However, a government entity that [WHICH] has elected to
14 make payments under this section is liable for the amount of regular
15 benefits plus the full amount of extended benefits that [WHICH] are
16 attributable to service in the employ of that entity. If benefits
17 paid to an individual are based on wages paid by more than one em-
18 ployer and one or more of these employers is [ARE] liable for payments
19 in place of contributions, the amount payable to the fund by each em-
20 ployer that is liable for payments shall be determined by the depart-
21 ment in accordance with regulations adopted by the department.

22 * Sec. 16. AS 23.20.340(b) is amended to read:

23 (b) Within one year from the date of the initial determination
24 of the weekly benefit amount and the maximum potential benefit amount
25 established under AS 23.20.350, the department shall reconsider only
26 the determination of the monetary amounts and shall issue a redeter-
27 mination amending the initial determination if it finds that an error
28 in computation or identity has been made or that additional wages
29 pertinent to the claimant's insured status have become available, or

1 that the initial determination resulted from a nondisclosure or mis-
2 representation of a material fact concerning the determination of
3 monetary amounts.

4 * Sec. 17. AS 23.20.378(c) is amended to read:

5 (c) An insured worker is disqualified for waiting-week credit or
6 benefits for a week of unemployment while the insured worker is pursu-
7 ing an academic education [ATTENDS AN ESTABLISHED SCHOOL IN A COURSE
8 OF STUDY PROVIDING ACADEMIC INSTRUCTION OF 10 OR MORE CREDIT HOURS PER
9 WEEK, OR THE EQUIVALENT]. A disqualification under this subsection
10 begins with the first week of academic instruction and ends with the
11 week immediately before the first full week in which the insured
12 worker is no longer pursuing an academic education. However, an
13 insured worker who has been pursuing an academic education for at
14 least one school term and who was working at least 30 hours a week
15 during a significant portion of the time that the worker was pursuing
16 an academic education is not disqualified for waiting-week credit or
17 benefits under this subsection if the worker's academic schedule does
18 not preclude full-time work in the worker's occupation and if the
19 insured worker became unemployed because the worker was laid off or
20 the worker's job was eliminated [ATTENDING CLASSES IF THE INSURED
21 WORKER CERTIFIES THAT THE PERIOD OF NONATTENDANCE WILL LAST AT LEAST
22 60 DAYS]. In this subsection,

23 (1) "pursuing an academic education" means attending an
24 established school in a course of study providing academic instruction
25 of 10 or more credit hours per week, or the equivalent:

26 (2) [THE TERM] "school" includes primary schools, secondary
27 schools, and institutions of higher education.

28 * Sec. 18. AS 23.20.382(b) is repealed and reenacted to read:

29 (b) An otherwise eligible individual may not be denied benefits

1 or waiting-week credit for any week because the individual is in
2 training approved under 19 U.S.C. 2296(a)(1) (sec. 236(a)(1), Trade
3 Act of 1974), if

4 (1) while attending the training, the individual is not
5 available for work, fails to seek work, or refuses work; or

6 (2) the individual left work that was not suitable employ-
7 ment to enter training.

8 * Sec. 19. AS 23.20.382 is amended by adding a new subsection to read:

9 (d) An otherwise eligible individual may not be denied benefits
10 or waiting-week credit for any week because the individual is in any
11 training approved under 29 U.S.C. 1651 - 1658, as amended by P.L.
12 100-418, and, while attending the training, is not available for work,
13 fails to seek work, or refuses work.

14 * Sec. 20. AS 23.20.387(a) is amended to read:

15 (a) An insured worker is disqualified for benefits for the week
16 with respect to which the false statement or misrepresentation was
17 made and for an additional period of not less than six weeks or more
18 than 52 weeks if the department determines that the insured worker has
19 knowingly made a false statement or misrepresentation of a material
20 fact or knowingly failed to report a material fact with intent to
21 obtain or increase benefits under this chapter. The length of the
22 additional [THIS] disqualification and the beginning date of that
23 [THE] disqualification shall be determined by the department according
24 to the circumstances in each case.

25 * Sec. 21. AS 23.20.390 is amended by adding a new subsection to read:

26 (f) In addition to the liability under (a) of this section for
27 the amount of benefits improperly paid, an individual who is disqual-
28 ified from receipt of benefits under AS 23.20.387 is liable to the
29 department for a penalty in an amount equal to 50 percent of the

1 benefits that were obtained by knowingly making a false statement or
2 misrepresenting a material fact, or knowingly failing to report a
3 material fact, with the intent to obtain or increase benefits under
4 this chapter. The department may, under regulations adopted under
5 this chapter, waive the collection of a penalty under this section.
6 The department shall deposit into the general fund the penalty that it
7 collects.

8 * Sec. 22. AS 23.20.530(a) is amended to read:

9 (a) In this chapter, "wages" means all remuneration for service
10 from whatever source, including, but not limited to, insured work,
11 noninsured work, or self-employment; commissions, bonuses, back pay
12 and the cash value of all remuneration in a medium other than cash
13 shall be treated as wages; gratuities customarily received by an
14 individual in the course of service from persons other than the indi-
15 vidual's employing unit may be treated as wages received from the
16 employing unit only to the extent the individual reports the gratu-
17 ities to the employing unit. The reasonable cash value of remunera-
18 tion in a medium other than cash, and the reasonable amount of gratu-
19 ities, shall be estimated and determined in accordance with regula-
20 tions adopted by the department; notwithstanding AS 23.20.350(a), back
21 pay awards shall be allocated to the weeks or quarters with respect to
22 which the pay was earned. If the remuneration of an individual is not
23 based upon a fixed period of time or if the individual's wages are
24 paid in irregular intervals or in a manner that [WHICH] does not
25 extend regularly over the period of employment, the wages shall be
26 allocated to weeks or quarters in accordance with regulations adopted
27 by the department. The regulations must [SHALL], so far as possible,
28 produce results reasonably similar to those that [WHICH] would prevail
29 if the individual's wages were paid at regular intervals. When an

1 employer has filed for bankruptcy, unpaid wages earned for services
2 performed for the employer are considered wages for the quarter in
3 which they were earned.

4 * Sec. 23. AS 23.20 is amended by adding a new section to read:

5 Sec. 23.20.533. APPLICATION FOR DEMONSTRATION PROJECT. (a) The
6 Department of Labor shall pursue application with appropriate agencies
7 to qualify this state as a pilot state for demonstration programs
8 related to helping unemployed Alaskans regain employment, if adminis-
9 trative money is available to operate the project.

10 (b) The Department of Labor may waive provisions of this chapter
11 for individuals who participate in a demonstration project, to the
12 extent required for the state to participate in the project.

13 * Sec. 24. AS 34.45.760(10) is amended to read:

14 (10) "intangible property"

15 (A) includes

16 (i) money, checks, drafts, deposits, interest,
17 dividends, and income;

18 (ii) credit balances, customer overpayments, gift
19 certificates, security deposits, refunds, credit memos,
20 unpaid wages, and unidentified remittances;

21 (iii) stocks and other intangible ownership inter-
22 ests in business associations;

23 (iv) money deposited to redeem stocks, bonds,
24 coupons, and other securities, or to make distributions;

25 (v) amounts due and payable under the terms of
26 insurance policies; and

27 (vi) amounts distributable from a trust or custo-
28 dial fund established under a plan to provide health, wel-
29 fare, pension, vacation, severance, retirement, death, stock

1 purchase, profit- sharing, employee savings, supplemental
2 unemployment insurance, or similar benefits;

3 (B) does not include

4 (i) unused airline tickets; [OR]

5 (ii) shares of stock issued by a corporation
6 organized under 43 U.S.C. 1601 - 1629a (Alaska Native Claims
7 Settlement Act) or unclaimed dividends payable on the
8 shares of stock; or

9 (iii) overpaid contributions by employers to the
10 unemployment compensation fund under AS 23.20.130;

11 * Sec. 25. AS 23.20.175(a), 23.20.175(b), 23.20.175(c)(1), 23.20.350-
12 (f)(4), and 23.20.350(f)(5) are repealed.

13 * Sec. 26. Section 24 of this Act is retroactive to September 7, 1986.

14 * Sec. 27. Sections 10, 24, and 26 of this Act take effect immediately
15 under AS 01.10.070(c).

16 * Sec. 28. Sections 1 - 9, 11 - 23, and 25 of this Act take effect
17 July 2, 1989.

SECTION-BY-SECTION ANALYSIS
House Bill 147

Section 1: [Sec. 1 of CS for HB 384 (L&C)]

The proposed amendment of AS 16.10.290(a) enhances the Department's ability to collect delinquent unemployment insurance contributions from fish processors and fish buyers. The Department's figures indicate that, as of December 1987, about 25 percent of all fish processors and buyers were delinquent in their contributions. Those delinquencies resulted in a loss to the unemployment trust fund of about \$610,000 as of that date. Under the proposed amendment, the Department may assert claims for contributions against the fish processors' and buyers' surety bonds, such claims having next priority after claims for wages and payments for raw fish.

Section 2: [New section proposed for 1989 session]

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires, as a condition of states receiving administrative grants under Title III of the Social Security Act, that states disclose certain information contained in employment security records, upon request, to HUD and representatives of a public housing agency. It also provides for reimbursement of costs and appropriate safeguards of the information. The proposed amendment to AS 23.20.110 would allow the Department of Labor to comply with these federal requirements. This is a federal conformity issue; as such, continued administrative funding for the Employment Security Division is contingent upon passage by September 30, 1989.

Section 3: [New section proposed for 1989 session]

This section provides for extension of the Reed Act for ten years. Title IX of the Social Security Act makes excess funds collected under the Federal Unemployment Tax Act (FUTA) available to pay benefits or for administration of the employment security programs. Federal law extended the time limits in which the funds may be used by ten years. Unless Congress increases the maximum allowable levels in these funds, we anticipate that there will be excess funds to distribute back to the states in the near future. Current statute does not permit the Employment Security Division to receive or use these funds. This proposal, by extending the Reed Act, would allow Alaska to accept our share of the funds.

Section 4: [Sec. 2 of CS for HB 384 (L&C)]

The amendment of AS 23.20.195(a) in this section provides that the ten percent penalty on delinquent employer reports and taxes may be discretionary instead of mandatory. It also increases the minimum penalty to \$10 from \$1. This provision is not presently enforced in cases for which it is not cost effective to do so. A discretionary penalty would conform the statute to current practice, and remove the requirement on the Department to assess and collect penalties regardless of whether the State actually loses money in doing so.

Sections 5, 6, 7 and 8:

[Sections 3 and 4 of CS for HB 384 (L&C)]

The amendments to AS 23.20.205(c) and AS 23.20.220(a) in these sections clarify the procedures for the appeal by an employer of the Department's assessment against the employer for unemployment contributions. The Department may extend the 30-day appeal filing deadline for circumstances beyond the control of an employer. Also, the amendments clarify that if the employer files security with the appeal, the collection of the assessment will be stayed pending determination of the appeal.

In addition, extraneous language in AS 23.20.220 is being deleted.

Section 9:

[New section proposed for 1989 session]

This amendment to AS 23.20.240 would allow the Department to use private collection agencies to collect outstanding employer contributions from employers. The Department is owed large amounts of contributions, especially by out of state employers, that are difficult to collect. This would provide a means to collect these delinquent contributions. The amendment provides for adding the collection fee to the amount of the debt owed. Federal law prohibits the use of trust fund (or employer contributions) to pay a collection agency. This would have no impact on our current operations; it would provide us a means to collect delinquent contributions not currently available to us. Current staff levels for the department's collection efforts would not change.

Section 10:

[Section 5 of CS for HB 384 (L&C)]

Under current law, an officer or employee of a corporation, or partner or employee of a partnership may be liable for delinquent unemployment taxes in a civil action if they have been determined to have the duty to pay the taxes. These individuals have no prior appeal rights regarding the determination of their duty to pay the taxes. This section provides a new section, AS 23.20.242, that allows these individuals to appeal, at an administrative level, the determination of "duty to pay," prior to civil action.

Sections 11, 12 and 13:

[Sections 5, 7, and 8 of CS for HB 384 (L&C)]

Under current law, nonprofit organizations pay 50 percent of extended benefits (the state share) with the federal share being 50 percent. Under the Gramm-Rudman-Hollings Act (the Federal Balanced Budget and Emergency Deficit Control Act of 1985), the federal share of extended benefits payments may decrease because it is subject to sequestration. This action will increase the State share of extended benefits payments. To offset the anticipated loss of some portion of the federal money, nonprofit organizations that choose to reimburse the Department for benefits paid to their former employees, instead of paying contributions under AS 23.20.165, will, under the amendments to AS 23.20.277(b), (e) and (l), be required to reimburse the Department the full amount of the State's share of the benefits paid to their former employees. The amount charged government entities will not change because they currently reimburse 100 percent of extended benefits paid.

Section 14:

[New Section proposed for 1989 session]

This section clarifies the intent of the law that the proviso for redetermining an initial claim applies only to the monetary determination. This redetermination will take place if the department finds that an error in computation or identity was made, additional wages for a claimant have become available or the initial determination resulted from the nondisclosure or misrepresentation of a material fact.

