

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
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convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) Notwithstanding (c) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (c) of this section by the cost of the ignition interlock device.

(h) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983; am §§ 4, 5 ch 57 SLA 1989)

Sec. 28.35.032. Refusal to submit to chemical test. (a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(a), after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test may not be given, except as provided by AS 28.35.035.

(b) *[Repealed, § 25 ch 77 SLA 1983.]*

(c) *[Repealed, § 25 ch 77 SLA 1983.]*

(d) *[Repealed, § 25 ch 77 SLA 1983.]*

(e) The refusal of a person to submit to a chemical test of breath under (a) of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or watercraft while intoxicated.

(f) Refusal to submit to the chemical test of breath authorized by AS 28.35.031(a) is a class A misdemeanor.

(g) Upon conviction of a person under this section, the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under AS 28.25.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000, if, within the previous 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. The

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execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Probation may be conditioned as provided in AS 12.55.102. Imposition of sentence may not be suspended. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked under AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate. The sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the committed person.

(h) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (g) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (g) of this section, or by an officer of the court in preparing a pre-sentence report for the use of the court in sentencing a person convicted under (g) of this section.

(i) A person who is sentenced to imprisonment for 72 consecutive hours under (g) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(j) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(k) Notwithstanding (g) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (g) of this section by the cost of the ignition interlock device. (§ 1 ch 83 SLA 1969; am § 28 ch 71 SLA 1972; am § 12 ch 129 SLA 1980, am § 17 ch 117 SLA 1982; am §§ 17 — 20, 25 ch 77 SLA 1983; am § 17 ch 60 SLA 1986; am §§ 6, 7 ch 57 SLA 1989)

Effect of amendments. — The 1986 amendment substituted "may" for "shall" following "chemical test" near the end of subsection (a).

The 1989 amendments, effective August

28, 1989, inserted "Probation may be conditioned as provided in AS 12.55.102" near the end of subsection (g) and added subsection (k).

Legislative history reports. — For re-

(5) notify the board and provide information on a prisoner 120 days before the prisoner's mandatory release date, if the prisoner is to be released to mandatory parole; and

(6) maintain records, files, and accounts as requested by the board.
(§ 2 ch 88 SLA 1985)

Sec. 33.16.190. Parole and probation officers. An officer appointed by the commissioner under AS 33.05.020(a) or under this chapter, may discharge duties under AS 33.05 or this chapter. (§ 2 ch 88 SLA 1985)

Sec. 33.16.200. Custody of parolee. Except as provided in AS 33.16.210, the board retains custody of discretionary and mandatory parolees until the expiration of the maximum term or terms of imprisonment to which the parolee is sentenced. (§ 2 ch 88 SLA 1985)

Sec. 33.16.210. Discharge of parolee. The board may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed two years of parole, if the sentence of the parolee does not include a residual period of probation. A parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation. (§ 2 ch 88 SLA 1985)

Sec. 33.16.220. Revocation of parole. (a) The board may revoke parole for conduct in violation of AS 33.16.150(a) or (b).

(b) Except as provided in (e) of this section, within 15 working days after the arrest and incarceration of a parolee for violation of a condition of parole, the board or its designee shall hold a preliminary hearing. At the preliminary hearing, the board or its designee shall determine if there is probable cause to believe that the parolee violated the conditions of parole and, when probable cause exists, whether the parolee should be released pending a final revocation hearing. A finding of probable cause at a preliminary hearing in a criminal case is conclusive proof of probable cause that a parole violation occurred.

(c) In determining whether a parole violator should be released pending a final revocation hearing, the board or its designee shall consider

(1) the likelihood of the parolee's appearance at a final revocation hearing;

(2) the seriousness of the alleged violation;

(3) whether the parolee presents a danger to the community; and

(4) whether the parolee is likely to further violate conditions of parole.

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(d) If the parole violator is released pending a final revocation hearing, the board or its designee may impose additional conditions necessary to ensure the parolee's appearance at the final revocation hearing, and to prevent further violation of conditions of parole.

(e) A preliminary hearing under (b) of this section is not required if the board holds a final revocation hearing within 20 working days after the parolee's arrest and incarceration.

(f) The board shall hold a final revocation hearing no later than 120 days after a parolee's arrest, subject to restrictions arising under AS 33.36.110 and (g) of this section.

(g) When the basis for the revocation proceeding is a criminal charge, the parolee may request, or the board upon its own motion may propose that further proceedings on the revocation be delayed. In making the determination to delay further proceedings, the board shall consider prejudice that may result to the parolee's and the state's interests in the pending criminal case and the parolee's decision to delay final revocation proceedings. If good cause to proceed is found, the board shall consult with the attorney general before continuing the final revocation proceeding.

(h) At a final revocation hearing, a violation of a condition of parole must be established by a preponderance of the evidence.

(i) If, after the final revocation hearing, the board finds that the parolee has violated a condition of parole imposed under AS 33.16.150(b), or a law or ordinance, the board may revoke all or a portion of the parole, or change any condition of parole. (§ 2 ch 88 SLA 1985)

NOTES TO DECISIONS

Right to impartial fact finder in proceedings. — Due process includes the right to an impartial fact finder in parole revocation proceedings. *Newell v. State*, Sup. Ct. Op. No. 2241 (File No. 4453), 620 P.2d 680 (1980), decided under former AS 33.15.090.

When a person sitting in on deliberations in a parole revocation hearing was the person who initially recommended revocation and whose reports and testimony form the bulk of the evidence supporting revocation, such a person was part of the prosecution, and his presence violated the

parolee's due process rights to an impartial fact finder. *Newell v. State*, Sup. Ct. Op. No. 2241 (File No. 4453), 620 P.2d 680 (1980), decided under former AS 33.15.090.

Use of illegally obtained evidence in revocation proceeding. — Ordinarily, neither the Alaska Constitution nor its criminal rules bar the use of illegally obtained evidence in parole revocation proceedings. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

Collateral references. — Right to notice and hearing before revocation of suspension of sentence, parole, conditional

pardon, or probation. 29 ALR2d 1074; 44 ALR3d 306.

Right to assistance of counsel at pro-

Original sponsor(s): REP. ULMER, Ellis, Goll

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 366 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the treatment and rehabilitation
7 of a defendant convicted of an offense; and providing
8 for an effective date."

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

10 * Section 1. AS 12.55.015(a) is amended to read:

11 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in
12 imposing sentence on a defendant convicted of an offense, may singly
13 or in combination

14 (1) impose a fine when authorized by law and as provided in
15 AS 12.55.035;

16 (2) order the defendant to be placed on probation under
17 conditions specified by the court that may include provision for
18 active supervision;

19 (3) impose a definite term of periodic imprisonment;

20 (4) impose a definite term of continuous imprisonment;

21 (5) order the defendant to make restitution under AS 12.-
22 55.045;

23 (6) order the defendant to carry out a continuous or peri-
24 odic program of community work under AS 12.55.055;

25 (7) suspend execution of all or a portion of the sentence
26 imposed under AS 12.55.080;

27 (8) suspend imposition of sentence under AS 12.55.085;

28 (9) order the forfeiture to the commissioner of public
29 safety of a deadly weapon that was in the actual possession of or used

1 by the defendant during the commission of an offense described in
2 AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

3 (10) order the defendant, while incarcerated, to participate
4 in or comply with the treatment plan of a rehabilitation program that
5 is related to the defendant's offense or to the defendant's reha-
6 bilitation, if the program is made available to the defendant by the
7 Department of Corrections.

8 * Sec. 2. AS 12.55.085(b) is amended to read:

9 (b) At any time during the probationary term of the person
10 released on probation, a probation officer may, without warrant or
11 other process, rearrest the person so placed in the officer's care and
12 bring the person before the court, or the court may, in its discre-
13 tion, issue a warrant for the rearrest of the person. The court [AND]
14 may revoke and terminate the probation [,] if the interests of justice
15 require, and if the court, in its judgment, has reason to believe that
16 the person placed upon probation is

17 (1) violating the conditions of probation;
18 (2) [, OR] engaging in criminal practices; or
19 (3) violating an order of the court to participate in or
20 comply with the treatment plan of a rehabilitation program under
21 AS 12.55.015(a)(10) [, OR HAS BECOME ABANDONED TO IMPROPER ASSOCIATES,
22 OR A VICIOUS LIFE].

23 * Sec. 3. AS 12.55.100(a) is amended to read:

24 (a) While on probation and among the conditions of probation,
25 the defendant may be required

26 (1) to pay a fine in one or several sums;
27 (2) to make restitution or reparation to aggrieved parties
28 for actual damages or loss caused by the crime for which conviction
29 was had;

1 (3) to provide for the support of any persons for whose
2 support the defendant is legally responsible; [AND]

3 (4) to perform community work in accordance with AS 12.-
4 55.055;

5 (5) to participate in or comply with the treatment plan of
6 an inpatient or outpatient rehabilitation program specified by either
7 the court or the defendant's probation officer that is related to the
8 defendant's offense or to the defendant's rehabilitation; and

9 (6) to satisfy the screening, evaluation, referral, pro-
10 gram, and fee requirements of an agency authorized by the court to
11 make referrals for rehabilitative treatment or to provide rehabilita-
12 tive treatment.