Section 15:

[HB 287 from 1988 session]

This amendment provides for the payment of benefits to individuals who have been working full time while attending school and who are laid off from work. Under present law, a person who is taking ten (10) or more credit hours of classes in an academic program is not eligible for unemployment insurance benefits, with no exceptions. Current law unfairly penalizes individuals who have demonstrated that they can attend school without affecting their availability to work full time.

Section 16:

[New section proposed for 1989 session]

This amendment would correct the language in AS 23.20.382 so the restrictions would apply only to claims under the Trade Act, as intended. Current language applies restrictions to all claimants that were only intended to apply to Trade Act claimants.

Section 17:

[New section proposed for 1989 session]

Federal law precludes states from denying benefits to individuals because they are in training approved under Title III of the Job Training Partnership Act (JTPA). This amendment provides that all individuals who are attending training approved under JTPA will not be denied their unemployment insurance benefits. Currently, this prohibition is addressed in regulation; however, the regulation only provides for paying benefits while the individual is in vocational training. This conforming legislation is needed to pay benefits to those individuals, regardless of whether their training is academic or vocational.

Section 18:

[New section proposed for 1989 session]

This provision disqualifies the week in which a fraudulent act occurs in addition to the period of disqualification currently imposed. Under current law, an individual can be paid for a week in which he commits fraud, because the disqualification begins the week the fraud decision is issued.

Section 19:

[Section 10 of CS for HB 384 (L&C)]

Under proposed AS 23.20.390(f), individuals who fraudulently obtain benefits incur an additional monetary penalty of 50 percent of the amount improperly received, unless the Department waives the penalty, with any penalties collected to go to the general fund. Currently, under AS 23.20.387, a person who fraudulently receives benefits is disqualified from receiving benefits for a specified period of time, and, under AS 23.20.390(a), must repay the benefits fraudulently received (a situation similar to an interest-free loan). As a further disincentive for fraud, the 50 percent penalty is proposed.

Sections 20 and 21:

[Sections 11 and 12 of CS for HB 384 (L&C)]

These amendments propose new AS 23.20.391, 23.20.393, and 23.20.394, which establish provisions for liens and attachment of property to facilitate the collection of overpayments that are caused by fraudulent receipt of benefits. The three proposed statutes are based on existing AS 23.20.200, 23.20.205 and 23.20.215, regarding liens on the property of an employer for failure to make the required contributions. Proposed AS 23.20.391(b), which tracks existing AS 23.20.200(b), refers to the lien being "constructive notice to creditors" and is intended to establish the priority of the state over unsecured and unrecorded creditors, whether prior or subsequent, as well as subsequent secured creditors.

Section 22:

[Section 13 of CS for HB 384 (L&C)]

Under current law, an individual's eligibility for unemployment insurance benefits is based upon wages paid to the individual. Thus, if an individual works for an employer who files for bankruptcy and does not pay its employees, the individual does not qualify for unemployment benefits. The proposed amendment to AS 23.20.530(a) in this section rectifies this situation. This section expands the definition of "wages" to include earnings for work that an employee performs but is not paid for because the employer files for bankruptcy.

Section 23:

This provision allows the Department to participate in demonstration or pilot projects with the U.S. Department of Labor (USDOL) that test innovative ways to assist unemployed individuals to return to work. The Department may waive eligibility requirements if needed. Participation in these projects will be incumbent upon availability of administrative funds for operating the project.

Section 24:

[New section proposed for 1989 session]

This amendment provides for employer overpayments of unemployment insurance contributions that are not claimed by the employer to remain in the unemployment insurance trust fund. The Unclaimed Property Act (AS 34.45) requires state agencies to transfer unclaimed property to the Department of Revenue. These overpayments should be exempted from the Unclaimed Property Act and remain in the Unemployment Trust Fund from which unemployment insurance benefits are paid. Expenditures from the trust fund are automatically replaced by employers in the state under the contribution formula; therefore, employers should receive the indirect benefit (through lower tax rates) of the unclaimed overpayments.

Section 25:

[New section proposed for 1989 session]

This section modifies the provisions covering dependents' allowance payments. Currently, a dependent claimed by one parent cannot be claimed by another parent until the first person's benefit year has expired (even if the first parent is not claiming benefits or has no remaining benefits to receive). A portion of every parent's wages goes to support their children. UI is for temporary, partial wage replacement of every eligible claimant. It is, therefore, inequitable for any parent with children to support to be denied dependents' allowance. This proposal allows each unemployed parent in a family unit to claim dependent children. Three dependents would still be the most that could be claimed by any claimant. It also repeals outdated subsections of AS 23.20.175.

Sections 26, 27 and 28 provide for effective dates.

missioner" at the end of the present first sentence, inserted "to the two-digit major group provided in the Standard Industrial Classification Code" in the present second sentence, and deleted "to the first digit

provided in the Standard Industrial Classification Code" at the end of the subsection

The 1984 amendment, effective January 1, 1985, added subsection (c)

NOTES TO DECISIONS

Cited in *Worthington Constr. Co. v. Labor, Sup. Ct. Op. No. 343* (File No. 582), Employment Sec. Div., Alas. Dep't of Labor, 413 P.2d 929 (1966).

Sec. 23.20.175. Base of contributions. (a) For the purposes of AS 23.20.165 and 23.20.170, after December 31, 1973, and through December 31, 1980, wages do not include that part of remuneration paid during any calendar year to an individual by an employer or by a predecessor of the employer that exceeds \$10,000.

(b) In this section, "employment" includes service constituting employment under the employment security law of another state or of the federal government.

(c) For the purposes of AS 23.20.165 and 23.20.170,

(1) after December 31, 1980, and through December 31, 1982, wages do not include that part of remuneration paid during any calendar year to an individual by an employer or by a predecessor of the employer that exceeds 60 percent of the average annual wage, as defined in AS 23.20.520(27), in Alaska for the preceding 12-month period ending June 30 computed to the nearest multiple of \$100;

(2) after December 31, 1982, wages do not include that part of remuneration paid during any calendar year to an individual by an employer or by a predecessor of the employer that exceeds 75 percent of the average annual wage, as defined in AS 23.20.520, in Alaska for the preceding 12-month period ending June 30 computed to the nearest multiple of \$100. (§ 503 ch 5 ESLA 1955; am § 18 ch 169 SLA 1957; am § 9 ch 60 SLA 1960; am §§ 4, 5 ch 43 SLA 1973; am §§ 15, 16 ch 9 SLA 1980)

Cross references. — For determination of average benefit cost rate for employer contributions in 1981 and 1983, see § 81, ch. 9, SLA 1980, in the Tempo-

rary and Special Acts.

Effect of amendments. — The 1980 amendment rewrote subsections (a) and (c)

Sec. 23.20.180. Records and analysis of experience with unemployment risk. For each calendar year the department shall maintain separate accounts for each employer and claimant to obtain facts and studies upon which the legislature may determine whether an experience rating system should be adopted to require contributions from employers based upon their experience with unemployment risk, and, if so, the most equitable system for accomplishing this purpose consistent with the solvency of the unemployment compensation fund. (§ 504 ch 5 ESLA 1955; am § 19 ch 169 SLA 1957)

B) Benefit Amount	(A) Base Period Wages		(B) Weekly Benefit Amount
	At least	But less than	
0	15,500	15,750	154
2	15,750	16,000	156
4	16,000	16,250	158
6	16,250	16,500	160
8	16,500	16,750	162
10	16,750	17,000	164
12	17,000	17,250	166
14	17,250	17,500	168
16	17,500	17,750	170
18	17,750	18,000	172
20	18,000	18,250	174
22	18,250	18,500	176
24	18,500	18,750	178
26	18,750	19,000	180
28	19,000	19,250	182
30	19,250	19,500	184
32	19,500	19,750	186
34	19,750		188

(e) An individual who is eligible under (d) of this section is entitled to receive a weekly benefit under this chapter for the number of weeks set out in column (B) of the table in this subsection opposite the applicable earnings ratio of the individual set out in column (A):

(A) Earnings Ratio	(B) Number of Weeks
less than 1.50	16
1.50-1.99	18
2.00-2.49	20
2.50-2.99	22
3.00-3.49	24
3.50 or more	26

(f) An individual who establishes a benefit year is eligible for an allowance for dependents in addition to the individual's weekly benefit amount. The department may require an individual claiming or receiving an allowance for dependents to produce income tax returns, birth certificates, notices of adoption or custody, social security account number of spouse, verification of support documents, or other information necessary to verify that the allowance is payable to the individual. The allowance for dependents

(1) is \$24 per week for each dependent, except that the total allowance for dependents paid to an individual may not exceed \$72 for each week of unemployment;

(2) is payable beginning with the week during the benefit year in which the individual claims an allowance for the dependent and is payable for the remainder of the individual's eligibility for regular, extended, or supplemental payments during the benefit year;

(3) may not be claimed for a new dependent after the end of the benefit year or after the exhaustion of regular benefits in the benefit year;

(4) may not be paid to an individual if

(A) that dependent has been claimed by another individual;

(B) the other individual has been found eligible to receive the allowance for the dependent; and

(C) the benefit year of the other individual has not expired; and

(5) may be paid only if the department determines that no other individual having an unexpired benefit year has been found eligible for an allowance for the same dependent.

(g) In this section,

(1) "dependent" means an individual's

(A) unmarried child, stepchild, legally adopted child, or legal ward under 18 years of age who is

(i) lawfully in the individual's physical custody at the time the individual claims the allowance for dependents; or

(ii) dependent on the individual for more than 50 percent of support;

(B) unmarried child, stepchild, legally adopted child, or legal ward of any age who is dependent on the individual for more than 50 percent of support and who is prevented by infirmity from engaging in a gainful occupation;

(2) "earnings ratio" means the ratio obtained by dividing the total base period wages of the insured worker by the wages paid in the quarter of the base period in which the worker was paid the greatest amount of wages. (§ 712(a) — (d) ch 5 ESLA 1955; am § 25 ch 169 SLA 1957; am § 1 ch 112 SLA 1966; am §§ 9, 10 ch 106 SLA 1969; am § 7 ch 106 SLA 1971; am § 10 ch 43 SLA 1973; am § 54 ch 9 SLA 1980; am §§ 8, 33 ch 115 SLA 1982; am §§ 6-8 ch 106 SLA 1984; am § 26 ch 85 SLA 1988)

Effect of amendments. — The 1958 amendment, effective June 2, 1988, substituted "less than 1.50" for "less than 1.49" at the beginning of column (A) of subsection (e).

Sec. 23.20.362. Disqualifying or deductible income. (a) The amount of benefits payable to an insured worker for a week of unemployment which begins in a period for which the insured worker receives a pension, retirement or retired pay, annuity, or similar periodic payment that is based on the previous work of the insured worker, shall be reduced by the amount of the payment that is attributable to that week. The requirements of this subsection apply only if

(§ 403 ch 5 ESLA 1955; am § 8 ch 9 SLA 1980; am § 2 ch 82 SLA 1987)

Effect of amendments. — The 1987 amendment inserted "arrange for" near the end of the section.

Article 3. Contributions.

Section

185. Interest on past due contributions
200. Lien

Section

250. Lien upon distribution or assignment of assets

Sec. 23.20.185. Interest on past due contributions. (a) If contributions are not paid on the date on which they are due, the amount remaining unpaid bears interest at the rate of 12 percent per year from the due date until payment plus accrued interest is received by the department. Interest collected under this section shall be deposited in the clearing account of the unemployment compensation fund.

(b) Interest does not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer after the date when the officer qualifies. However, contributions accruing with respect to employment of a person by the officer are due and draw interest in the same manner as contributions due from other employers.

(c) Payments of contributions erroneously paid to an unemployment compensation fund of another state which should have been paid to this state and which are refunded by the other state and paid by the employer to this state shall be considered paid to this state at the date of payment of the other state.

(d) Interest collected under this section shall periodically be transferred from the clearing account to the training and building fund. (§ 511 ch 5 ESLA 1955; am § 2 ch 106 SLA 1969; am §§ 17, 18 ch 9 SLA 1980)

Editor's notes. — This section is set out to incorporate editorial changes made by the Revisor of Statutes.

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

(b) The claim becomes a lien when the department records a notice of the lien with the recording officer of the recording district in which the property is located. The claim becomes a lien on a motor vehicle when the department files a notice of the lien in the office of the commissioner of public safety. Filing or recording of the notice of lien is constructive notice of the lien against the property described in the

notice to creditors of the owner, and to subsequent purchasers and encumbrancers.

(c) [Repealed, § 80 ch 9 SLA 1980.]

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

Revisor's notes. — Minor word changes related to the recording of documents were made in subsections (b) and (d) of this section in 1988 because of the enactment of ch. 161, SLA 1988.

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

NOTES TO DECISIONS

Stated in *In re Active Steel Erectors, Inc.*, 53 Bankr. 851 (Bankr. D. Alaska 1985).

Sec. 23.20.250. Lien upon distribution or assignment of assets. (a) If the assets of an employer are distributed under a court order, including a receivership, probate, legal dissolution, or a similar proceeding, or in the case of an assignment for the benefit of creditors, a composition, or a similar proceeding, contributions which are or which become due are a lien upon all the assets of the employer. The lien is prior to all other liens or claims except a prior tax lien, a lien filed or recorded under AS 23.20.200, or a claim for remuneration of service of not more than \$250 to each claimant, earned within six months before the starting of the proceeding.

(b) The existence of a condition of insolvency or the institution of a judicial proceeding for legal dissolution or of a proceeding for distribution of assets causes the lien to attach without action on behalf of the department or the state.

(c) In the event of an employer's adjudication in bankruptcy, judicially-confirmed extension proposal, or composition, under 11 U.S.C. (Federal Bankruptcy Act), contributions that are or become due are entitled to the priority provided under that Act, as amended. (§ 523 ch 5 ESLA 1955; am § 28 ch 21 SLA 1985)

Revisor's notes. — Minor word changes related to the recording of documents were made in subsection (a) of this section in 1988 because of the enactment of ch. 161, SLA 1988.

amendment in subsection (c) substituted "11 U.S.C. (Federal Bankruptcy Act)" for "the Federal Bankruptcy Act of 1898, as amended (11 U.S.C. 1 et seq.)," "that" for "which" followings, and "under" for "in" preceding "that Act."

Effect of amendments. — The 1985

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of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

Lien does not attach to property leased before 1955. — When the state's lien was extended in 1955 to cover "property used with the permission of the owner," the legislature did not expressly provide that this was meant to include property in circumstances where the "use" and "permission" antedated the statute and where the owner of the property, after the enactment of the law, had no practical means of protecting himself against the state's claim of lien for unpaid taxes. In the absence of such express provisions, the statute reasonably may be construed as having a more limited application, so that the state's lien does not attach to property leased before the 1955 amendment. Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

Mere use of property of a third person alone will not bring this section into play. Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

There must be use "in prosecuting the business of the employer." Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

And this use must be "with the permission of the owner." Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

Only when all of these factors are present does the property become subject to the lien. Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

A person who leases his property to another is chargeable with knowing the lien provisions of AS 23.20.005 — 23.20.150. Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

And cannot complain if his property

rights are subordinated to state's lien. — If, in advance of making the lease, the lessor knows that his property may be subjected to the lien of the state's tax but enables his lessee to exercise dominion over the property and use it in the conduct of a business subject to the incidence of the tax, then he cannot be heard to complain if his property rights are subordinated to the state's claim of lien. Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

Lessor should stipulate for prospective or permissible use of property. — Practically, this section suggests that the lessor should ascertain for what purposes the property is to be used, and then make appropriate provisions in the lease as to prospective or permissible use. Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

And that employment security taxes will be paid. — This section also suggests that the lessor secure assurance from his lessee that employment security taxes — if the lessee is likely to be subject to them — will be paid when due. Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

Recorded mortgage lien not subordinate to unrecorded lien for unpaid employment security contributions. — The provision of this section that filing of notice shall constitute constructive notice means that a recorded mortgage lien would not be subordinate to the unrecorded lien of the state for unpaid employment security contributions. Territory of Alaska v. Craig Enters., Inc., Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

Federal tax liens are entitled to priority over the liens of the Employment Security Commission. Bentley v. Kirbo, 169 F. Supp. 38 (D. Alas. 1958).

Applied in S. Birch & Sons Const. Co. v. Capehart, 192 F. Supp. 330 (D. Alas. 1961).

Sec. 23.20.205. Notice of assessment, distraint, seizure and sale. (a) If the department finds that a contribution including interest or penalty on the contribution is delinquent, the department may issue a notice of assessment specifying the amount due and may serve it on the delinquent employer. A peace officer or an authorized representative of the department may serve the notice personally or the department may mail the notice by certified or registered mail with return receipt requested.

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(b) If the notice is served by mail the notice must be deposited in the post office, addressed to the delinquent employer at the employer's last address of record and the postage paid. The date of service is considered to be the day of delivery shown on the delivery receipt. However, if it appears the addressee is deliberately avoiding service, then the date of service is the day of mailing.

(c) If the amount assessed is not paid within 30 days after personal service or mailing of the notice, the department may, subject to AS 23.20.220, collect the amount stated in the assessment by the distraint, seizure and sale of the property, goods, chattels and effects of the delinquent employer. Goods and property exempt from execution under the laws of this state are exempt from distraint and sale under this section. (§ 515 ch 5 ESLA 1955; am § 20 ch 169 SLA 1957; am § 23 ch 9 SLA 1980)

Effect of amendments. — The 1980 record" for "last known address" in the amendment substituted "last address of first sentence of subsection (b).

Sec. 23.20.210. Inventory and sale. (a) Upon making a distraint, the department shall seize the property and make an inventory of it. The department shall mail or personally deliver a copy of the inventory to the owner of the property, and shall specify the time and place when the property is to be sold. Notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the recording district of the judicial district where the seizure is made. The time of sale may not be less than 20 nor more than 30 days from the date of posting the notice. The department may adjourn the sale from time to time but adjournment may not exceed 90 days in all. The department or its authorized representative shall conduct the sale. The property may be sold by parcel or lot at a public auction. The department may set a minimum price to include the expenses of making the levy and advertising the sale, and if the amount bid for the property at the sale is not equal to the minimum price fixed by the department, the department or its representative may declare the property purchased by the department for the minimum price. The department shall credit the delinquent account with the amount received at the sale for the property after defraying the costs of distraint, seizure and sale. The department may sell the property acquired by it at public or private sale, and shall deposit the amount received in the unemployment compensation fund.

(b) Upon sale of the property, the department shall issue a bill of sale or a deed to the purchaser. The bill of sale or the deed is prima facie evidence of the regularity of the proceedings of the department in making the sale. The bill of sale or the deed transfers to the purchaser all right, title, and interest of the delinquent employer in the property. The department shall first apply the proceeds of the sale toward reimbursement of the administration fund for the costs of distraint,

seizure and sale and the balance toward satisfaction of the delinquent account. The department shall refund the excess to the delinquent employer. (§ 516 ch 5 ESLA 1955)

Sec. 23.20.215. Notice and order to withhold and deliver. (a) The department may issue a notice and order to withhold and deliver property of any kind to a person or a political subdivision or department of the state when (1) the department has reason to believe that the person, political subdivision or department possesses property which is due, owing, or the property of another person; and (2) notice and order of assessment has been served, at least 30 days before the issuance of the notice and order to withhold and deliver.

(b) A peace officer or an authorized representative of the department may serve the notice to withhold and deliver. The person, political subdivision or department upon whom service is made shall answer the notice within 10 days.

(c) If the person, political subdivision or department possesses property, credits or money subject to the claim of the department, it shall deliver the property to the department immediately upon demand. The department shall hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a sufficient bond satisfactory to the department conditioned upon final determination of liability.

(d) If a person fails to answer the order to withhold and deliver within the time prescribed, the superior court in the judicial district in which the order is served may enter a judgment by default against the person for the full amount claimed by the department in the notice to withhold and deliver, together with costs. (§ 516.1 ch 5 ESLA 1955, added by § 21 ch 169 SLA 1957)

Sec. 23.20.220. Petition for hearing and summary judgment. (a) When a notice of assessment is delivered or mailed to a delinquent employer, the employer may within 30 days file a petition in writing with the department, stating that the assessment is unjust or incorrect and requesting a hearing on it. The petition shall set out the reasons the assessment is objected to and the amount of contributions which the employer admits is due and must be accompanied by a bond or deposit of other security in the amount of the assessment to insure collection. The department may waive the security requirement if the employer submits proof of solvency or reasonable assurance, as prescribed by regulations, that the contributions, interest and penalties due are not in jeopardy. If no petition is filed within the time prescribed, or if the employer fails to provide the required security, the assessment is prima facie correct. However, the department may entertain a subsequent application for refund, and, if denied a refund, a hearing on the application in accordance with AS 23.20.225.

HB

148

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

HOUSE FINANCE COMMITTEE



House of Representatives

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS ALASKA 99701
1907) 456 6473

JUNEAU

PO BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
1907) 465 3466

M E M O R A N D U M

TO: Representative Peter Goll
Representative Max Gruenberg
Co-Chairs House Judiciary

FROM: Representative Mark Boyer *MR*

DATE: February 13, 1989

SUBJECT: PROPOSED AMENDMENT TO HB 148 - 1989 REVISOR'S BILL

It has been brought to my attention by my politically correct staff that in a few places in our state statutes we continue to use the term "policeman" which is not a sex neutral term to designate the position of police officer. The same problem also exists with the term "fireman".

In order to make our statutes sex neutral and to recognize the contributions of the women who work in these positions, I am respectfully requesting that you add my proposed amendments to the Revisor's Bill.

Thank you.

A M E N D M E N T

OFFERED IN THE HOUSE JUDICIARY COMMITTEE

BY ROYER

TO: HB 148

Page 18, after line 18:

Insert a new bill section to read:

"* Sec. 39. The revisor of statutes shall substitute "police officer" or "police officers" for "policeman" or "policemen" in AS 23.10.037, AS 23.-30.092, 23.30.220, 23.30.265, and AS 28.35.070."

Renumber remaining bill sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE JUDICIARY COMMITTEE

BY BOYER

TO: HB 148

Page 18, after line 18:

Insert a new bill section to read:

"* Sec. 39. The revisor of statutes shall substitute "fire fighter" or "fire fighters" for "fireman" or "firemen" in AS 18.60.395, AS 23.30.092, 23.30.220, 23.30.243, 23.30.265, AS 28.35.180, AS 39.35.160, 39.35.360, 39.35.370, 39.35.527, and 39.35.680."

Renumber remaining bill sections accordingly.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 3, 1989

FURTHER REFERRALS:

Date of Committee Action: 3/6/89

The JUDICIARY Committee recommends that:

HOUSE BILL NO. 148

[1989 REVISOR'S BILL]

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

[] be replaced with CS HB 148 (JUD) [] the same title
[] a new title

[] have attached amendment(s)

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

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

APPROVES PREVIOUS:

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

SIGNING DO PASS:

Peter J. ...
Max ...
Mike ...
J. ...
Harry ...
Cliff ...

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

Mike Miller

Peter J. ... / Max ...
 chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act making corrective amend-
ments to the Alaska Statutes as recommended...
Sponsor: House Judiciary
Requestor: House Judiciary

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Components Legal Services

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 Fund						
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)

NO FISCAL IMPACT

Prepared By: Pamela Stoops, Director *Pamela Stoops* Phone: 465-3850
Division: Administrative Services Date: 3/6/89
Approved By: Warren Endicott, Executive Director *Warren Endicott*
Agency: Legislative Affairs Agency Date: 3/6/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

6-0391E
Dierdorff
2/28/89

Original sponsor: Rules/Legislative Council

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 148 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making corrective amendments to the Alaska
7 Statutes as recommended by the revisor of statutes;
8 and providing for an effective date."

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

10 * Section 1. AS 04.16.051(b) is amended to read:

11 (b) This section does not prohibit the furnishing or delivery of
12 an alcoholic beverage

13 (1) by a parent to the parent's child, by a guardian to the
14 guardian's ward, or by a person to the legal spouse of that person if
15 the furnishing or delivery occurs off licensed premises; or

16 (2) by a licensed physician or nurse to a patient in the
17 course of administering medical treatment.

18 * Sec. 2. AS 05.05.030(c) is amended to read:

19 (c) Each member of the commission [COMMISSIONER] shall attend
20 and supervise all boxing and wrestling events in the member's [COMMIS-
21 SIONER'S] area unless an official inspector attends the event under
22 AS 05.10.110. A member may attend [, AND] other athletic events in
23 the member's [THAT] area that [WHICH] the member [COMMISSIONER] con-
24 siders necessary. A member [AND] may provide for the attendance of a
25 physician whose fees shall be paid for by the promoter or manager of
26 the event [PROGRAM].

27 * Sec. 3. AS 05.05.040 is amended to read:

28 Sec. 05.05.040. MEETINGS AND COMPENSATION OF ATHLETIC COMMIS-
29 SION. The commission may meet at least once a year at the call of the

1 governor. When called, the members of the commission may, at the
2 election of the governor, receive travel expenses incurred in carrying
3 out the purposes of this chapter. A member [THE COMMISSIONERS] may
4 receive the per diem allowance for time spent at meetings allowed by
5 law or by executive order.

6 * Sec. 4. AS 08.84.030(a) is amended to read:

7 (a) To be eligible for licensure by the board as a physical
8 therapist or physical therapy assistant, an applicant, unless a gradu-
9 ate of a foreign school of physical therapy located outside the United
10 States, shall

11 (1) [REPEALED

12 (2)] have graduated from a school of physical therapy
13 approved by the Council on Medical Education and Hospitals of the
14 American Medical Association, or the American Physical Therapy Associ-
15 ation;

16 (2) [(3)] pass to the satisfaction of the board an examina-
17 tion prepared by [THE PROFESSIONAL EXAMINATION SERVICE ASSOCIATION OR
18 BY] a national testing service approved by the board to determine the
19 applicant's fitness for practice as a physical therapist or physical
20 therapy assistant, or be entitled to licensure without examination as
21 provided in AS 08.84.060;

22 (3) [(4)] meet qualifications for licensure established in
23 regulations adopted by the board under AS 08.84.010(b)(8).