13 * Sec. 4. AS 12.55.100 is amended by adding a new subsection to read:

14 (c) A program of inpatient or outpatient treatment may be re-
15 quired by the authorized agency under (a)(6) of this section only if
16 authorized in the judgment, and may not exceed the maximum term of
17 inpatient or outpatient treatment specified in the judgment. A person
18 who has been referred for treatment may make a written request to the
19 sentencing court asking the court to review the referral. The request
20 for review shall be made within seven days of the agency's referral,
21 and shall specifically set out the grounds upon which the request for
22 review is based. The court may order a hearing on the request for
23 review.

24 * Sec. 5. AS 12.55.110 is amended by adding a new subsection to read:

25 (b) Good cause justifying the revocation of a suspended sentence
26 is established if the defendant has violated an order of the court to
27 participate in or comply with the treatment plan of a rehabilitation
28 program under AS 12.55.015(a)(10).

29 * Sec. 6. AS 28.35.030(c) is amended to read:

1 (c) Upon conviction under this section the court shall impose a
2 minimum sentence of imprisonment of not less than 72 consecutive hours
3 and a fine of not less than \$250 if the person has not been previously
4 convicted in this or another jurisdiction of driving while intoxicated
5 under this or another law or ordinance with substantially similar
6 elements or refusal to submit to a chemical test under AS 28.35.032 or
7 another law or ordinance with substantially similar elements. Upon
8 conviction under this section the court shall impose a minimum sen-
9 tence of imprisonment of not less than 20 consecutive days and a fine
10 of not less than \$500 if, within the preceding 10 years, the person
11 has been previously convicted once in this or another jurisdiction of
12 driving while intoxicated under this or another law or ordinance with
13 substantially similar elements or refusal to submit to a chemical test
14 under AS 28.35.032 or another law or ordinance with substantially
15 similar elements. Upon conviction under this section the court shall
16 impose a minimum sentence of imprisonment of not less than 30 consecu-
17 tive days and a fine of not less than \$1,000 if, within the preceding
18 10 years, the person has been previously convicted in this or another
19 jurisdiction of more than one of the following offenses or has more
20 than once been previously convicted of one of the following offenses:
21 (1) driving while intoxicated under this or another law or ordinance
22 with substantially similar elements; (2) refusal to submit to a chemi-
23 cal test under AS 28.35.032 or another law or ordinance with substan-
24 tially similar elements. The execution of sentence may not be sus-
25 pended nor may probation be granted except on condition that the
26 minimum imprisonment provided in this section is served. Probation may
27 be conditioned as provided in AS 12.55.102. Imposition of sentence
28 may not be suspended. In addition, if the offense involved driving a
29 motor vehicle for which a driver's license is required, the person's

1 driver's license shall be revoked in accordance with AS 28.15.181 and
2 the vehicle used in commission of the offense may be forfeited under
3 AS 28.35.036. [IN ADDITION, THE COURT SHALL ORDER, AND A PERSON
4 CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPECIFIED BY
5 THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION THAT
6 THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (d)
7 OF THIS SECTION, FINDS APPROPRIATE.]

8 * Sec. 7. AS 28.35.030 is amended by adding new subsections to read:

9 (i) The court shall order a person convicted under this section
10 to satisfy the screening, evaluation, referral, program, and fee
11 requirements of an agency authorized by the court to make referrals
12 for rehabilitative treatment or to provide rehabilitative treatment.

13 (j) A program of inpatient or outpatient treatment may be re-
14 quired by the authorized agency under (i) of this section only if au-
15 thorized in the judgment, and may not exceed the maximum term of
16 inpatient or outpatient treatment specified in the judgment. A person
17 who has been referred for treatment under this subsection may make a
18 written request to the sentencing court asking the court to review the
19 referral. The request for review shall be made within seven days of
20 the agency's referral, and shall specifically set out the grounds upon
21 which the request for review is based. The court may order a hearing
22 on the request for review.

23 (k) If a person fails to satisfy the requirements of an au-
24 thorized agency under (j) of this section, the court

25 (1) may impose any portion of a suspended sentence;

26 (2) may punish the failure as contempt of the authority of
27 the court under AS 09.50.010 or as a violation of a condition of
28 probation; and

29 (3) shall order the revocation or suspension of the

1 person's driver's license until the requirements are satisfied.

2 * Sec. 8. AS 28.35.032(g) is amended to read:

3 (g) Upon conviction of a person under this section, the court
4 shall impose a minimum sentence of imprisonment of not less than 72
5 consecutive hours and a fine of not less than \$250 if the person has
6 not been previously convicted in this or another jurisdiction of
7 driving while intoxicated under AS 28.25.030 or another law or ordi-
8 nance with substantially similar elements or refusal to submit to a
9 chemical test under this section or another law or ordinance with
10 substantially similar elements. Upon conviction under this section the
11 court shall impose a minimum sentence of imprisonment of not less than
12 20 consecutive days and a fine of not less than \$500 if, within the
13 preceding 10 years, the person has been previously convicted once in
14 this or another jurisdiction of driving while intoxicated under
15 AS 28.35.030 or another law or ordinance with substantially similar
16 elements or refusal to submit to a chemical test under this section or
17 another law or ordinance with substantially similar elements. Upon
18 conviction under this section the court shall impose a minimum sen-
19 tence of imprisonment of not less than 30 consecutive days and a fine
20 of not less than \$1,000, if, within the previous 10 years, the person
21 has been previously convicted in this or another jurisdiction of more
22 than one of the following offenses or has more than once been previ-
23 ously convicted of one of the following offenses: (1) driving while
24 intoxicated under AS 28.35.030 or another law or ordinance with sub-
25 stantially similar elements; (2) refusal to submit to a chemical test
26 under this section or another law or ordinance with substantially
27 similar elements. The execution of sentence may not be suspended nor
28 may probation be granted except on condition that the minimum impris-
29 onment provided in this section is served. Probation may be

1 conditioned as provided in AS 12.55.102. Imposition of sentence may
2 not be suspended. If the offense involved driving a motor vehicle for
3 which a driver's license is required, the person's driver's license
4 shall be revoked under AS 28.15.181. [IN ADDITION, THE COURT SHALL
5 ORDER, AND A PERSON CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR
6 A TERM SPECIFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR
7 REHABILITATION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION
8 COMPILED UNDER (h) OF THIS SECTION, FINDS APPROPRIATE.] The sentence
9 imposed by the court under this subsection shall run consecutively
10 with any other sentence of imprisonment imposed on the committed
11 person.

12 * Sec. 9. AS 28.35.032 is amended by adding new subsections to read:

13 (l) The court shall order a person convicted under this section
14 to satisfy the screening, evaluation, referral, program, and fee
15 requirements of an agency authorized by the court to make referrals
16 for rehabilitative treatment or to provide rehabilitative treatment.

17 (m) A program of inpatient or outpatient treatment may be re-
18 quired by the authorized agency under (l) of this section only if au-
19 thorized in the judgment, and may not exceed the maximum term of
20 inpatient or outpatient treatment specified in the judgment. A person
21 who has been referred for treatment under this subsection may make a
22 written request to the sentencing court asking the court to review the
23 referral. The request for review shall be made within seven days of
24 the agency's referral, and shall specifically set out the grounds upon
25 which the request for review is based. The court may order a hearing
26 on the request for review.

27 (n) If a person fails to satisfy the requirements of an au-
28 thorized agency under (m) of this section, the court

29 (l) may impose any portion of a suspended sentence;

1 (2) may punish the failure as contempt of the authority of
2 the court under AS 09.50.010 or as a violation of a condition of
3 probation; and

4 (3) shall order the revocation or suspension of the per-
5 son's driver's license until the requirements are satisfied.

6 * Sec. 10. AS 33.16.220(a) is amended to read:

7 (a) The board may revoke parole if the parolee

8 (1) engages in [FOR] conduct in violation of AS 33.16.-
9 150(a) or (b); or

10 (2) has violated an order of the court to participate in or
11 comply with the treatment plan of a rehabilitation program under
12 AS 12.55.015(a)(10).

13 * Sec. 11. AS 12.55.015(d) is repealed.

14 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).
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HOUSE COMMITTEE REPORT

(7)

Date Referred: February 22, 1990
(Returned to Judiciary from Calendar)
Date of Committee Action: 2/27/90

FURTHER REFERRALS:

The JUDICIARY Committee considered:

HB 368

HOUSE BILL NO. 368

CONSTRUCTION STNDS FOR AHFC HOUSING LOANS

"An Act relating to residential housing assistance provided by the Alaska Housing Finance Corporation."

RECOMMENDATIONS:

- be replaced with CS HD 368 (Judiciary) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- ~~individual~~ individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

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

- fiscal note(s) _____
- zero fiscal note(s) Rev. cc 1/30/90
- zero fn/analysis _____

SIGNING DO PASS:

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SIGNING:
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Chairman's Signature

Original sponsor(s): REP. SWACKHAMMER, Navarre, Brown, Zawacki

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 368 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to residential housing assistance
7 provided by the Alaska Housing Finance Corporation."