24 * Sec. 5. AS 09.10.050 is amended to read:

25 Sec. 09.10.050. ACTIONS TO BE BROUGHT IN SIX YEARS. A [NO]
26 person may not bring an action (1) upon a contract or liability,
27 express or implied, excepting those mentioned in AS 09.10.040 [OR
28 09.10.055]; (2) for waste or trespass upon real property; or (3) for
29 taking, detaining, or injuring personal property, including an action

1 for its specific recovery [, EXCEPT THOSE MENTIONED IN AS 09.10.055];
2 unless commenced within six years.

3 * Sec. 6. AS 09.20.040 is amended to read:

4 Sec. 09.20.040. COMPLIANCE WITH STATUTE. The selection of
5 jurors shall be made in substantial compliance with AS 09.20.040 -
6 09.20.090 [THE FOLLOWING PROVISIONS]. A failure in substantial com-
7 pliance which prejudices the rights of a party is reversible error.

8 * Sec. 7. AS 09.30.170 is amended to read:

9 Sec. 09.30.170. DEFINITIONS. In AS 09.30.100 - 09.30.180

10 (1) "foreign state" means a governmental unit other than
11 the United States, or a state, district, commonwealth, territory, or
12 insular possession thereof [, OR THE PANAMA CANAL ZONE, THE TRUST
13 TERRITORY OF THE PACIFIC ISLAND, OR THE RYUKYU ISLANDS];

14 (2) "foreign judgment" means a judgment of a foreign state
15 granting or denying recovery of a sum of money other than a judgment
16 for taxes, a fine or other penalty, or a judgment for support in
17 matrimonial or family matters.

18 * Sec. 8. AS 10.06.343 is amended to read:

19 Sec. 10.06.343. STOCK RIGHTS AND OPTIONS. Subject to a pro-
20 vision in its articles, a corporation may create and issue, whether or
21 not in connection with the issuance and sale of any of its shares or
22 other securities, rights, or options entitling the holders of the
23 rights or options [SHARES] to purchase from the corporation shares of
24 any class or classes. These rights or options shall be evidenced in
25 the manner the board approves and, subject to the provisions of the
26 articles, shall set out the terms upon which, the time within which,
27 and the price at which the shares may be purchased from the corpo-
28 ration upon the exercise of the right or option. If the rights or
29 options are to be issued to directors, officers, or employees of the

1 corporation or of a subsidiary of the corporation and not to the
2 shareholders generally, their issuance shall be authorized by the
3 approval of the outstanding shares or shall be consistent with a plan
4 so approved or ratified. In the absence of fraud in the transaction,
5 the judgment of the board as to the adequacy of the consideration
6 received for the rights or options is conclusive.

7 * Sec. 9. AS 10.06.833 is amended to read:

8 Sec. 10.06.833. FEES AND PENALTIES PAYABLE ON WITHDRAWAL OF
9 FOREIGN CORPORATION. A registered foreign corporation may withdraw
10 from this state upon payment of all biennial corporation taxes and
11 penalties due at the time of desired withdrawal and by filing with the
12 department an application for a certificate of withdrawal signed by
13 its proper officers and under its corporate seal. The fee for filing
14 the application [CERTIFICATE] with the commissioner shall be estab-
15 lished by the department by regulation.

16 * Sec. 10. AS 10.06.870 is amended to read:

17 Sec. 10.06.870. IDENTIFICATION CODE. The commissioner [OF
18 COMMERCE AND ECONOMIC DEVELOPMENT AND THE COMMISSIONER OF REVENUE]
19 shall [JOINTLY] establish and adopt a coded list of business activi-
20 ties and shall make the list available to the public.

21 * Sec. 11. AS 10.15.255 is amended to read:

22 Sec. 10.15.255. TERMINATION OF RECORDED CONTRACT. When a
23 contract recorded under AS 10.15.230 - 10.15.260 has been terminated
24 in any manner, the cooperative shall upon demand, give a statement of
25 termination to the member party to the contract, who may record the
26 statement in the office of the recorder where the contract was orig-
27 inally recorded. The recorder shall stamp "expired" after the name of
28 the member in the alphabetical record. The fee for the recording and
29 stamping shall be established by the department by regulation [SUBJECT

1 TO AS 10.05.773).

2 * Sec. 12. AS 10.15.260 is amended to read:

3 Sec. 10.15.260. RECORDING OF LIST OF TERMINATED CONTRACTS. A
4 cooperative may record in the office of the recorder where the con-
5 tract was originally recorded a sworn list of the names of all persons
6 whose contracts have been terminated in a manner other than by expira-
7 tion of their term. The recorder shall stamp "expired" after the name
8 of each of those persons in the alphabetical record. The fee for the
9 recording and stamping shall be established by the department by
10 regulation [SUBJECT TO AS 10.05.773].

11 * Sec. 13. AS 10.15.325 is amended to read:

12 Sec. 10.15.325. FORM OF BIENNIAL REPORT; DELINQUENT REPORTS.
13 The biennial report shall be made on forms furnished by the depart-
14 ment. The information contained in the biennial report shall be given
15 as of June 30 of the reporting year. [THE FIRST BIENNIAL REPORT FOR
16 CORPORATIONS REQUIRED TO FILE IN ODD-NUMBERED YEARS MUST BE FILED
17 BEFORE JULY 2, 1981. THE FIRST BIENNIAL REPORT FOR CORPORATIONS
18 REQUIRED TO FILE IN EVEN-NUMBERED YEARS MUST BE FILED BEFORE JULY 2,
19 1982.] The biennial report is delinquent if not filed before August 1
20 of each odd or even year as provided in this section. A corporation
21 that is delinquent is [DELINQUENT RETURNS ARE] subject to involuntary
22 dissolution under [THE PENALTY PRESCRIBED IN] AS 10.15.505.

23 * Sec. 14. AS 10.15.535 is amended to read:

24 Sec. 10.15.535. DETERMINATION OF LICENSE FEE FOR COOPERATIVE
25 AUTHORIZED TO ISSUE CAPITAL STOCK. The license fee of each coopera-
26 tive authorized by its articles to issue capital stock shall be estab-
27 lished by the department by regulation [SUBJECT TO AS 10.05.773]. The
28 license fee shall be based on the amount of authorized capital stock.

29 * Sec. 15. AS 10.15.545 is amended to read:

1 Sec. 10.15.545. LICENSE FEE FOR COOPERATIVE WITHOUT CAPITAL
2 STOCK. The license fee of each cooperative having no authorized
3 shares of capital stock shall be established by the department by
4 regulation [SUBJECT TO AS 10.05.773].

5 * Sec. 16. AS 10.15.555 is amended to read:

6 Sec. 10.15.555. MISCELLANEOUS FEES AND CHARGES. (a) The de-
7 partment shall establish by regulation [SUBJECT TO AS 10.05.773] and
8 charge and collect from a cooperative fees for filing

9 (1) articles of incorporation or articles of consolidation
10 for a new cooperative;

11 (2) articles of amendment, restated articles, or articles
12 of merger, and, if the articles provide for an increase of the amount
13 of authorized capital stock of the cooperative, the filing cooperative
14 shall also pay the proportionate part of the annual license fee for
15 the succeeding fraction of the fiscal year, payable by a cooperative
16 whose authorized shares equal the newly increased authorized shares of
17 the filing cooperative, less the annual license fee already paid for
18 the succeeding fraction of the fiscal year by the filing cooperative;
19 but filing articles decreasing the authorized shares does not reduce
20 the annual license fee of the filing cooperative until the beginning
21 of the fiscal year following that in which the articles were filed;

22 (3) statement of intent to dissolve;

23 (4) statement of revocation of voluntary dissolution pro-
24 ceedings;

25 (5) articles of dissolution;

26 (6) all other statements.

27 (b) The department may by regulation charge each cooperative
28 corporation subject to this chapter a fixed fee in place of charging
29 cooperative corporations the various fees specified in this chapter,

1 with the exception of AS 10.15.535, (a)(1) of this section, and for
2 routine administrative services rendered to the cooperative corpora-
3 tion by the department. [AN INCREASE IN THE AMOUNT OF A FIXED FEE
4 CHARGED UNDER THIS SUBSECTION IS SUBJECT TO AS 10.05.773.]

5 * Sec. 17. AS 10.20.530 is amended to read:

6 Sec. 10.20.530. SERVICE ON COMMISSIONER. When a foreign corpo-
7 ration authorized to transact business in the state, or not authorized
8 to transact business in the state but doing so, fails to appoint or
9 maintain a registered agent in the state, or when a registered agent
10 cannot with reasonable diligence be found at the registered office, or
11 when the certificate of authority of a foreign corporation is sus-
12 pended or revoked, the commissioner is an agent upon whom process,
13 notice, or demand may be served. Service on the commissioner shall be
14 made by delivering to and leaving with the commissioner, or a designee
15 in the corporation division of the department, duplicate copies of the
16 process, notice or demand, accompanied by a fee established by the
17 department by regulation [SUBJECT TO AS 10.05.773]. The commissioner
18 shall immediately have one copy forwarded by registered or certified
19 mail, addressed to the corporation at its principal office in the
20 state or country under whose laws it is incorporated. Service on the
21 commissioner is returnable in not less than 30 days.

22 * Sec. 18. AS 10.20.635 is amended to read:

23 Sec. 10.20.635. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFI-
24 CATES. (a) The commissioner shall establish by regulation and [SUB-
25 JECT TO AS 10.05.773,] charge and collect fees for filing

26 (1) [FILING] articles of incorporation and issuing a certi-
27 ficate of incorporation;

28 (2) [FILING] articles of amendment and issuing a certifi-
29 cate of amendment;

1 (3) [FILING] restated articles of incorporation and issuing
2 a restated certificate of incorporation;

3 (4) [FILING] articles of merger or consolidation and issu-
4 ing a certificate of merger or consolidation;

5 (5) [FILING] a statement of change of address of registered
6 office or change of registered agent, or both;

7 (6) [FILING] articles of dissolution;

8 (7) [FILING] an application of a foreign corporation for a
9 certificate of authority to conduct affairs in this state and issuing
10 a certificate of authority;

11 (8) [FILING] an application of a foreign corporation for an
12 amended certificate of authority to conduct affairs in this state and
13 issuing an amended certificate of authority;

14 (9) [FILING] a copy of an amendment to the articles of
15 incorporation of a foreign corporation holding a certificate of au-
16 thority to conduct affairs in this state;

17 (10) [FILING] a copy of articles of merger of a foreign
18 corporation holding a certificate of authority to conduct affairs in
19 this state;

20 (11) [FILING] an application for withdrawal of a foreign
21 corporation and issuing a certificate of withdrawal;

22 (12) [FILING] any other statement or report, including a
23 biennial report, of a domestic or foreign corporation.

24 (b) The department may by regulation charge each corporation
25 subject to this chapter a fixed fee in place of the various fees
26 specified in this chapter, with the exception of (a)(1) of this sec-
27 tion, and for routine administrative services rendered to the corpo-
28 ration by the department. [AN INCREASE IN THE FIXED FEE CHARGED UNDER
29 THIS SUBSECTION IS SUBJECT TO AS 10.05.773.]

1 * Sec. 19. AS 10.20.640 is amended to read:

2 Sec. 10.20.640. FEE FOR CERTIFIED COPIES OF INSTRUMENTS. The
3 fee for furnishing a certified copy of any instrument shall be estab-
4 lished by the department by regulation [SUBJECT TO AS 10.05.773].

5 * Sec. 20. AS 10.25.530(a) is amended to read:

6 (a) The commissioner shall establish by regulation and [SUBJECT
7 TO AS 10.05.773,] charge and collect [FILING] fees for

- 8 (1) filing articles of incorporation;
9 (2) filing articles of amendment;
10 (3) filing articles of consolidation or merger;
11 (4) filing articles of conversion;
12 (5) filing certificate of election to dissolve;
13 (6) filing articles of dissolution;
14 (7) filing certificate of change of principal office and
15 designation or change of registered office and registered agent; and
16 (8) acting as agent for service of process.

17 * Sec. 21. AS 10.25.530(b) is amended to read:

18 (b) The department may by regulation charge each cooperative
19 subject to this chapter a fixed fee in place of the various fees
20 specified in this chapter, with the exception of (a)(1) of this sec-
21 tion, and for the routine administrative services rendered to the
22 corporation by the department. [AN INCREASE IN THE FIXED FEE CHARGED
23 UNDER THIS SUBSECTION IS SUBJECT TO AS 10.05.773.]

24 * Sec. 22. AS 10.35.060 is amended to read:

25 Sec. 10.35.060. FEE FOR AND DURATION OF REGISTERED NAME. The
26 fee for the initial registration of a business name shall be estab-
27 lished by the department by regulation [SUBJECT TO AS 10.05.773]. The
28 year in which the registration becomes effective is considered a full
29 year of registration and the registration is effective until the close

1 of the fifth calendar year beginning with the year of initial registra-
2 tion.

3 * Sec. 23. AS 10.35.070 is amended to read:

4 Sec. 10.35.070. RENEWAL OF REGISTERED NAME. A registered busi-
5 ness name may be renewed every five years if an application for re-
6 newal is filed. An application for renewal must set out the facts
7 required in an original application for registration and be accom-
8 panied by a renewal fee to be established by the department by regu-
9 lation [SUBJECT TO AS 10.05.773]. An application for renewal may be
10 filed between October 1 and December 31 of any year. The renewal of
11 the registration extends the registration for the following five
12 calendar years.

13 * Sec. 24. AS 10.40.140(a) is amended to read:

14 (a) Any document required to be filed with the commissioner
15 under this chapter shall be accompanied by a fee to be established by
16 the department by regulation [SUBJECT TO AS 10.05.773].

17 * Sec. 25. AS 11.41.432 is amended to read:

18 Sec. 11.41.432. DEFENSES [DEFENSE]. (a) It is a defense to a
19 crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.-
20 420(a)(3), or 11.41.425 that the offender is

21 (1) mentally incapable; or

22 (2) married to the person and neither party has filed with
23 the court for a separation, divorce, or dissolution of the marriage.

24 (b) Except as provided in (a) of this section, in a prosecution
25 under AS 11.41.410 or 11.41.420, it is not a defense that the victim
26 was, at the time of the alleged offense, the legal spouse of the
27 defendant.

28 * Sec. 26. AS 11.41.470(2) is amended to read:

29 (2) "mentally incapable" means suffering [A PERSON WHO

1 SUFFERS] from a mental disease or defect that renders the person
2 incapable of understanding the nature of consequences of the person's
3 conduct, including the potential for harm to that person;

4 * Sec. 27. AS 12.36.050(a) is amended to read:

5 (a) A claimant seeking remission of [, OR REMITTANCE OF THE
6 VALUE OF,] the claimant's interest in a weapon ordered forfeited under
7 AS 12.55.015(a)(9) shall prove to the court by a preponderance of evi-
8 dence that the claimant

9 (1) has a valid interest in the weapon, acquired in good
10 faith;

11 (2) did not knowingly participate in the commission of the
12 crime in which the weapon was used; and

13 (3) did not know or have reasonable cause to believe that
14 the weapon was used or would be used to commit a crime.

15 * Sec. 28. AS 14.03.085 is amended to read:

16 Sec. 14.03.085. PROCUREMENT PREFERENCE FOR RECYCLED ALASKA
17 PRODUCTS. A school district shall comply with AS 29.71.050, except
18 that in AS 29.71.050(b), "AS 29.71.040" is read as "AS 36.15.050," and
19 in AS 29.71.050(a) - (c) and (e) [AS 29.71.050(a) - (e) and (g)],
20 "municipal" and "municipality" are read as "school district." In this
21 section, "school district" does not include regional educational
22 attendance areas.

23 * Sec. 29. AS 14.25.220(20) is amended to read:

24 (20) "member contribution account" means the total maintain-
25 ed by the system of the member's mandatory contributions, indebtedness
26 principal and interest payments [CONTRIBUTIONS], interest credited to
27 each of those accounts, and adjustments to the account in accordance
28 with AS 14.25.173 [AS 14.25.170];

29 * Sec. 30. AS 15.13.040(d) is amended to read:

1 (d) Every individual, person or group making a contribution or
2 expenditure shall make a full report, upon a form prescribed by the
3 commission, of the following contributions or expenditures:

4 (1) any contribution of cash, goods or services valued at
5 more than \$250 [\$100] a year to any group or candidate; or

6 (2) any expenditure whatsoever for advertising in newspa-
7 pers, on radio or on television; or, for the publication, distribution
8 or circulation of brochures, flyers, or other campaign material for
9 any candidate or ballot proposition or question.

10 * Sec. 31. AS 15.25.030(a)(6) is amended to read:

11 (6) the full residence [RESIDENT] address of the candidate;

12 * Sec. 32. AS 16.43.210(a) is amended to read:

13 (a) Pending the establishment of the maximum number of entry
14 permits under AS 16.43.240 and the issuance of entry permits under AS
15 16.43.270, the commission shall issue interim-use permits under regu-
16 lations adopted by the commission for each fishery, to all applicants
17 who can establish their present ability to participate actively in the
18 fishery for which they are making application [, EXCEPT AS PROVIDED
19 UNDER (e) OF THIS SECTION].

20 * Sec. 33. AS 21.84.590 is amended to read:

21 Sec. 21.84.590. OTHER PROVISIONS APPLICABLE. In addition to the
22 provisions contained in this chapter, the following [OTHER CHAPTERS
23 AND] provisions of this title [SHALL] apply to fraternal benefit
24 societies [,] to the extent applicable and not in conflict with the
25 express provisions of this chapter and the reasonable implications of
26 this chapter [THEREOF, AS FOLLOWS]:

27 (1) AS 21.03

28 (2) AS 21.06

29 (3) AS 21.09.050 and 21.09.100

1 (4) AS 21.33 [AS 21.33.010]

2 (5) AS 21.36

3 (6) AS 21.42.290 and 21.42.355

4 (7) AS 21.69.370 and 21.69.640

5 (8) AS 21.78

6 (9) AS 21.89.060.

7 * Sec. 34. AS 22.15.210(b) is amended to read:

8 (b) A magistrate, while holding office, may not hold office in a
9 political party. A magistrate may hold any other office or position
10 of profit under the United States, the state or its political subdivi-
11 sions, or engage in the conduct of any profession or business that
12 [WHICH] does not interfere with the performance of the judicial duties
13 of the magistrate or require that the magistrate is repeatedly dis-
14 qualified, on the magistrate's own motion, [DISQUALIFY HIMSELF OR
15 HERSELF] from judicial service because of a conflict of interest
16 caused thereby.

17 * Sec. 35. AS 22.20.020(c) is amended to read:

18 (c) If a judicial officer is disqualified on the officer's own
19 motion [DISQUALIFIES HIMSELF OR HERSELF] or consents to disqualifica-
20 tion, the presiding judge of the district shall immediately transfer
21 the action to another judge of that district to which the objections
22 of the parties do not apply or are least applicable and if there is no
23 such judge, the chief justice of the supreme court shall assign a
24 judge for the hearing or trial of the action. If a judicial officer
25 denies disqualification the question shall be heard and determined by
26 another judge assigned for the purpose by the presiding judge of the
27 next higher level of courts or, if none, by the other members of the
28 supreme court. The hearing may be ex parte and without notice to the
29 parties or judge.

1 * Sec. 36. AS 24.08.330(a) is amended to read:

2 (a) The Department of Education is responsible for making offi-
3 cial distribution of the Alaska Statutes to state executive branch
4 agencies. The administrative director of the court system is respon-
5 sible for distribution to the court system. Distribution shall be
6 made on the basis of written lists submitted by the department and the
7 court system to the Legislative Affairs Agency within 90 days after
8 the last day of each regular session of the legislature [REQUESTS AND
9 JUSTIFICATIONS SUBMITTED BY THE EXECUTIVE OFFICER OF EACH AGENCY TO
10 THE LEGISLATIVE AFFAIRS AGENCY AND APPROVED BY THE EXECUTIVE DIRECTOR
11 OF THE LEGISLATIVE AFFAIRS AGENCY]. A legislator is entitled to
12 receive one set of the statutes for the member's personal use, and
13 this entitlement is restricted to the one set issued during a member's
14 entire legislative service. The commissioner of education may deposit
15 one set of the statutes in each free public library within the state.
16 The right of sale to persons and organizations remains exclusively
17 with the publisher.

18 * Sec. 37. AS 25.23.040(a) is amended to read:

19 (a) Unless consent is not required under AS 25.23.050, a petition
20 to adopt a minor may be granted only if written consent to a particu-
21 lar adoption has been executed by

22 (1) the mother of the minor;

23 (2) the father of the minor, if the father was married to
24 the mother at the time the minor was conceived or at any time after
25 conception, the minor is the father's child by adoption, or the father
26 has otherwise legitimated the minor under the laws of the state;

27 (3) any person lawfully entitled to custody of the minor or
28 empowered to consent;

29 (4) the court having jurisdiction to determine custody of

1 the minor, if the legal guardian or custodian of the person of the
2 minor is not empowered to consent to the adoption;

3 (5) the minor, if [MORE THAN] 10 years of age or older,
4 unless the court in the best interest of the minor dispenses with the
5 minor's consent; and

6 (6) the spouse of the minor to be adopted.

7 * Sec. 38. AS 33.32.015(b)(5) is amended to read:

8 (5) subject to the provisions of AS 36.30 (State Procure-
9 ment Code) [AS 37.05], enter into joint cooperative ventures with
10 private industry for the establishment and operation of "Free Venture"
11 industries under AS 33.32.017, if the Correctional Industries Commis-
12 sion determines at the time of inception that the "Free Venture"
13 industry will not compete with an existing private industry or labor
14 force in the state.

15 * Sec. 39. AS 37.14.210 is amended to read:

16 Sec. 37.14.210. POWERS AND DUTIES OF THE COMMISSIONER OF REVE-
17 NUE. The commissioner of revenue is the treasurer of the fund and has
18 the power and duty to:

19 (1) act as official custodian of the cash and investments
20 belonging to the fund by securing adequate and safe custodial facil-
21 ities;

22 (2) receive all items of cash and investments belonging to
23 the fund;

24 (3) collect the principal and income from investments owned
25 or acquired by the fund and deposit the amounts in separate principal
26 and income accounts for the fund;

27 (4) invest and reinvest the assets of the fund as provided
28 in this section and as provided for the investment of [SURPLUS
29 PENSION] funds under AS 14.25.180(c) and AS 37.14.170 [FORMER AS 39.-

1 35.110(a), (c), (e), (f), (h) AND (i)];

2 (5) exercise the powers of an owner with respect to the
3 assets of the fund;

4 (6) maintain accounting records of the fund in accordance
5 with investment accounting principles and with distinction between the
6 principal and income accounts of the fund;

7 (7) engage an independent firm of certified public accoun-
8 tants to annually audit the financial condition of the fund's invest-
9 ments and investment transactions;

10 (8) enter into and enforce contracts or agreements
11 considered necessary for the investment purposes of the fund;

12 (9) report to the board the condition and investment perfor-
13 mance of the fund;

14 (10) do all acts, whether or not expressly authorized, that
15 the commissioner of revenue considers necessary or proper in adminis-
16 tering the assets of the fund.

17 * Sec. 40. AS 37.15.300 is amended to read:

18 Sec. 37.15.300. BORROWING IN ANTICIPATION OF SALE OF BONDS
19 PERMITTED. When the state bond committee considers it in the best
20 interests of the state, it may borrow money in anticipation of the
21 sale of general obligation and revenue bonds if money to be derived
22 from the sale of the bonds has been appropriated by the legislature
23 and

24 (1) in the case of revenue bonds, the bonds to be sold have
25 been authorized by law; or

26 (2) in the case of [(1) THE] general obligation bonds, the
27 bonds to be sold have been

28 (A) authorized by law and ratified by a majority vote
29 of the qualified voters of the state who vote on the question; or

1 (B) [(2) THE GENERAL OBLIGATION BONDS TO BE SOLD HAVE
2 BEEN] authorized by law for the purpose of meeting natural disas-
3 ters, repelling invasion, suppressing insurrection, or defending
4 the state in war [; OR

5 (3) THE REVENUE BONDS TO BE SOLD HAVE BEEN AUTHORIZED BY
6 LAW; AND

7 (4) MONEY TO BE DERIVED FROM THE SALE OF GENERAL OBLIGATION
8 AND REVENUE BONDS HAS BEEN APPROPRIATED BY THE LEGISLATURE].

9 * Sec. 41. AS 38.04.910(4) is amended to read:

10 (4) 'long-term lease" means a lease for a term of more than
11 10 years [OR MORE];

12 * Sec. 42. AS 38.05.965(21) is amended to read:

13 (21) "tideland" means land that [WHICH] is periodically
14 covered by tidal water between the elevation of mean high water and
15 mean low water [TIDES];

16 * Sec. 43. AS 43.05.120 is amended to read:

17 Sec. 43.05.120. CONCEALING PROPERTY OR EVIDENCE. A person,
18 upon conviction, is punishable by a fine of not more than \$5,000 or by
19 imprisonment for not more than one year, or by both, if, in connection
20 with a compromise under AS 43.05.070 or offer of a compromise or in
21 connection with a closing agreement under AS 43.05.060 [AS 43.05.010 -
22 43.05.130] or offer to enter a closing agreement, the person wilfully

23 (1) conceals from an officer or employee of the state prop-
24 erty belonging to the estate of the taxpayer or other person liable
25 for the tax; or

26 (2) receives, destroys, mutilates, or falsifies a book,
27 document, or record or makes a false statement under oath relating to
28 the estate or the financial condition of the taxpayer or to the person
29 liable for the tax.

1 * Sec. 44. AS 43.55.012(b) is amended to read:

2 (b) The cents-per-barrel amount set out in AS 43.55.011(c) [AS
3 ADJUSTED BY (a) OF THIS SECTION] applies to oil of 27 degrees API
4 gravity. For each degree of API gravity less than 27 degrees the
5 cents-per-barrel amount shall be reduced by \$.005 and for each degree
6 of API gravity greater than 27 degrees the cents-per-barrel amount
7 shall be increased by \$.005 except that oil above 40 degrees API
8 gravity shall be taxed as 40 degree oil. In applying the gravity
9 adjustment under this subsection, fractional degrees of API gravity
10 shall be disregarded.