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

9 * Section 1. AS 18.56.088(c) is amended to read:

10 (c) The board may adopt regulations to carry out the purposes of
11 this chapter, and shall adopt regulations necessary for the following
12 purposes:

13 (1) determination of borrower eligibility including, but
14 not limited to, income limitations and the determination of remote,
15 underdeveloped or blighted areas of the state;

16 (2) loan guidelines and terms including but not limited to
17 maximum loan amounts and required loan-to-value ratios, but excluding
18 mortgage loan interest rates;

19 (3) characteristics of housing eligible for loans or pur-
20 chase of loans, including compliance with the requirements of AS 18.-
21 56.300; [AND]

22 (4) the qualifications of loan originators and servicers
23 and the method of allocating amounts available for the purchase of
24 loans; and [.]

25 (5) establishment of a procedure, including a fee schedule,
26 for the commitment for one year or less of money for the purchase of
27 an individual mortgage loan at a specific interest rate.

28 * Sec. 2. AS 18.56 is amended by adding a new section to read:

29 Sec. 18.56.300. CONSTRUCTION STANDARDS FOR HOUSING ELIGIBLE FOR
30

1 PURCHASE OF LOANS. (a) The corporation may not make or purchase a
2 housing loan for residential housing the construction of which begins
3 after June 30, 1991, unless the seller of the mortgage loan complies
4 with the provisions of this section and unless

5 (1) the unit is in compliance with the construction codes
6 of the municipality, if the unit is located within a municipality that
7 has adopted and enforces construction codes and each of those codes
8 meets or exceeds the comparable standards for similar housing estab-
9 lished by the state building code; or

10 (2) the unit is in compliance with the comparable standards
11 for similar housing established by the state building code

12 (A) if the unit is located

13 (i) within a municipality whose construction
14 codes do not meet the standards for similar housing estab-
15 lished by the state building code;

16 (ii) within a municipality that does not enforce
17 construction codes; or

18 (iii) outside a municipality; or

19 (B) as to each specific code within the construction
20 codes of the municipality that has adopted and enforces con-
21 struction codes if the specific code does not meet or exceed the
22 comparable standard for similar housing established by the state
23 building code.

24 (b) As a condition of a commitment to purchase or approve a loan
25 under this section for residential housing the construction of which
26 begins after June 30, 1991, the corporation shall require inspection
27 of the unit of residential housing that is the subject of the loan.
28 The inspection must be performed by a municipal building inspector or
29 by a person who is approved or certified to perform residential

1 inspections by the International Conference of Building Officials or
2 the International Association of Electrical Inspectors. The person
3 who makes the inspection shall determine whether the construction
4 conforms to relevant provisions of the construction codes of the
5 municipality or of the state building code, as applicable, at each of
6 the following stages of construction:

- 7 (1) plan approval;
- 8 (2) completion of footings and foundations;
- 9 (3) completion of electrical installation, plumbing, and
10 framing;
- 11 (4) completion of installation of insulation;
- 12 (5) final approval.

13 (c) A person may not bring an action for damages based on a duty
14 imposed by (b) of this section to inspect a residential unit unless
15 the action is for damages caused by gross negligence or intentional
16 misconduct.

17 (d) This section does not apply to a housing loan made by the
18 corporation under AS 18.56.106.

19 (e) In this section,

20 (1) "construction codes" means, with reference to a munic-
21 ipality, the building, mechanical, plumbing, and electrical codes, or
22 any of them that have been adopted and are enforced by the municipal-
23 ity;

24 (2) "state building code" means

25 (A) for building standards, the standards set out in
26 the version of the Uniform Building Code adopted by the Depart-
27 ment of Public Safety under AS 18.70.080, including the pro-
28 visions of that code applicable to buildings used for residential
29 purposes containing fewer than four dwelling units.

1 notwithstanding the exclusion of those buildings from the Depart-
2 ment of Public Safety's jurisdiction made by AS 18.70.080(a)(2);

3 (B) for mechanical standards, the standards set out in
4 the version of the Uniform Mechanical Code adopted by the Depart-
5 ment of Public Safety under AS 18.70.080, including the pro-
6 visions of that code applicable to buildings used for residential
7 purposes containing fewer than four dwelling units, notwithstand-
8 ing the exclusion of those buildings from the Department of
9 Public Safety's jurisdiction made by AS 18.70.080(a)(2);

10 (C) for plumbing standards, the minimum plumbing code
11 adopted by the Department of Labor under AS 18.60.705; and

12 (D) for electrical standards, the minimum electrical
13 standards prescribed by AS 18.60.580.

14 * Sec. 3. AS 18.56.300(e)(2)(A) and (B), enacted by sec. 2 of this Act,
15 are intended to assure that, for purposes of determining whether housing
16 the construction of which begins after June 30, 1991, meets the building
17 and mechanical standards under AS 18.56.300(a) and (b), enacted by sec. 2
18 of this Act, the standards set out in each of the following fully apply to
19 residences containing fewer than four dwelling units, even though those
20 residences are excepted from regulation by AS 18.70.080(a)(2):

21 (1) the Uniform Building Code, adopted for the state by 13 AAC
22 50.020(a);

23 (2) the Uniform Mechanical Code, adopted for the state by 13 AAC
24 50.020(b).

A M E N D M E N T

#1

OFFERED IN THE HOUSE

BY REP. SWACKHAMMER

TO: CSHB 36b (Finance)

Page 3, following line 24:

Insert a new subsection to read:

"(d) This section does not apply to a housing loan made by the corporation under AS 18.56.106."

Reletter the following subsection accordingly.

Page 4, line 20:

Delete "AS 18.56.300(d)(2)(A) and (B)"

Insert "AS 18.56.300(e)(2)(A) and (B)"

*MG
Adopted*

*from calendar
2d Reading
Ref to Judiciary
(attached am #1
though it was
not offered)*

#2

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. GRUENBERG

TO: CSHB 368 (Finance)

Page 3, lines 13 - 24:

Delete all material and insert:

Created "(c) A person may not bring an action for damages based on a duty *under (b) of this section* ^{*created*} to inspect a residential unit ~~under (b) of this section~~ unless the action is for damages caused by gross negligence or intentional misconduct."

MG MW
advised

6-1671M
Chenoweth
2/27/90

Original sponsor(s): REP. SWACKHAMMER, Navarre, Brown, Zawacki

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 368 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to residential housing assistance
7 provided by the Alaska Housing Finance Corporation."

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

9 * Section 1. AS 18.56.088(c) is amended to read:

10 (c) The board may adopt regulations to carry out the purposes of
11 this chapter, and shall adopt regulations necessary for the following
12 purposes:

13 (1) determination of borrower eligibility including, but
14 not limited to, income limitations and the determination of remote,
15 underdeveloped or blighted areas of the state;

16 (2) loan guidelines and terms including but not limited to
17 maximum loan amounts and required loan-to-value ratios, but excluding
18 mortgage loan interest rates;

19 (3) characteristics of housing eligible for loans or pur-
20 chase of loans, including compliance with the requirements of AS 18.-
21 56.300; [AND]

22 (4) the qualifications of loan originators and servicers
23 and the method of allocating amounts available for the purchase of
24 loans; and [.]

25 (5) establishment of a procedure, including a fee schedule,
26 for the commitment for one year or less of money for the purchase of
27 an individual mortgage loan at a specific interest rate.

28 * Sec. 2. AS 18.56 is amended by adding a new section to read:

29 Sec. 18.56.300. CONSTRUCTION STANDARDS FOR HOUSING ELIGIBLE FOR

1 PURCHASE OF LOANS. (a) The corporation may not make or purchase a
2 housing loan for residential housing the construction of which begins
3 after June 30, 1991, unless the seller of the mortgage loan complies
4 with the provisions of this section and unless

5 (1) the unit is in compliance with the construction codes
6 of the municipality, if the unit is located within a municipality that
7 has adopted and enforces construction codes and each of those codes
8 meets or exceeds the comparable standards for similar housing estab-
9 lished by the state building code; or

10 (2) the unit is in compliance with the comparable standards
11 for similar housing established by the state building code

12 (A) if the unit is located

13 (i) within a municipality whose construction
14 codes do not meet the standards for similar housing estab-
15 lished by the state building code;

16 (ii) within a municipality that does not enforce
17 construction codes; or

18 (iii) outside a municipality; or

19 (B) as to each specific code within the construction
20 codes of the municipality that has adopted and enforces con-
21 struction codes if the specific code does not meet or exceed the
22 comparable standard for similar housing established by the state
23 building code.

24 (b) As a condition of a commitment to purchase or approve a loan
25 under this section for residential housing the construction of which
26 begins after June 30, 1991, the corporation shall require inspection
27 of the unit of residential housing that is the subject of the loan.
28 The inspection must be performed by a municipal building inspector or
29 by a person who is approved or certified to perform residential

1 inspections by the International Conference of Building Officials or
2 the International Association of Electrical Inspectors. The person
3 who makes the inspection shall determine whether the construction
4 conforms to relevant provisions of the construction codes of the
5 municipality or of the state building code, as applicable, at each of
6 the following stages of construction:

- 7 (1) plan approval;
8 (2) completion of footings and foundations;
9 (3) completion of electrical installation, plumbing, and
10 framing;
11 (4) completion of installation of insulation;
12 (5) final approval.