11 * Sec. 45. AS 43.55.020(a) is amended to read:

12 (a) The [GROSS] production tax on oil or gas shall be paid
13 monthly. The tax is due on the 20th day of each calendar month on oil
14 or gas produced from each lease or property during the preceding
15 month. If the tax is not paid before the end of the month in which it
16 becomes due, the tax becomes delinquent.

17 * Sec. 46. AS 43.55.020(b) is amended to read:

18 (b) The [GROSS] production tax on oil or gas shall be paid by or
19 on behalf of the producer.

20 * Sec. 47. AS 44.19.257(a) is amended to read:

21 (a) The commission is composed of the senior science advisor in
22 the governor's office who serves as chairperson and director of the
23 commission, the executive director of the Alaska Science and Tech-
24 nology Foundation established under AS 37.17, and six [EIGHT] members
25 appointed by the governor as follows:

26 (1) one member [IS TO BE APPOINTED] from individuals from
27 the academic institutions in the state with expertise in areas of
28 research relating to the state, including the physical, biological,
29 health, environmental, social, and behavioral sciences;

1 (2) one member [IS TO BE APPOINTED] from individuals who
2 are engaged in activities furthering the welfare of the human and
3 physical environment and who have expertise in areas of research
4 relating to the state, including the physical, biological, health,
5 environmental, social, and behavioral sciences;

6 (3) one member [IS TO BE APPOINTED] from state departments
7 with research needs;

8 (4) one member [IS TO BE APPOINTED] from individuals famil-
9 iar with the state and representative of the needs and interests of
10 private industry;

11 (5) one member [IS TO BE APPOINTED] from individuals with
12 experience in national and international research programs; and

13 (6) one member [IS TO BE APPOINTED] from the general public
14 [;

15 (7) THE EXECUTIVE DIRECTOR OF THE ALASKA SCIENCE AND TECH-
16 NOLOGY FOUNDATION ESTABLISHED UNDER AS 37.17; AND

17 (8) THE SENIOR SCIENCE ADVISOR IN THE GOVERNOR'S OFFICE,
18 WHO SERVES AS CHAIRPERSON AND DIRECTOR OF THE COMMISSION].

19 * Sec. 48. AS 44.21.230(c) is amended to read:

20 (c) The commission may not investigate, review, or undertake any
21 responsibility for the longevity bonus program (AS 47.45.010 - 47.-
22 45.170) or, except for activities of the office of the long term care
23 ombudsman, the Alaska Pioneers' Homes (AS 47.25.010 - 47.25.100).

24 * Sec. 49. AS 45.75.010 is amended to read:

25 Sec. 45.75.010. SYSTEMS OF WEIGHTS AND MEASURES. The system of
26 weights and measures in customary use in the United States and the
27 metric system of weights and measures are jointly recognized, and one
28 or the other of these systems shall be used for all commercial pur-
29 poses in the state. The definitions of basic units of weight and

1 measure, the tables of weight and measure, and weight and measure
2 equivalents, as published by the National Bureau of Standards or its
3 successor organization, the National Institute of Standards and Tech-
4 nology, govern weighing and measuring equipment and transactions in
5 the state.

6 * Sec. 50. AS 45.75.020 is amended to read:

7 Sec. 45.75.020. STATE STANDARDS OF WEIGHT AND MEASURE. The
8 weights and measures obtained by the state in conformity with them and
9 certified by the National Bureau of Standards or its successor orga-
10 nization, the National Institute of Standards and Technology, are the
11 state standards of weight and measure. The state standards shall be
12 kept in a safe and suitable place in the office or laboratory of the
13 state division of weights and measures. They may not be removed from
14 the office or laboratory except for repairs or for certification.
15 [THE STATE STANDARDS SHALL BE SUBMITTED AT LEAST ONCE IN 10 YEARS TO
16 THE NATIONAL BUREAU OF STANDARDS FOR CERTIFICATION.] The state stan-
17 dards shall be used only in verifying the office standards and for
18 scientific purposes.

19 * Sec. 51. AS 45.75.050(d) is amended to read:

20 (d) The specifications, tolerances, and regulations for commer-
21 cial weighing and measuring devices, together with amendments to them,
22 as recommended by the National Bureau of Standards or its successor
23 organization, the National Institute of Standards and Technology, and
24 published in the National Bureau of Standards or its successor orga-
25 nization, the National Institute of Standards and Technology, Handbook
26 44 and supplements to it, or in any publication revising or supersed-
27 ing Handbook 44, are the specifications, tolerances, and regulations
28 for commercial weighing and measuring devices of the state, except as
29 specifically modified, amended, or rejected by a regulation adopted by

1 the director.

2 * Sec. 52. AS 46.03.299(a) is amended to read:

3 (a) The department shall adopt [DEVELOP] regulations under the
4 Administrative Procedure Act (AS 44.62) for the identification and
5 management of hazardous waste as defined by the Environmental Protec-
6 tion Agency and hazardous waste that exhibits the characteristic of
7 toxicity, persistence, or carcinogenicity. [THE DEPARTMENT SHALL
8 ADOPT THESE REGULATIONS NOT LATER THAN JULY 1, 1986, IN ACCORDANCE
9 WITH THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62). THESE REGULATIONS
10 SHALL TAKE EFFECT JULY 1, 1987.]

11 * Sec. 53. AS 47.10.090(a) is amended to read:

12 (a) The court shall make and keep records of all cases brought
13 before it. The court's official records may be inspected only with
14 the court's permission and only by persons having a legitimate inter-
15 est in them. All information and social records pertaining to a minor
16 and prepared by an employee of the court or by a federal, state or
17 city agency in the discharge of the employee's or agency's official
18 duty, including [TRAFFIC OFFENSES AND] driver's license action under
19 AS 28.15.185, are privileged and may not be disclosed directly or
20 indirectly to anyone without the court's permission. However, a state
21 or city law-enforcement agency shall disclose information regarding a
22 case which is needed by the person or agency charged with making a
23 preliminary investigation for the information of the court. The court
24 shall forward a record of adjudication of a violation of an offense
25 listed in AS 28.15.185(a) to the Department of Public Safety, if the
26 court imposes a license revocation under AS 28.15.185. Within 30 days
27 of the date of a minor's 18th birthday or, if the court retains juris-
28 diction of a minor past the minor's 18th birthday, within 30 days of
29 the date on which the court relinquishes jurisdiction over the minor,

1 the court shall order sealed all the court's official records, infor-
2 mation and social records pertaining to that minor, as well as records
3 of all driver's license proceedings under AS 28.15.185, criminal
4 proceedings against the minor and punishments assessed against the
5 minor except for traffic offenses. A person may not use these sealed
6 records for any purpose except that the court may order their use for
7 good cause shown or may order their use by an officer of the court in
8 making a presentencing report for the court.

9 * Sec. 54. Section 10, ch. 166, SLA 1988 is amended by adding a new
10 subsection to read:

11 (c) Notwithstanding (a) of this section, an amendment to the
12 articles of incorporation of a corporation organized under 43 U.S.C.
13 1601 - 1628 (Alaska Native Claims Settlement Act) and incorporated
14 under former AS 10.05.005 to add a provision eliminating or limiting
15 the personal liability of a director to the corporation or its stock-
16 holders for monetary damages under AS 10.06.210(1)(N) may be adopted
17 by the affirmative vote of a majority of the shares represented at the
18 regular or special meeting at which a quorum is present in person or
19 by proxy.

20 * Sec. 55. Section 11, ch. 166, SLA 1988 is amended to read:

21 Sec. 11. INDEMNIFICATION BY A CORPORATION. AS 10.06.490, as
22 enacted by sec. 1 of this Act, governs a proposed indemnification by a
23 corporation after the effective date of this Act, whether the events
24 upon which the indemnification is based occurred before or after the
25 effective date of this Act. A statement relating to indemnification
26 contained in the articles or bylaws of a corporation on the effective
27 date of this Act may limit the indemnification permitted by AS 10.06.-
28 490 if [UNLESS] the statement expressly states that indemnification is
29 limited.

1 * Sec. 56. The revisor of statutes shall substitute "police officer" or
2 "police officers" for "policeman" or "policemen" in AS 23.10.037, AS 23.-
3 30.092, 23.30.220, 23.30.265, and AS 28.35.070.

4 * Sec. 57. The revisor of statutes shall substitute "fire fighter" or
5 "fire fighters" for "fireman" or "firemen" in AS 18.60.395, AS 23.30.092,
6 23.30.220, 23.30.243, 23.30.265, AS 28.35.180, AS 39.35.160, 39.35.360,
7 39.35.370, 39.35.527, and 39.35.680.

8 * Sec. 58. AS 09.10.055; AS 10.40.130(c); AS 11.41.443; AS 14.07.-
9 030(9); AS 16.05.632(d); AS 19.45.001(7); AS 38.05.184(c), 38.05.184(d),
10 38.05.184(e), 38.05.184(f), 38.05.184(g); AS 44.47.560(1), 44.47.560(2);
11 AS 44.83.425(1), 44.83.425(4); and AS 46.03.299(e) are repealed.

12 * Sec. 59. Sections 8 - 12, 14 - 24, 54, and 55 of this Act take effect
13 July 1, 1989.

14 * Sec. 60. Except for secs. 8 - 12, 14 - 24, 54, and 55, this Act takes
15 effect immediately under AS 01.10.070(c).
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Sec. 09.10.055. Certain actions relating to construction in six years. (a) No action, whether in contract (oral or written, sealed or unsealed), in tort or otherwise, to recover damages (1) for a deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property; (2) for injury to property, real or personal, arising out of a deficiency; or (3) for injury to the person or for wrongful death arising out of such deficiency, may be brought against a person performing or furnishing the design, planning, supervision or observation of construction, or construction of an improvement more than six years after substantial completion of an improvement.

(b) Notwithstanding the provisions of (a) of this section, in the case of an injury to property or the person or an injury causing wrongful death, which injury occurred during the sixth year after substantial completion, an action in tort to recover damages for the injury may be brought within two years after the date on which the injury occurred. In no event may action be brought more than eight years after the substantial completion of construction of an improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of defense by a person in actual possession or control, as owner, tenant, or otherwise of an improvement at the time a deficiency in an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

(e) In this section, "person" means an individual, corporation, partnership, business trust, unincorporated organization, association, or joint-stock company. (§ 2 ch 61 SLA 1967)

Sec. 10.40.130. Service of process.

(c) Corporations organized under this chapter have until January 31, 1977, to comply with this section. (§ 58 ch 170 SLA 1976)

Sec. 11.41.443. Spousal relationship no defense. In a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant. (§ 1 ch 43 SLA 1985)

Sec. 14.07.030. Powers of the department. The department may (9) exercise disapproval power under AS 14.08.101;

Sec. 16.05.632. Identification of shellfish pots or buoys, or both, used in the taking of king crab and requirements for buoys.

(d) Upon conviction of a person of a violation of (a) or (b) of this section or a regulation adopted under (a) or (b) of this section, the court shall, in addition to any other penalty imposed by law, revoke the violator's shellfish pot license for a period of not less than 12 consecutive months nor more than five years and, in addition, restrict the boat used in a violation of (a) of this section from being used in the taking of king crab for the same period as the shellfish pot license is revoked. After the restriction is imposed, if the boat is used in the taking of king crab within the period of restriction, it shall be seized and forfeited to the state as provided in AS 16.05.195.

Sec. 44.47.560. Definitions. In AS 44.47.370 — 44.47.560,

- (1) "commissioner" means the commissioner of the Department of Community and Regional Affairs;
- (2) "department" means the Department of Community and Regional Affairs;

Sec. 44.83.425. Definitions. In AS 44.83.380 — 44.83.425,

(1) "bus bar" means the substation that serves as the delivery point from the generation and transmission system of the authority to the transmission and distribution system of the utility;

(4) "industrial consumer" means a customer of a utility which customer has a peak power demand in excess of 500 kilowatts and uses the power principally for

- (A) manufacturing;
- (B) pipeline transportation;
- (C) the recovery or processing of minerals;
- (D) the processing of timber, agricultural, or seafood products or their by-products; or
- (E) the operation of facilities owned by the federal government;

Sec. 46.03.299. Regulation of hazardous waste.

(e) During the period July 1, 1986, through June 30, 1987, the department shall conduct a program to inform persons of their responsibilities under regulations adopted under (a) of this section. (§ 10 ch 93 SLA 1981; am § 1 ch 77 SLA 1984)

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

M E M O R A N D U M

To: All Members
Alaska State House of Representatives

From: Rep. Peter Goll, Co-Chairman *Peter*
Rep. Max Gruenberg, Co-Chairman *MG*
House Judiciary Committee

Date: March 8, 1989

Re: HB 148 - 1989 Revisor's Bill

The 1989 Revisor's bill will be on the floor on Friday, March 10. To assist members in reviewing this document, we have attached a copy of the bill and a sectional analysis.

STATE OF ALASKA
THE LEGISLATURE

POUCH # STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

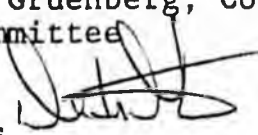
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 8, 1989

SUBJECT: Sectional Analysis of
CSHB 148(Jud)(Revisor's Bill)

TO: Representative Peter Goll, Co-Chair
Representative Max Gruenberg, Co-Chair
House Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

This memorandum discusses CSHB 148 (Judiciary), the 1989
revisor's bill as adopted by the House Judiciary Committee.

The bill was prepared under AS 01.05.036, which provides, in
part, that the revisor of statutes shall

. . . prepare for submission to the legislature
legislation for the correction or removal of . . .
deficiencies, conflicts, or obsolete provisions, or to
otherwise improve the form or substance of . . . the
statute law of this state.

SUMMARY OF EFFECT

To assist in understanding the draft, I have summarized the
contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions: Sec-
tions 4, 5, 7, 10 - 24, 32, 44 - 46, 52, and 58 delete or
repeal provisions that have become obsolete either through
the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or im-
prove the style of the statutes: Sections 3, 6, 26, 29, 31,
33 - 36, 39, 40, 43, 47, 49 - 51, 56, and 57 substitute new
provisions for provisions that are obsolete, archaic, or
otherwise outdated, including improvements in the style of
language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 2, 25, 28, 30, 37, 41, 42, 48, and 54 resolve conflicts between laws or otherwise harmonize laws dealing with the same subjects.

Sections that correct errors or oversights: Sections 1, 8, 9, 27, 38, 53, and 55 correct errors or oversights in drafting.

SECTIONAL ANALYSIS

Section 1. The addition of "or delivery" to AS 04.16.-05T(b)(1) by the amendment proposed in sec. 1 conforms the language of the paragraph to the introductory language of the subsection as amended by sec. 8, ch. 156, SLA 1988. The need for this change was noted by the Department of Law when the 1988 Act was reviewed for the governor.

Sec. 2. The amendment to AS 05.05.030(c) proposed in this section would remove a conflict with the provisions of AS 05.10.110. Existing AS 05.05.030(c) requires that a member of the athletic commission attend every boxing and wrestling event. However, AS 05.10.110 provides for the appointment of official inspectors to attend in the absence of a member of the commission. The amendment would simply recognize that commissioners need not attend if official inspectors have been provided for the event. The amendment also substitutes "member of the commission" for "commissioner" to be consistent with other usage in AS 05.05 and to eliminate confusion between the duties of the members of the commission and the duties of the athletic commissioner.

Sec. 3. The amendment substitutes "A member" for "The commissioners" to clarify that the provision is dealing with members of the commission and not the athletic commissioner, and conform the usage to that found elsewhere in AS 05.05.

Sec. 4. The proposed amendment to AS 08.84.030(a) deletes a reference to the Professional Examination Service Association because, effective August, 1988, the association is no longer administering the exam for physical therapists. The amendment was requested by the division of occupational licensing.

Sec. 5. This amendment is required if AS 09.10.055 is repealed, as proposed in sec. 58 of this draft. It deletes two references to the section that would be repealed.

Sec. 6. This section proposes the substitution of a reference to specific, relevant provisions of AS 09.20 for an archaic reference to "the following provisions."

Sec. 7. Since the 1972 enactment of AS 09.30.100 - 09.30.-180 (Uniform Foreign Money-Judgments Recognition Act), the United States' relationship with former trust territories has substantially changed. For example, the Ryukyu Islands (Okinawa and its neighbors) are now governed by Japan rather than by an American military government. Rather than name specific jurisdictions in this definitional provision, it appears to be wiser to rely on a generic listing of jurisdictions that would logically be considered "domestic" rather than "foreign."

Sec. 8. This section corrects a drafting error in the new corporations code (AS 10.06) enacted last session. This section and secs. 9 and 10 are given a July 1, 1989 effective date by sec. 59 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Sec. 9. As enacted, AS 10.06.833 provided for the filing of a certificate of withdrawal by certain foreign corporations. However, the corporation would not have a certificate of withdrawal to file; the corporation files an application for a certificate and the Department of Commerce and Economic Development issues a certificate to the corporation. The amendment corrects this error. It was requested by the corporations supervisor in the department.

Sec. 10. Last year, by Executive Order and a companion bill, the responsibility for administering business licenses was transferred from the Department of Revenue to the Department of Commerce and Economic Development. The proposed amendment to AS 10.06.870 reflects that transfer.

Secs. 11, 12, and 14 - 24. AS 10.05.773 is repealed, effective July 1, 1989, by ch. 166, SLA 1988. These sections delete references to the repealed provision. Sections 11 and 12 appeared in HB 148 as secs. 8 and 9. When originally drafted they would have substituted the substance of the repealed provision for the obsolete reference. Upon further review, it was determined that the approach taken in secs. 11 and 12, and new secs. 14 - 24, was more appropriate, because the former approach actually changed existing law. The sections are given a July 1, 1989 effective date by

sec. 59 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Sec. 13. This section proposes amendments to AS 10.15.325 to delete material that has become obsolete through the passage of time and to rewrite the last sentence for clarity.

Sec. 25. AS 11.41.432, enacted last session, partially repeals AS 11.41.443 by implication. This section of the draft enacts the substance of AS 11.41.443 as a new subsection (b) of AS 11.41.432, with additional language to clarify the interaction of the two provisions. In sec. 58, AS 11.41.443 is proposed for repeal.

Sec. 26. This section proposes an amendment to the definition of "mentally incapable" (enacted by sec. 5, ch. 96, SLA 1988) for grammatical consistency.

Sec. 27. Last session, the legislature enacted AS 12.36.050, relating to the remission of a forfeited weapon. At one time, the bill that enacted the provision had provided for a court order compensating a claimant for the monetary value of the claimant's interest in the weapon, or an order returning the weapon to a claimant. That provision (in AS 12.36.050(b)) was amended in committee to delete the authority to order compensation. The amendment to subsection (a) proposed by this section of the draft should have been made at that time, but it was overlooked until after the bill passed both houses and was being enrolled.

Sec. 28. The amendment proposed by this section harmonizes a provision enacted by ch. 63, SLA 1988, with related provisions enacted by ch. 64, SLA 1988.

Sec. 29. The amendment to the definition of "member contribution account" for the Teachers' Retirement System law is proposed to conform the language to actual practice. Members do not make "contributions" toward their indebtedness, they make "payments." The amendment was requested by the Department of Law. The internal reference to AS 14.25.170 is changed to a reference to AS 14.25.173 to correct what appears to be an error.

Sec. 30. This section proposes an amendment to AS 15.13.040(d) to conform the dollar amount to other law and actual practice. In 1975, AS 15.13.080, which requires the filing with APOC of statements of contributions by persons and

groups other than political action committees, was amended to require the statements when more than \$250 (rather than \$100) had been contributed. Even though AS 15.13.040(d)(1) was not amended at that time, such an amendment would have been consistent with the intent of the 1975 change. Therefore, since 1975 APOC has requested the filing of statements under AS 15.13.040(d)(1) only at the point when more than \$250 has been given in a year to a candidate or political group. The amendment proposed by this section was requested by APOC.

Sec. 31. This amendment is proposed to conform the language to the style of the statutes.

Sec. 32. The amendment proposed by this section deletes a reference to a subsection that was repealed in 1984.

Sec. 33. The purpose of this amendment is to replace a reference to a repealed provision with an appropriate reference to current law. In addition, the introductory language of the section is cleaned up to conform to current style.

Secs. 34 and 35. These amendments are proposed to substitute alternate language for gender-indicating personal pronouns.

Sec. 36. This section proposes amendments to AS 24.08.-330(a), relating to the distribution of the Alaska Statutes, to reflect actual practice.

Sec. 37. Under AS 25.23.125(a), enacted in 1986, the court is required to consider the desires of a person under the age of 10 who is adopted (if the person is "of sufficient age and intelligence to state desires"). Under AS 25.23.-040(a), enacted in 1974, a minor over the age of 10 must consent to an adoption, unless the court determines that it would be in the best interest of the minor to dispense with that requirement. The upshot of this is that a minor who is exactly 10 is not required to consent, nor is the court required to consider the minor's desires. The amendment proposed by this section amends AS 25.23.040(a) to require consent from a minor 10 years or older, using the age cutoff most recently enacted by the legislature.

Sec. 38. The suggested amendment to AS 33.32.015(b)(5), relating to the powers of the commissioner of corrections with respect to the correctional industries program,

substitutes a reference to the new state procurement code for a reference to AS 37.05 (the Fiscal Procedures Act). This should have been done in 1986 in connection with the enactment of the procurement code. In sec. 23 of HB 148, the deletion of the reference to AS 37.05 had not been proposed.

Sec. 39. This amendment substitutes relevant current references for references rendered obsolete by the 1988 repeal of AS 39.35.110. The amendment was requested by the commissioner of revenue.

Sec. 40. This amendment rewrites AS 37.15.300, relating to borrowing by the state bond committee in anticipation of the sale of bonds, to update the style and clarify the language. There are no substantive changes.

Sec. 41. Section 2, ch. 123, SLA 1988 added a definition of "long-term lease" to AS 38.04. Unfortunately, the definition overlapped the existing definition of "short-term lease" (found in AS 38.04.910(8)), in that both definitions included a 10 year lease. The amendment to AS 38.04.910(4) proposed by this section would resolve this overlap by defining long-term leases as leases for more than 10 years, which is consistent with other relevant provisions of the public land laws. See, for example, AS 38.05.070(b).

Sec. 42. This section proposes an amendment to harmonize the definitions of "submerged land" and "tideland" for AS 38.05. Because the two types of land share a common boundary, the language used to define each should be the same. In sec. 27 of HB 148, the definition of "submerged land" was the one proposed for amendment. The Departments of Law and Natural Resources advised that an amendment to the definition of "tideland" would be more consistent with common usage.

Sec. 43. This amendment substitutes a reference to the only relevant statute for a spanned reference to clarify the law establishing a criminal provision in the tax laws. The amendment was suggested by the Department of Law.

Sec. 44. The amendment made by this section deletes a reference to a provision that was repealed in 1981.

Secs. 45 and 46. The amendments proposed in these sections are proposed to conform to the 1977 repeal of the gross

production tax. The current tax is simply the "production tax."

Sec. 47. This section rewrites, for clarity, the law describing the membership of the science and engineering advisory commission.

Sec. 48. The amendment proposed by this section is intended to resolve a conflict between AS 44.21.240(2), enacted by sec. 3, ch. 108, SLA 1988, and AS 44.21.230(c). The latter provision (enacted in 1981) prohibits the Older Alaskans Commission from investigating, reviewing, or undertaking any responsibility for the Alaska Pioneers' Home. The 1988 legislation established the long term care ombudsman program within the commission, and defined "long term care facility" in such a way that it includes the Alaska Pioneers' Home (the pioneers' home is included within the definition of "nursing home" in AS 08.70.180). The amendment resolves the conflict by excluding activities of the long term care ombudsman from the prohibition contained in AS 44.21.230(c). The problem was brought to our attention by the Department of Law when the 1988 Act was reviewed for the governor. This approach to resolving the conflict is different from that contained in sec. 30 of HB 148.

Secs. 49 - 51. The amendments proposed by these sections reflect a change in the name of the National Bureau of Standards (by last year's Omnibus Trade and Competitiveness Act). Also, in sec. 50, an obsolete provision is proposed for deletion.

Sec. 52. This amendment deletes obsolete time-dated material.

Sec. 53. The amendment proposed by this section conforms the provisions of AS 47.10.090(a), as amended by sec. 4, ch. 130, SLA 1988, to the other substantive provisions of ch. 130, SLA 1988. As enacted, AS 28.15.185 did not include any references to traffic offenses, although earlier versions of the bill did encompass certain traffic offenses. When the references to traffic offenses were removed from AS 28.15.185, the reference within AS 47.10.090(a) should also have been changed. This amendment was suggested by the Department of Law in connection with its review of the 1988 Act for the governor.

Sec. 54. Last year the legislature enacted ch. 148, SLA 1988, relating to the liability of corporate directors. In that Act, two provisions in AS 10.05 were amended. AS 10.05 is repealed, effective July 1, 1989, by ch. 166, SLA 1988, enacting the new corporations code. To give effect to legislative intent in enacting ch. 148, the provisions of sec. 1 of that Act were editorially incorporated into AS 10.06.-210(1)(N). The provisions of sec. 2 of that Act were not editorially incorporated. because the revisor mistakenly believed that they were no longer needed because of other changes made in the new code as it relates to ANSCA corporations. The revisor had overlooked sec. 10 of ch. 166, which grandfathers the two-thirds voting requirements of AS 10.05.276 for corporations incorporated under AS 10.05 before July 1, 1989. Because sec. 2 of ch. 148, SLA 1988 enacted an exception to the two-thirds requirement for ANSCA corporations that desired to amend their articles to eliminate or limit director liability as allowed under ch. 148, that exception needs to be continued in connection with the grandfather clause.