13 (c) A person may not bring an action for damages based on a duty
14 to inspect a residential unit^{created} under (b) of this section unless the
15 action is for damages caused by gross negligence or intentional mis-
16 conduct.

17 (d) In this section,

18 (1) "construction codes" means, with reference to a munic-
19 ipality, the building, mechanical, plumbing, and electrical codes, or
20 any of them that have been adopted and are enforced by the municipa-
21 lity;

22 (2) "state building code" means

23 (A) for building standards, the standards set out in
24 the version of the Uniform Building Code adopted by the Depart-
25 ment of Public Safety under AS 18.70.080, including the pro-
26 visions of that code applicable to buildings used for residential
27 purposes containing fewer than four dwelling units, notwith-
28 standing the exclusion of those buildings from the Department of
29 Public Safety's jurisdiction made by AS 18.70.080(a)(2);

1 (B) for mechanical standards, the standards set out in
2 the version of the Uniform Mechanical Code adopted by the Depart-
3 ment of Public Safety under AS 18.70.080, including the pro-
4 visions of that code applicable to buildings used for residential
5 purposes containing fewer than four dwelling units, notwithstand-
6 ing the exclusion of those buildings from the Department of
7 Public Safety's jurisdiction made by AS 18.70.080(a)(2);

8 (C) for plumbing standards, the minimum plumbing code
9 adopted by the Department of Labor under AS 18.60.705; and

10 (D) for electrical standards, the minimum electrical
11 standards prescribed by AS 18.60.580.

12 * Sec. 3. AS 18.56.300(d)(2)(A) and (B), enacted by sec. 2 of this Act,
13 are intended to assure that, for purposes of determining whether housing
14 the construction of which begins after June 30, 1991, meets the building
15 and mechanical standards under AS 18.56.300(a) and (b), enacted by sec. 2
16 of this Act, the standards set out in each of the following fully apply to
17 residences containing fewer than four dwelling units, even though those
18 residences are excepted from regulation by AS 18.70.080(a)(2):

19 (1) the Uniform Building Code, adopted for the state by 13 AAC
20 50.020(a);

21 (2) the Uniform Mechanical Code, adopted for the state by 13 AAC
22 50.020(b).

6-1671M
Chenoweth
2/27/90

Original sponsor(s): REP. SWACKHAMMER, Navarre, Brown, Zawacki

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 368 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to residential housing assistance
7 provided by the Alaska Housing Finance Corporation."

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

9 * Section 1. AS 18.56.088(c) is amended to read:

10 (c) The board may adopt regulations to carry out the purposes of
11 this chapter, and shall adopt regulations necessary for the following
12 purposes:

13 (1) determination of borrower eligibility including, but
14 not limited to, income limitations and the determination of remote,
15 underdeveloped or blighted areas of the state;

16 (2) loan guidelines and terms including but not limited to
17 maximum loan amounts and required loan-to-value ratios, but excluding
18 mortgage loan interest rates;

19 (3) characteristics of housing eligible for loans or pur-
20 chase of loans, including compliance with the requirements of AS 18.-
21 56.300; [AND]

22 (4) the qualifications of loan originators and servicers
23 and the method of allocating amounts available for the purchase of
24 loans; and [.]

25 (5) establishment of a procedure, including a fee schedule,
26 for the commitment for one year or less of money for the purchase of
27 an individual mortgage loan at a specific interest rate.

28 * Sec. 2. AS 18.56 is amended by adding a new section to read:

29 Sec. 18.56.300. CONSTRUCTION STANDARDS FOR HOUSING ELIGIBLE FOR

1 PURCHASE OF LOANS. (a) The corporation may not make or purchase a
2 housing loan for residential housing the construction of which begins
3 after June 30, 1991, unless the seller of the mortgage loan complies
4 with the provisions of this section and unless

5 (1) the unit is in compliance with the construction codes
6 of the municipality, if the unit is located within a municipality that
7 has adopted and enforces construction codes and each of those codes
8 meets or exceeds the comparable standards for similar housing estab-
9 lished by the state building code; or

10 (2) the unit is in compliance with the comparable standards
11 for similar housing established by the state building code

12 (A) if the unit is located

13 (i) within a municipality whose construction
14 codes do not meet the standards for similar housing estab-
15 lished by the state building code;

16 (ii) within a municipality that does not enforce
17 construction codes; or

18 (iii) outside a municipality; or

19 (B) as to each specific code within the construction
20 codes of the municipality that has adopted and enforces con-
21 struction codes if the specific code does not meet or exceed the
22 comparable standard for similar housing established by the state
23 building code.

24 (b) As a condition of a commitment to purchase or approve a loan
25 under this section for residential housing the construction of which
26 begins after June 30, 1991, the corporation shall require inspection
27 of the unit of residential housing that is the subject of the loan.
28 The inspection must be performed by a municipal building inspector or
29 by a person who is approved or certified to perform residential

1 inspections by the International Conference of Building Officials or
2 the International Association of Electrical Inspectors. The person
3 who makes the inspection shall determine whether the construction
4 conforms to relevant provisions of the construction codes of the
5 municipality or of the state building code, as applicable, at each of
6 the following stages of construction:

- 7 (1) plan approval;
8 (2) completion of footings and foundations;
9 (3) completion of electrical installation, plumbing, and
10 framing;
11 (4) completion of installation of insulation;
12 (5) final approval.

13 (c) A person may not bring an action for damages based on a duty
14 to inspect a residential unit^{created} under (b) of this section unless the
15 action is for damages caused by gross negligence or intentional mis-
16 conduct.

17 (d) In this section,

18 (1) "construction codes" means, with reference to a munic-
19 ipality, the building, mechanical, plumbing, and electrical codes, or
20 any of them that have been adopted and are enforced by the municip-
21 ality;

22 (2) "state building code" means

23 (A) for building standards, the standards set out in
24 the version of the Uniform Building Code adopted by the Depart-
25 ment of Public Safety under AS 18.70.080, including the pro-
26 visions of that code applicable to buildings used for residential
27 purposes containing fewer than four dwelling units, notwith-
28 standing the exclusion of those buildings from the Department of
29 Public Safety's jurisdiction made by AS 18.70.080(a)(2);

1 (B) for mechanical standards, the standards set out in
2 the version of the Uniform Mechanical Code adopted by the Depart-
3 ment of Public Safety under AS 18.70.080, including the pro-
4 visions of that code applicable to buildings used for residential
5 purposes containing fewer than four dwelling units, notwithstand-
6 ing the exclusion of those buildings from the Department of
7 Public Safety's jurisdiction made by AS 18.70.080(a)(2);

8 (C) for plumbing standards, the minimum plumbing code
9 adopted by the Department of Labor under AS 18.60.705; and

10 (D) for electrical standards, the minimum electrical
11 standards prescribed by AS 18.60.580.

12 * Sec. 3. AS 18.56.300(d)(2)(A) and (B), enacted by sec. 2 of this Act,
13 are intended to assure that, for purposes of determining whether housing
14 the construction of which begins after June 30, 1991, meets the building
15 and mechanical standards under AS 18.56.300(a) and (b), enacted by sec. 2
16 of this Act, the standards set out in each of the following fully apply to
17 residences containing fewer than four dwelling units, even though those
18 residences are excepted from regulation by AS 18.70.080(a)(2):

19 (1) the Uniform Building Code, adopted for the state by 13 AAC
20 50.020(a);

21 (2) the Uniform Mechanical Code, adopted for the state by 13 AAC
22 50.020(b).

AN ACT

Relating to immunity for treatment of intoxicated or incapacitated persons; and providing for an effective date.

* Section 1. INTENT. It is the intent of the legislature that the immunity granted under this Act should not lower the duty imposed on a peace officer to fully enforce the laws of the state, including the duty to take a person incapacitated by alcohol into protective custody imposed under AS 47.37.170(b).

* Sec. 2. AS 47.37.170(g) is repealed and reenacted to read:

(g) A person may not bring an action for damages based on the decision of a peace officer under this section to take or not to take an intoxicated person or a person incapacitated by alcohol into protective custody, unless the action is for damages caused by gross negligence or intentional misconduct.

* Sec. 3. This Act applies to causes of action that accrue on or after the effective date of this Act.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

HOUSE COMMITTEE REPORT

2/16

(11)

Date Referred: February 2, 1990

FURTHER REFERRALS:

Date of Committee Action: 2/14/90

(Rule)
+ Approval

The FINANCE Committee considered:

HB 368

HOUSE BILL NO. 368

CONSTRUCTION STNDS FOR AHFC HOUSING LOANS

"An Act relating to residential housing assistance provided by the Alaska Housing Finance Corporation."