This could probably be accomplished editorially, but that change would not be disseminated to the public until the 1989 statutory materials are distributed this fall. Further, while it is easy to communicate editorial changes in the codified Alaska Statutes, there is no equivalent way to communicate editorial changes made in Temporary Law provisions if those changes are made after publication of the session laws. (It has been done, on rare occasion, by including a letter from the revisor in the Journals of the next legislative session.) Section 54 of CSHB 148(Jud) amends sec. 10, SLA 1988 to continue the exception that had been enacted as AS 10.05.276(b). The problem was called to the revisor's attention on February 27 by an attorney for a Native Corporation.

Sec. 55. This amendment corrects a drafting error in one of the transitional provisions of ch. 166, SLA 1988, enacting the new corporations code. This section and sec. 54 are given a July 1, 1989 effective date by sec. 59 of this draft to correspond with the effective date of ch. 166. The error was brought to our attention by the Hon. Ralph Stemp.

Secs. 56 and 57. These sections propose that the revisor substitute "police officer" and "fire fighter" for "policeman" and "fireman," respectively, in those provisions in which the latter terms still appear. The change was

requested by Representative Boyer, by amendments presented to the subcommittee.

Sec. 58. This section proposes the repeal of several obsolete provisions.

AS 09.10.055 was held unconstitutional by the Alaska supreme court in Turner Const. Co. v. Scales, 752 P.2d 467 (1988).

AS 10.40.130(c) was a 1977 deadline for compliance with a provision in AS 10.40.

AS 11.41.443 would be obsolete if sec. 25 of this draft is enacted, and the need for repeal of the provision is discussed in connection with sec. 25 of this draft.

AS 14.07.030(9) was rendered obsolete by 1975 legislation and should have been repealed then.

AS 16.05.632(d) should have been repealed when the provisions relating to shellfish pot licenses were repealed in 1977.

AS 19.45.001(7) defines a term that is not used in AS 19 except in a section catchline, which is not law (see AS 01.05.006).

AS 38.05.184(c)-(g) were all related to the procedures to be followed to implement the ban on further oil and gas leasing in Katchemak Bay (contained in AS 38.05.-184(b)). The Department of Natural Resources advises that all of the provisions have been fully executed and are now obsolete. This information was received by the revisor immediately following the subcommittee meeting.

AS 44.47.560(1) and (2) contain definitions that are redundant to those found in AS 44.47.998(1) and (3).

AS 44.83.425(1) and (4) define terms that were deleted from AS 44.83 in 1984, making the definitions obsolete.

AS 46.03.299(e) relates to a duty that was imposed only from July 1, 1986 through June 30, 1987.

Representative Peter Goll

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The text of all provisions proposed for repeal is attached as an appendix to this memo. Section 39 of HB 148 had proposed the repeal of only five provisions.

Sec. 59. Gives a July 1, 1989 effective date to those sections relating to the new corporations code.

Sec. 60. Gives an immediate effective date to the remainder of this draft.

DRD:mi
wkg7/1118

Enclosure

cc: Art Peterson, Department of Law



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

March 1, 1989

M E M O R A N D U M

TO: House Judiciary Committee

FR: House State Affairs Committee

RE: Proposed Amendments to HB 140

The intent of the House State Affairs committee in introducing HB 140 is to provide candidates protection from political lawsuits charging them with violation of the Open Meetings Act.

We are referring to malicious, not frivolous, lawsuits. Suits brought with the sole intention of creating harm and slandering a candidate's character, particularly during the campaign season.

Our intent is to provide a reasonable balance between the public's right to know and an individual's right to be protected from malicious acts.

Unfortunately, Alaska's Open Meetings Act presents the opportunity for individuals or political organizations to pervert good public policy into political gamesmanship.

Imagine a scenario whereby a candidate in a hotly contested race is suddenly faced with a barrage of lawsuits days before an election. The painful facts are that lawsuits charging legislators with violating the Open Meetings Act is front page headline news. A story explaining that the courts found the suit to be without merit gets buried on the back page, after the election, when the harm has already been done.

Both candidates and the public need to have some protection from this kind of action. HB 140 seeks to provide that protection.

The exact language of HB 140 is less important than making sure that: 1) legislators are protected from malicious acts and 2) the public is protected against false accusations which deprive them of the ability to choose their representatives with the full facts before them.

However, the committee feels there may be other ways to provide this protection and asks that the House Judiciary committee carefully consider alternatives to prevent Alaska's Open Meetings Act from being potentially used as a political tool.

You should note that HB 140 passed the House State Affairs committee with 5 do pass - those members absent support the Bill as written.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

COPY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

February 20, 1989

SUBJECT: Policy Questions in CSHB 148(Jud)

TO: Representative Peter Goll
Chair, House Judiciary Subcommittee on HB 148

FROM: David R. Dierdorff
Revisor of Statutes

The purpose of this memo is to call your attention to those provisions of this year's revisor's bill that involve a policy decision that should be addressed by the subcommittee. As you know, it is often impossible to resolve technical problems in the statutes without making a policy judgment. Usually the choice is obvious and without controversy. There are instances, however, when that is not the case and the legislature needs to consider the alternatives available, including the possibility of deleting the proposal from the revisor's bill and addressing the problem in a separate, substantive bill.

In draft CSHB 148(Jud), prepared for your subcommittee, I believe the following sections may present policy questions for your consideration:

Sec. 7. Any unilateral amendment to a uniform law presents the basic question of whether the deviation from the model text is justified. An updated version of the Uniform Foreign Money-Judgments Recognition Act has not been promulgated by the commissioners. Different states, depending primarily upon the date of enactment, have treated the provision found at AS 09.30.170 differently. The question for the subcommittee is whether the proposal in sec. 7 is consistent with the purpose of AS 09.30.100 - 09.30.180.

Sec. 25. This section does not present a policy question per se, but it is important that the subcommittee review the proposed amendment carefully to ensure that it accurately reflects the effect on AS 11.41.443 of the enactment of AS 11.41.432 last year.

Sec. 31. Even though the amendment proposed for AS 15.13.040(d) conforms the law to actual practice, the subcommittee should review this proposal to ensure that actual practice accurately reflects the legislature's intent in its 1975 amendments to AS 15.13.

Sec. 38. As pointed out in the sectional analysis, instead of amending AS 25.23.040(a) to include minors 10 years of age in the category of those who must consent to an adoption, the legislature could amend AS 25.23.125(a) to provide that the court is required to consider the desires of a minor 10 years of age.

Sec. 39. As suggested in the sectional analysis, you may wish to further amend AS 33.32.015(b)(5) by deleting the reference to AS 37.05. I believe that the reference was there only because, before the enactment of AS 36.30, the provisions relating to competitive bidding, etc., were located in AS 37.05. Because of AS 37.05.990(2), the definition of "state agency," the Correctional Industries Commission is subject to AS 37.05 whether or not this reference is retained.

Secs. 42 and 43. Both sections propose amendments to harmonize inconsistent or conflicting provisions. In both cases, the proposed amendments in draft CSHB 148(Jud) reflect the preferences of the Departments of Law and Natural Resources. You may prefer the alternative resolutions available.

Sec. 49. The sectional analysis covers the issue raised in this section. Suffice to say, the subcommittee needs to consider each of the two possible solutions to the existing conflict between provisions.

Sec. 50. There are two issues raised by sec. 50. The first is whether the law as enacted in fact represented a conscious decision by the legislature or was the result of a drafting change by our office that was not considered by the legislature. The second issue is raised if the first is resolved in favor of retaining the proposed amendment. As pointed out in the sectional analysis, existing AS 44.88.-545(2) needs to be changed if the amendment to (1) is to have any substantive effect.

Sec. 56. The only question here is whether the revisor's bill is the right place to deal with the problem. It may well be that a separate bill would be preferable. Also, of

Representative Peter Goll
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course, there are a number of alternative solutions to the problem raised as a result of changed circumstances after the enactment of ch. 6, SLA 1986.

Sec. 58. The proposed repeal of AS 09.10.055, while responsive to the supreme court's opinion that the provision is unconstitutional, raises the question of the continuing validity of other statutes of repose found in the Alaska Statutes. Perhaps the Judiciary Committee should review Alaska's statutes of limitations during the interim to ensure that they have continued validity. The proposed repeal of AS 16.05.632(d) has been reviewed by the Department of Law (and was suggested in lieu of an amendment to the provision), but the subcommittee should conduct its own review to ensure that AS 16.05.710 - 16.05.723 provide adequate authority for a court to impose equivalent sanctions against a person who violates the provisions of AS 16.05.632.

I look forward to meeting with the subcommittee at your earliest convenience.

DRD:kb:gc
wkk2/028

cc: Representative Mike Davis
Representative Max Gruenberg
Representative Terry Martin
Art Peterson

STATE OF ALASKA
THE LEGISLATURE

STATE OF ALASKA
LEGISLATIVE AGENCY
907 465 8000


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1979

SUBJECT: Sectional Analysis of draft
CSHB 148(Jud)(Revisor's Bill)

TO: Representative Peter Goll, Co-Chair
Representative Max Gruenberg, Co-Chair
House Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

I have prepared the enclosed draft CSHB 148(Jud) for the consideration of your committee. The draft incorporates all changes requested by the subcommittee and two changes made by the revisor after the subcommittee meeting.

SUMMARY OF SUBCOMMITTEE CHANGES TO HB 148

Sections 15, 31, and 37 of HB 148 were deleted by the subcommittee. Section 32 of HB 148 was deleted by the revisor at the request of the Department of Commerce and Economic Development.

Sections 8, 9, 23, 27, 30, and 39 of HB 148, which appear in CSHB 148(Jud) as secs. 11, 12, 38, 42, 48, and 58, respectively, have been modified in varying degrees. The changes will be discussed within the sectional analysis which follows.

The following sections of CSHB 148(Jud) did not appear in HB 148: secs. 5, 9, 10, 13 - 24, 33, 44 - 46, 52, 54, 56, and 57. Except for secs. 56 and 57, these sections were added at the request of the revisor. Sections 56 and 57 were added through an amendment submitted by Representative Boyer.

CHANGES MADE BY REVISOR AFTER SUBCOMMITTEE MEETING

After the subcommittee meeting, two provisions were added to CSHB 148(Jud), based upon information received by the re-

visor after that meeting. Section 54, amending one of the transitional provisions of the new corporations code is the first of the two. The other is the addition of the proposed repeal of AS 38.05.184(c)-(g) to the repealers in sec. 58. Both items are discussed in the sectional analysis.

Also, a change was made in sec. 39, relating to certain powers of the commissioner of revenue. Because the provisions cited on page 15, line 29 do not really deal with surplus pension funds, those words are deleted on line 14.

SUMMARY OF EFFECT

To assist in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions: Sections 4, 5, 7, 10 - 24, 32, 44 - 46, 52, and 58 delete or repeal provisions that have become obsolete either through the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or improve the style of the statutes: Sections 3, 6, 26, 29, 31, 33 - 36, 39, 40, 43, 47, 49 - 51, 56, and 57 substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, including improvements in the style of language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 2, 25, 28, 30, 37, 41, 42, 48, and 54 resolve conflicts between laws or otherwise harmonize laws dealing with the same subjects.

Sections that correct errors or oversights: Sections 1, 8, 9, 27, 38, 53, and 55 correct errors or oversights in drafting.

SECTIONAL ANALYSIS

Section 1. The addition of "or delivery" to AS 04.16.-051(b)(1) by the amendment proposed in sec. 1 conforms the language of the paragraph to the introductory language of the subsection as amended by sec. 8, ch. 156, SLA 1988. The need for this change was noted by the Department of Law when the 1988 Act was reviewed for the governor.

Sec. 2. The amendment to AS 05.05.030(c) proposed in this section would remove a conflict with the provisions of AS 05.10.110. Existing AS 05.05.030(c) requires that a member of the athletic commission attend every boxing and wrestling event. However, AS 05.10.110 provides for the appointment of official inspectors to attend in the absence of a member of the commission. The amendment would simply recognize that commissioners need not attend if official inspectors have been provided for the event. The amendment also substitutes "member of the commission" for "commissioner" to be consistent with other usage in AS 05.05 and to eliminate confusion between the duties of the members of the commission and the duties of the athletic commissioner.

Sec. 3. The amendment substitutes "A member" for "The commissioners" to clarify that the provision is dealing with members of the commission and not the athletic commissioner, and conform the usage to that found elsewhere in AS 05.05.

Sec. 4. The proposed amendment to AS 08.84.030(a) deletes a reference to the Professional Examination Service Association because, effective August, 1988, the association is no longer administering the exam for physical therapists. The amendment was requested by the division of occupational licensing.

Sec. 5. This amendment is required if AS 09.10.055 is repealed, as proposed in sec. 58 of this draft. It deletes two references to the section that would be repealed.

Sec. 6. This section proposes the substitution of a reference to specific, relevant provisions of AS 09.20 for an archaic reference to "the following provisions."

Sec. 7. Since the 1972 enactment of AS 09.30.100 - 09.30.-180 (Uniform Foreign Money-Judgments Recognition Act), the United States' relationship with former trust territories has substantially changed. For example, the Ryukyu Islands (Okinawa and its neighbors) are now governed by Japan rather than by an American military government. Rather than name specific jurisdictions in this definitional provision, it appears to be wiser to rely on a generic listing of jurisdictions that would logically be considered "domestic" rather than "foreign."

Sec. 8. This section corrects a drafting error in the new corporations code (AS 10.06) enacted last session. This