RECOMMENDATIONS:

- [] be replaced with CS HB 368 (FIN) [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

- | | |
|-------------------------------------|---|
| ATTACHES NEW FISCAL NOTE(S): | APPROVES PREVIOUS: |
| (Dept) | (Date/Dept) |
| [] fiscal impact _____ | [] fiscal note(s) _____ |
| [] <u>zero</u> fiscal note _____ | [] <u>zero</u> fiscal note(s) _____ |
| [] <u>zero</u> with analysis _____ | [<input checked="" type="checkbox"/>] <u>zero</u> fn/analysis <u>2/2/90 / REVENUE</u> |

SIGNING DO PASS:

Hoffman

Larson

Swackhammer

Brown

Barnes

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
_____ Kopman		No Rec	
_____ Phillips		✓	
_____ Wallis		✓	
_____ Rieger		✓	

Hoffman

cc - _____
Chairman's Signature

Larson

HOUSE COMMITTEE REPORT

2-2
Fin

(7)
Date Referred: January 8, 1990

FURTHER REFERRALS: FINANCE

Date of Committee Action: 1/25/90

The LABOR & COMMERCE Committee considered:

HB 368

HOUSE BILL NO. 368

CONSTRUCTION STNDS FOR AHFC HOUSING LOANS

"An Act relating to residential housing assistance provided by the Alaska Housing Finance Corporation."

RECOMMENDATIONS:

- be replaced with CS HB 368 (L+C) 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):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis Rev
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass
No Rec
Amend

<u>[Signature]</u>	<u>FUNKELSTEIN</u>	<u>[Signature]</u>	<u>GOENRIG</u>		
<u>[Signature]</u>	<u>BOUCHER</u>	<u>[Signature]</u>			
<u>[Signature]</u>	<u>DONLEY</u>				
<u>[Signature]</u>	<u>BOYER</u>				

[Signature]

Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 368 (L & C)
PUBLISH DATE: HOUSE 2/2/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: Construction Sites for Housing
Eligible for AHFC Financing
Sponsor: Rep. SWACKHAUSER
Requester:

Agency Address:
AAU: Alaska Housing Finance Corporation
Component:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Judith DeSpain 
Division: Alaska Housing Finance Corporation Phone: 561-1900
Date: 1/30/90

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue Date: _____

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

FISCAL ANALYSIS
SB 368

The cost to AHFC to implement the provisions of this legislation are negligible, as the onus for ensuring compliance rests with the lender, not AHFC. AHFC activity will be limited to the routine adding and publicizing of a new underwriting requirement which must be met by the lender before a commitment to purchase can be issued.

Inspections will be done by non-AHFC personnel. Costs of inspections ultimately will be borne by borrowers.

HB

370

HOUSE COMMITTEE REPORT

3/8

B

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: 3/5/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 370

HOUSE BILL NO. 370

STUDENT LOANS AND GRANTS

"An Act relating to student loans and grants; and providing for an effective date."

RECOMMENDATIONS:

- [X] be replaced with CSHB 370 (HESS) [] the same title
- [] have attached amendment(s) [X] a new title
- [] do pass
- [] do not pass
- [X] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: House HESS letter of intent

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

- [X] fiscal impact Post Secondary Comm. [] fiscal note(s) _____
- [] zero fiscal note _____ [] zero fiscal note(s) _____
- [] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

Mr. Guenther

Chris Daniels

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>J. Ellis - fiscal note</u>		X	
<u>Mark Boyer / fiscal note</u>		X	
<u>Peter Gale / note</u>		X	

J. Ellis

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: 2/21/90
Title: Grant language reinstated
forgiveness rescinded
Sponsor: Lehman, Furnace, Hanley, Sharp,
Requestor: House HESS Hudson

Agency Affected: Education
BRU: Postsecondary Education
Components: Student Loan Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	296.3					
TRAVEL						
CONTRACTUAL	30.7					
SUPPLIES						
EQUIPMENT	100.6					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	427.6	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	427.6	-0-	-0-	-0-	-0-	-0-
TOTAL	427.6	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	9	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jane Byers Maynard, Executive Director Phone: 465-2854
Division: Alaska Commission on Postsecondary Education Date: 3/6/90

Approved by Commissioner: _____ Date: _____
Agency: _____

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

HOUSE COMMITTEE REPORT

3/8

(7)
Date Referred: January 8, 1990

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: 3/5/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 370

HOUSE BILL NO. 370

STUDENT LOANS AND GRANTS

"An Act relating to student loans and grants; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB 370 (HESS) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: House HESS letter of intent

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

- fiscal impact Post Secondary Comm. fiscal note(s) _____
- zero fiscal note _____ zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

Mr. Guenther

Chris DeLuis

SIGNING:

(Check approb. column)

	Do Not Pass	No Rec	Amend
<u>J. Ellis - fiscal note</u>		<input checked="" type="checkbox"/>	
<u>Mark Bayer / local</u>		<input checked="" type="checkbox"/>	
<u>Peter Quee / note</u>		<input checked="" type="checkbox"/>	

J. Ellis
Chairman's Signature

Original sponsor(s): REP. LEMAN, Furnace, Hanley, Sharp, Hudson

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 370 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to conditions of scholarship loans;
7 and providing for an effective date."

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

9 * Section 1. AS 14.43.120 is amended by adding new subsections to read:

10 (s) A portion of a loan shall be considered a grant if the loan
11 was made after July 1, 1971, and before July 1, 1987, and if, after
12 completion of the course of study for which the loan was received, the
13 borrower is a resident of the state for at least two years. The
14 portion of the loan that shall be considered a grant is based on the
15 following percentages of the principal amount of the loan plus inter-
16 est up to a total of 50 percent of the total indebtedness:

17 (1) two - three years residence in the state, 10 percent;

18 (2) three - four years residence in the state, an addition-
19 al 10 percent;

20 (3) four - five years residence in the state, an additional
21 10 percent;

22 (4) five - six years residence in the state, an additional
23 10 percent;

24 (5) over six years residence in the state, an additional 10
25 percent.

26 (t) A person who became eligible or who received forgiveness for
27 a loan, on or after January 1, 1987, and before January 1, 1990, may
28 elect to defer the forgiveness or may rescind an application for
29 forgiveness that has been approved. A person may defer forgiveness of

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES



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

March 7, 1990

Letter of Intent to
CSHB 370 (HESS)

The purpose of this letter is to inform the public on circumstances surrounding the issue of taxation of student loans relevant to HB 370.

The House HESS Committee passed out HB 370 in an attempt to relieve Alaska Student Loan recipients of tax liability on forgiveness portions of their loans. The bill proposes to change the loan program to a grant program. The public should be aware that this bill is not likely to relieve students of their tax liability. In a letter from the Anchorage IRS office to the State Attorney General's office, the IRS stated, "The Alaskan program is an outright loan program. Repayment is required. The original intent was to have the money revolve in the fund so that it could be loaned to another student. This money has always been considered a loan subject to repayment based upon the terms of a note signed at the time a loan is granted. The borrower knows that it is subject to repayment, and if not paid, the loan is subject to enforced collection."

Since there was no formal ruling from the IRS, the Committee passed HB 370 to the next committee of referral. The HESS Committee has requested the Postsecondary Education Commission and the Attorney General's office to solicit a formal ruling from the IRS.

The HESS Committee would also like to highlight the state Ombudsman's report dated February 27, 1990 which revealed that the student loan office knew as early as 1983 that forgiveness portions of loans were probably taxable, but decided not to notify borrowers based on advice from the Attorney General's office. The student loan office has rectified the situation and is now informing students of the tax liability associated with forgiveness.

It is the belief of members of this Committee that the Postsecondary Education Commission should seek ways of assisting students in paying their large, unanticipated tax bills.

A handwritten signature in cursive script, appearing to read "Johnny Ellis".

Rep. Johnny Ellis, Chair

CORRECTION

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

Original sponsor(s): REP. LEMAN, Furnace, Hanley, Sharp, Hudson

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 370 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to conditions of scholarship loans;
7 and providing for an effective date."

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

9 * Section 1. AS 14.43.120 is amended by adding new subsections to read:

10 (s) A portion of a loan shall be considered a grant if the loan
11 was made after July 1, 1971, and before July 1, 1987, and if, after
12 completion of the course of study for which the loan was received, the
13 borrower is a resident of the state for at least two years. The
14 portion of the loan that shall be considered a grant is based on the
15 following percentages of the principal amount of the loan plus inter-
16 est up to a total of 50 percent of the total indebtedness:

17 (1) two - three years residence in the state, 10 percent;

18 (2) three - four years residence in the state, an addition-
19 al 10 percent;

20 (3) four - five years residence in the state, an additional
21 10 percent;

22 (4) five - six years residence in the state, an additional
23 10 percent;

24 (5) over six years residence in the state, an additional 10
25 percent.

26 (t) A person who became eligible or who received forgiveness for
27 a loan, on or after January 1, 1987, and before January 1, 1990, may
28 elect to defer the forgiveness or may rescind an application for
29 forgiveness that has been approved. A person may defer forgiveness of

1 a loan for up to five years.

2 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

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HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

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



March 7, 1990

Letter of Intent to
CSHB 370 (HESS)

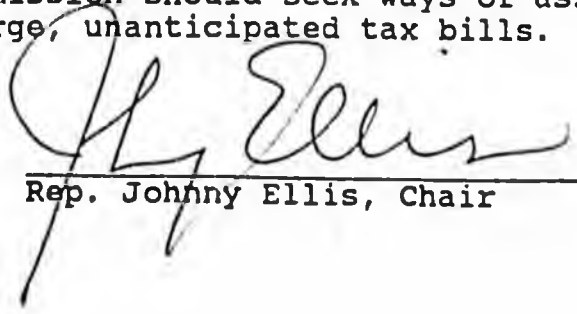
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It is the belief of members of this Committee that the Postsecondary Education Commission should seek ways of assisting students in paying their large, unanticipated tax bills.



Rep. Johnny Ellis, Chair

STATE OF ALASKA

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

STEVE COWPER, GOVERNOR

P.O BOX FP
JUNEAU, ALASKA 99811-0599
PHONE: (907) 465-2854

January 26, 1990

The Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, DC 20510

Dear Senator Stevens:

On behalf of the members of the Alaska Commission on Postsecondary Education, I would like to take this opportunity to thank you for your efforts to address the recent action by the IRS to tax Alaska Student Loan forgiveness recipients. While it is understood that congressional action may take a year or more to resolve this problem, your genuine concern and action to date are appreciated by both loan borrowers and state officials.

As you work with IRS representatives, it is important to alert you to a procedural aspect of forgiveness that may affect the IRS position on taxation. The IRS is currently taxing students for years in which the student has received no monetary benefit from his or her forgiveness eligibility.

For example, a student becomes eligible for the first 10% of his or her loan forgiveness upon residing in the State for two years after graduation. The student applies to our office, we determine the forgiveness eligibility, and notify the student that they are qualified for the first forgiveness. The student's account is adjusted to reflect a reduction in the total loan principal balance owed, but the student's monthly payments remain the same. The student receives no monetary benefit (i.e., reduction in payments) until the scheduled tenth (final) year of the repayment cycle when no payments will be owed. The tenth year of repayment is, therefore, forgiven.

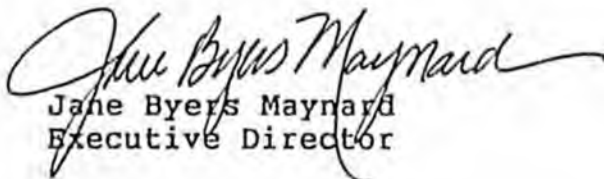
To take this a step further, when the same student has resided in the State an additional year and applies for a second 10% of loan forgiveness, the ninth year of loan repayment is forgiven, and so on up to five years of forgiveness eligibility.

The Honorable Ted Stevens
January 26, 1990
Page 2

Again, the issue here is that the student continues to pay the same amount out-of-pocket whether or not forgiveness has been received. It is only the length of the repayment period that gets progressively shorter with each forgiveness eligibility. The IRS, however, is currently taxing a student at the time of forgiveness eligibility as if the student has already seen a cost savings. This is simply not the case, and it is imperative that the IRS be made aware of this fact.

Thank you again for your assistance in this matter. If I can provide additional information, please contact me.

Sincerely,



Jane Byers Maynard
Executive Director

cc: The Honorable Pat Rodey
Alaska State Senate

The Honorable Loren Leman
Alaska House of Representatives

Frank Baxter, Commissioner
Department of Administration

John Havelock, Chair
Alaska Commission on Postsecondary Education

Kristen Bomengen, Assistant Attorney General
Alaska Department of Law

STEVE COWPER, GOVERNOR

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

P.O. BOX FP
JUNEAU, ALASKA 99811-0599
PHONE: (907) 465-2854

M E M O R A N D U M

TO: Members of the Alaska Commission on Postsecondary Education

Mr. John Havelock, Chair	Mr. Donald Eller
Ms. Patricia Abney	Senator Paul Fischer
Ms. Alice Bosshard	Ms. Karen Fultz
Ms. Ruth Burnett	Mr. Paul Harris
Mr. John Chenoweth	Mr. Mark Helmericks
Dr. Patricia Clark	Representative Niilo Koponen
Dr. April Crosby	Ms. Bettye Smith

FROM: Jane Byers Maynard, Executive Director
Alaska Commission on Postsecondary Education *JBM*

SUBJECT: Internal Revenue Service Request Regarding Alaska Student Loan Forgiveness Recipients

DATE: October 12, 1989

As you may be aware, the IRS has requested information from the Alaska Commission on Postsecondary Education concerning 1987 and 1988 Alaska Student Loan forgiveness recipients "for tax administration purposes." The information requested was public information subject to release at the request of the IRS.

Following the release of this information on September 28, 1989, we sent a courtesy letter dated October 3, 1989 to the forgiveness recipients to advise them that information had been given to the IRS and to provide an IRS contact number in the event of questions.

Understandably, this matter is of concern to a number of loan borrowers. In order to explain the sequence of events which led to the IRS request, the following information is provided for your use in responding to questions on this matter.

The Commission and the Alaska Student Loan Corporation have never received a ruling or correspondence from the IRS regarding the tax status of the forgiven portion of loans. To date, the Commission has only received an August 1989 request and a September 1989 clarification from the IRS for information concerning 1987 and 1988 forgiveness recipients. From press reports, it appears that the IRS took the action as part of an overall review of the tax status of Alaska benefit programs.

Members of the Alaska Commission
on Postsecondary Education
October 12, 1989
Page 2

The data requested included the borrower's name, current address, social security number, and amount of forgiveness benefit received. The information provided to the IRS covered 7,743 loans and approximately 5,900 borrowers (since some had multiple loans) and \$10.6 million in forgiveness over the two-year period. It has since come to our attention that the IRS operates under a three-year statute of limitations that precluded requests regarding forgiveness benefits received prior to 1987.

Prior to this event, our agency was directed on two occasions, in 1983 and 1986, by the Office of the Attorney General to avoid providing federal tax advice to loan recipients. Staff was advised instead to direct individual inquiries to the IRS.

In November 1988, Commission staff asked Price Waterhouse officials whether information return (Form 1099) reporting requirements applied to the forgiven portion of student loans. An informal opinion from IRS representatives told Price Waterhouse that forgiveness of loans does not constitute a "payment" although it may be income to the student, and therefore, there is no information reporting requirement on the part of the State. This was reported to the Alaska Student Loan Corporation.

No further action was taken on this matter until the 1989 request for information was received from the IRS. As a result of that request, we are now advising borrowers on both the forgiveness application and the forgiveness statement of the following:

REMINDER: The amount of your loan reduction under the forgiveness provisions of the Alaska Student Loan Program may be includable as gross income for tax purposes. We recommend you provide this information to your tax return preparer, or consult with a tax accountant prior to completing the return yourself.

We continue to be advised by the Office of the Attorney General to not give direct tax advice to individuals or take further action prior to a more formal determination of IRS action in this matter. Callers are being given the following toll-free number to contact the IRS for further information: 1-800-424-1040. In addition, we are working with Alaska's Congressional delegation in their review of this matter.

You will be advised of any further developments as they occur.

January 19, 1990

Jane Byers Maynard
Executive Officer
Alaska Student Loan Corporation
P.O. Box 57
Juneau, Alaska 99811-0599

Re: Senate Bill No. 350

Dear Jane:

At your request, I have reviewed SB 350 as introduced on January 8, 1990. The bill is a legislative response to the well publicized determination by the Internal Revenue Service to tax, as imputed income to the student loan borrower, the "forgiven" amount of that borrower's loan. Under AS 14.43, as its provisions read before 1987, a borrower who remained in Alaska following graduation was entitled to reimbursement from the State for a portion of the amounts repaid on the borrower's student loan. Although the statute referred to reimbursement from the State, in practice the borrower was simply not required to make the payments that were to be reimbursed by the State. It is the amount of the payments that the borrower was not required to repay that the Internal Revenue Service has now determined to be taxable income.

The approach taken by SB 350 is to recast these pre-1987 loans as part loan and part grant. The theory is that an amount received as a grant is not taxable income. To the extent that the borrower does not or did not qualify for forgiveness under the previous program, SB 350 would require that the grant portion of the financial assistance be converted over to a loan with interest accruing thereon from the date the grant was made.

I have a number of questions and comments about this bill which are set forth in the following paragraphs. Some of those questions and comments directly relate to the bill's impact on the Corporation's bonds and bonding ability. Others are general questions and comments which may only indirectly relate to bonds and bonding.

1/19/90
Ken Yasson letter to Post-Sunderland

1. Will it work? My initial reaction to SB 350 is that it seems unlikely that the Service would accept a recharacterization of the affected loans such as proposed by the bill. Having made loans to borrowers under specific terms that were agreed to in writing by the borrowers, I would expect the Service to conclude that the loans are loans regardless of what you call them. A cat is still a cat no matter how many times you call it a cow. The real point of this comment is that, before going to the effort of passing legislation and committing the Corporation and the other entities affected by this legislation to an expensive and laborious effort to revise these loans, there should be a high level of comfort that the bill will produce the desired effect with the Service. Has a tax lawyer been consulted? Has there been any formal or informal approach to the Service for guidance?

2. Is it counterproductive? Under the bill, an outstanding loan would be terminated and replaced, at the request of the borrower, with new financial assistance in the form of a loan and a grant. The new loan and grant would "for the same amount as the loan being replaced" (see Section 7(c) of the bill. I have difficulty understanding this language, but more on that subject in paragraph 5 below). I wonder whether the Service would consider that the termination of the outstanding loan is itself a taxable event to the borrower at least to the extent that it is being replaced by a grant. This is perhaps only a variation on the question presented in paragraph one, but it could result in the borrower being placed in a worse position as to income taxation than the borrower would have been in under the existing provisions. Under the existing provisions, the borrower would be taxed only as and to the extent that a portion of the borrower's loan in a given year was forgiven. If the Service takes the view that the termination of the outstanding loan (at least to the extent of its replacement by a grant) constitutes a forgiveness of that loan that is a taxable event, then the borrower could be liable for taxes on the entire amount of the loan so forgiven.

Again, the point here is the same as in paragraph one; i.e., there needs to be a careful tax analysis of the impact of this bill -- preferably including an approach to the Service -- before the State commits itself to this proposal.

3. Section 7(d)(3). Under Section 7(d)(3) of the bill, the Corporation and other entities are directed to advise borrowers as to "how their federal tax obligation may be affected" by the proposed form of financial assistance. Before the Corporation or any other entity undertakes this task, I would reiterate and stress that there needs to be a careful tax analysis of the proposal which preferably includes seeking guidance from the Service.

4. Section 7(a) and (b). My first comment with respect to these two subsections is simply to state my understanding that they limit the applicability of SB 350 to loans that were made before July 1, 1987. In other words, there is no prospective effect of this bill, and the current lending program is not being replaced by either the old forgiveness program or the bill's grant program. I think it would be helpful to have that explicitly stated in Section 7.

My second comment as to these subsections is that I do not understand the reason for having two subsections which say virtually the same thing. Subsection (a) says do not provide financial assistance unless certain circumstances exist. Subsection (b) says do provide financial assistance if those same circumstances exist (except that (b) does add one new circumstance which must also exist). I just do not see the point of having both of these subsections, and I wonder whether I am missing something.

5. Section 7(c). Section 7(c) of the bill states that the amount of financial assistance to be given a borrower "must be for the same amount as the loan being replaced". Does this refer to the outstanding principal balance of the loan being replaced at the time it is replaced? Or, does it refer to the original principal amount of the loan? If it is the former, then will the grant provisions of sec. 14.43.118(a) and (b) result in a grant amount equal to what would have been forgiven? It does not appear so. On the other hand, if the amount of the financial assistance is to equal the original principal amount of the loan, then the borrower may be undertaking a larger loan than the borrower then has outstanding. If there has previously been amounts of the borrower's outstanding loan forgiven under the existing program, will this result in the borrower benefitting from greater forgiveness than would have been originally the case? And if, as intimated in paragraphs one and two above, this forgiveness amount (whether cast in terms of a forgiven loan or in terms of a grant) constitutes taxable income, might the borrower's tax burden thereby be increased? Regardless of whether the borrower has received any forgiveness, if the borrower has paid off a portion of the borrower's loan and now receives a loan and grant equal to the original amount borrowed, is the borrower to receive any credit for the amount paid off under the previous loan? Finally, with regard to this subsection, what is the meaning of the direction to the financial aid committee to "make the financial assistance retroactive to the date of the loan being replaced"?

6. Would implementation of this legislation impair contracts with bondholders? The loans that would be affected by this legislation have been pledged as security for the

Jane Dyer's Maynard
Alaska Student Loan Corporation
January 19, 1990
Page 4

outstanding bonds of the Corporation. The terms of those loans have been described in detail in the Official Statements prepared in connection with the sale of those bonds. It must be assumed that holders of the Corporation's bonds relied on those descriptions in making their determinations to buy the bonds.

In my letter to Dr. Ron Phipps dated April 18, 1989, I discussed the constitutional inhibition against State action which impairs the obligations of contracts. That letter was written with respect to proposed legislation which would have retroactively modified the terms of certain student loans that had been pledged as security for the Corporation's bonds. The legislation discussed in that letter would have applied forgiveness provisions to loans that were made without any such provisions. My conclusion was that such a modification would have violated the constitutional inhibition.

It is difficult to analyze SB 350 under this constitutional issue without first obtaining clarification with respect to the questions asked in paragraph 5 above. However, based upon my general understanding of the bill, I believe it would not pass constitutional scrutiny.

The program suggested by the bill would take loans that might be forgiven in part to loans and grants that might become loans in part. The intent is that the amount of the existing loans that would be forgiven would equal the amount of the grants that would remain grants. Even if it actually worked out in accordance with that intent (which, again, cannot be determined without knowing the answers to the questions presented in this letter), there would nevertheless be a distinct change in the security for the bonds. At one moment, the bondholders would be secured by loans which might be forgiven at a time in the future. The next moment, the bondholders would be secured by a lesser amount of loans with a possibility that there might be more loans created in the future by virtue of conversion of the grants. The two are not the same.

What happens if the borrower goes into default? Is the Trustee, acting on behalf of the bondholders, in the same position with respect to enforcing payment of amounts that might become due if the grant ever becomes a loan as the Trustee would be in attempting to enforce payment of a loan that might at some time be forgiven? What happens if the borrower goes into bankruptcy? Is the Trustee, as one of the bankrupt's creditors, in the same position with respect to a loan and a grant that might become a loan at some time in the future as the Trustee would be in with respect to a larger loan that might at some time in the future be forgiven? What

A191262

Alaska Student Loan Corporation

January 19, 1990

Page 5

position is the Trustee or the Corporation in with respect to determining whether any portion of the grant is to be converted to a loan? Must either of them take affirmative steps to trace every borrower to determine where the borrower is living and how long the borrower has lived there? Upon whom is the burden of producing evidence to show that the grant should or should not become a loan?

Sec. 14.43.118(c) of the bill states that interest on a grant that has been converted to a loan begins on the date the grant was made. Therefore, interest will accrue for a period of time until it is determined how much of the grant will be converted to a loan. How will this accrued interest be paid? In a lump sum or over time? Will the accrued interest compound until it is actually paid? And does the payment of this accrued interest at some time in the future put the Trustee and the Corporation in the same position as if interest on the whole loan had been paid on a regularly scheduled basis and in due course? What happens if the borrower leaves the State and returns periodically within the first six years after the borrower completes his or her course of study? Must the Corporation and Trustee wait the full six years before being able to determine how much of the grant will become a loan?

These are genuine questions. I just do not know what the answers are or what the intent is. It seems to me that the answers may lead to the conclusion that the loans and grants which would be offered under the terms of SB 350 as substitute collateral to replace the existing loans are significantly different.

7. Will this have an impact on the Corporation's ability to issue bonds in the future? There could be an impact for one of two reasons. If there is any diminution of revenues to the Corporation, it will directly affect the Corporation's ability to meet the coverage tests set forth in its indenture for the outstanding bonds and, therefore, will limit the Corporation's ability to issue bonds. It appears that the effect of the bill on the Corporation's revenues would be negligible, although it is not possible to determine this with certainty until the questions asked in the preceding paragraphs are answered. If the effect on the Corporation's revenues were more than negligible, then the bill would probably be unconstitutional under the impairment of contracts clause referred to in paragraph 6.

The second reason that the bill might affect the Corporation's ability to issue bonds would be marketplace concerns. Even if the bill does not violate the impairment of contracts clause of the constitution, a perception that the State has unilaterally "changed the deal" with respect to

A191262

JANE DYER MAYNARD

Alaska Student Loan Corporation

January 19, 1990

Page 6

outstanding bonds could have an adverse impact on potential buyers of bonds to be issued in the future. This is not my area of expertise, and I would suggest contacting the Corporation's financial advisor for a reaction to this concern.

These are my initial reactions to the bill. I hope that they are helpful to you. I am certainly happy to discuss this with you at any time.

Very truly yours,

Kenneth E. Vassar

A191262

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 4, 1990

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

465-3603

Robert Jackson
Internal Revenue Service
P.O. Box 101500
Anchorage, Alaska 99510

Re: Taxation of state-paid portion
of student loans

Dear Mr. Jackson:

I have enclosed copies of some of the legislative background that surfaced when I researched the development of Alaska's Scholarship Loan Program. As we discussed briefly about a week ago, it appears that the program was developed as an educational grant program, with grant benefits extended only to those who qualified by returning to the state after receiving a degree.

By way of brief summary, the state, at that time, was interested in encouraging people to remain in or return to the state to avert a "brain drain" that could be an indirect consequence of making an education more accessible to Alaskans through the scholarship loan program. The 1981 statutory change did not affect and was not intended to address the "grant" aspect of the program. It also appears unlikely the change would have been acceptable to the legislature had it been thought that returning students would face increased expenses by incurring tax liability during the early years after graduation.

As you can see from the enclosed documents, the original statutory language specifically stated that the forgiveness "portion of a loan shall be considered a grant" to the recipient or grantee who returns to the state. Because loans were only available to pay for specific school-related expenses,

1/4/90
A.G. letter to I.R.S.

and were not available for other purposes, these funds appear to fall within the requirements for educational or scholarship grants as set out in 26 U.S.C. 117(b).

In 1981, the statute underwent a number of other changes that included the addition of another 10 percent "forgiveness" benefit so that up to 50 percent of the original loan amount would be eligible for payment by the state if the recipient returned to the state after receiving an education. The letter of intent that was accepted by both legislative bodies, and published in the legislative journals, demonstrates that the concern of the legislature at the time was with reducing immediate costs for returning students so that they would not be burdened with high debts during the early years after graduation. (It should be noted that the practice of reimbursement that was endorsed in this letter was in effect for less than a year when it became apparent that it would not be a workable system. An administrative determination was made at that time, with the concurrence of legislative committee members, to stop sending checks to loan recipients while they still owed a considerable debt to the state.)

The statutory language that clearly designated that this state benefit program was intended to be a grant has been buried from view for many years. The most recent statutory provision addressing this benefit was repealed in 1987 and no longer appears in current Alaska statutes. Because it was repealed, students who obtained loans after the 1986-87 school year do not qualify for this state benefit.

The State of Alaska has a unique loan program and is beset by some unique problems. Among these problems are limited educational opportunities within the state, and a relatively high cost of living for students who may wish to return to the state after graduation. The loan program was intended to have the effect of reducing the costs to these students and providing an incentive for returning to the state shortly after graduation by designating a portion of the loan to be a grant upon return to the state.

There is good reason to consider, in light of the original statutory language, whether this state benefit may be more appropriately treated as an educational grant, as addressed in 26 U.S.C. 117, rather than a discharge of indebtedness under 26 U.S.C. 108.

Robert Jackson
Internal Revenue Service
Our file: 663-89-0403

January 4, 1990
Page 3

Please let me know if you have any questions or comments in light of this information about the original intent of the Scholarship Loan Program. I will be interested in hearing your thoughts about this matter.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


Kristen F. Bomengen
Assistant Attorney General

KFB:jh

Enclosure

cc: Jerry Leonard, District Counsel
Internal Revenue Service

✓ Jane Byers Maynard, Executive Director
Alaska Commission on Postsecondary Education

SPECIAL COMMITTEE REPORTS

FREE CONFERENCE COMMITTEE REPORT

SB 120

June 19, 1981

Mr. President:
Mr. Speaker:

The Free Conference Committee considering CS FOR SENATE BILL NO. 120 (HESS) (amending the undergraduate and graduate scholarship loan program; eff. date) and HOUSE CS FOR SENATE BILL NO. 120(FIN) (efd fld) (relating to undergraduate and graduate scholarship loans) recommends that FREE CONFERENCE CS FOR SENATE BILL NO. 120 (relating to undergraduate and graduate scholarship loans; eff. date) be adopted with a Letter of Intent.

Senate members signing the report: Senator Sturgulewski, Chairman and Senators Stimson and Parr. House members signing the report: Representative Cuddy, Chairman and Representatives Hurlbert and Buchholdt.

Letter of Intent on Free Conference CS for Senate Bill No. 120 follows:

FCCS SB 120 amends the Student Loan Program by increasing the maximum amount which can be borrowed and the number of years in which the loans may be paid. It increases the incentive for students to remain in the State after graduation (so that the State may profit by its investment) by increasing the loan forgiveness from 40 percent to 50 percent.

It is the intent of the Committee that the loan forgiveness not wait until the end of the repayment cycle, as is currently the practice, since students cannot perceive these benefits during the first several years. For the loan forgiveness to be truly effective, benefits should be realized as they are earned.

It is the intent of the Committee that forgiveness benefits be provided to the borrower in the form of annual refunds as eligibility is established. Under this policy the borrower remaining in the State will get 10 percent loan forgiveness at the end of each incremental period.

The above loan forgiveness policy can be handled by administrative action and no legislation is required.

President Kerntula stated the above Free Conference Committee Report would be held on the Secretary's desk one legislative day.

INTRODUCTION AND REFERENCE OF SENATE RESOLUTION

SJR 53

SENATE JOINT RESOLUTION NO. 53 by Senator Fetz

Requesting the National Park Service to improve an old mining road through the north addition to Denali National Park and Preserve and to extend the road to the McKinley Park Road at Wonder Lake-Kantishna.

was read the first time and referred to the Committee.

INTRODUCTION AND REFERENCE OF SENATE BILL

SB 605

SENATE BILL NO. 605 by Senators Kelly and G.

"An Act limiting municipal taxes on personal property; and providing for an effective date."

was read the first time and referred to the Regional Affairs Committee and the Finance Committee.

CONSIDERATION OF THE CALENDAR

HOUSE BILLS IN SECOND READING

HB 131

CS FOR HOUSE BILL NO. 131 (HESS) am S (increase for health facilities and hospitals) which from June 19 with amendment No. 2 moved before the Senate at this time.

Senator Sackett offered the following amendment No. 2:

Amendment No. 2 is on pages 1545 and 1546 of the journal.

First paragraph, delete underlined beginning with "except that money ending with health facility"

Committee has had COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 244 (Finance) amended (redesignating certain loans by and by the Alaska Power Authority for power projects for power projects subject to the power projects (effective date) under consideration and replaced with HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 244 (Rules) that it do pass. Concurring: Fuller, Phillips, Smith, O'Connell and Hayes.

was referred to the Rules Committee for calendar.

Committee has had COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 555 (Resources)(continuing the Guide Licensing and Control Board; under consideration and recommends it do pass. Fuller (Chairman), Phillips, Smith,

is referred to the Rules Committee for calendar.

REPORTS OF SPECIAL COMMITTEES

(efd failed)

Committee which has had HCS CSSB 120(Fin) CSSB 120(HESS) under consideration, recom-

REFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 120 relating to undergraduate and scholarship loans; effective

letter of intent.

led by Senators Sturgulewski, Chairman, and Representatives Cuddy, Chairman,

follows:

HCS CSSB 120(Fin)(efd failed) continued

SENATE LETTER OF INTENT

ON

CS FOR SENATE BILL NO. 120

CSSB 120 amends the Student Loan Program by increasing the maximum amount which can be borrowed and the number of years in which loans may be paid. It increases the incentive for the student to remain in the State after graduation (so that the State may profit by its investment) by increasing the loan forgiveness from 40 percent to 50 per cent.

It is the intent of the Committee that the loan forgiveness not wait until the end of the repayment cycle, as is currently the practice, since students cannot perceive these benefits during the first several years. For the loan forgiveness to be a truly effective incentive, benefits should be realized as they are earned.

It is the intent of the Committee that forgiveness benefits be provided to the borrower in the form of annual refunds as eligibility is established. Under this policy the borrower remaining in the State will get 10 percent loan forgiveness at the end of each year.

The above loan forgiveness policy can be handled by administrative action, and no legislation is required.

A copy was placed on each member's desk and will be taken up later under Unfinished Business.

CONSIDERATION OF THE DAILY CALENDAR

The Speaker stated that consideration of the daily calendar would be held until after Unfinished Business. Without objection, the House advanced to

Internal Revenue Service

01/25/90 15:18
FROM AGO/ANNEX/JUNO
Department of the Treasury

District
Director

P.O. Box 101500, Anchorage, Alaska 99510

25
Person to Contact: Robert Jackson

Telephone Number: (907) 261-4303

Refer Reply to: E:TC

Date: January 23, 1990

Kristen B. Bomengen
Assistant Attorney General
State of Alaska, Department of Law
P. O. Box K
Juneau, Alaska 99811

Re: Your letter of January 4, 1990

Dear Mrs. Bomengen:

When the State of Alaska forgives a portion of a student loan, the amount forgiven is a taxable event to the borrower. The debt forgiven is subject to tax in accordance with section 108 of the Internal Revenue Code.

A review of your letter and the copy of the Alaskan Statutes that you sent to me did not change that result. I discussed your letter with our attorneys and they agree with that conclusion.

The Alaskan legislature set up a revolving loan fund, in order to loan money to Alaskans so that they could attend college. The loans are subject to repayment upon termination of studies, over a period of six years. Upon the Alaskan meeting certain conditions, a portion of the loan may be forgiven, if application is made to the State of Alaska by the student. If no application is made, the full loan is subject to repayment.

The statute says that a portion of the loan shall be considered a "grant" based upon residency. This is the amount that is forgiven, but the statute uses the word grant rather than calling it a loan forgiveness.

The question revolves around the difference between a scholarship (or grant) and a loan.

A scholarship or grant is an amount given to a student without any strings attached to it concerning repayment. It is an outright gift to a student. This type of scholarship is covered by I.R.C. section 117. No repayment is involved as no debt was ever created.

1/23/90
IRS memo to AG's office

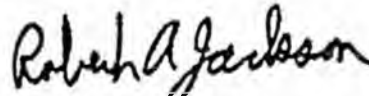
-2-

Kristen B. Bomengen

The Alaskan program is an outright loan program. Repayment is required. The original intent was to have the money revolve in the fund so that it could be loaned to another student. This money has always been considered a loan subject to repayment based upon the terms of a note signed at the time a loan is granted. The borrower knows that it is subject to repayment, and if not paid, the loan is subject to enforced collection.

As a loan, its' forgiveness is subject to I.R.C. section 108.

Sincerely yours,



Robert A. Jackson
Technical coordinator

account in determining whether entity meets vest qualifications. Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) Indebtedness satisfied by corporation's stock.

(A) In general. For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock.

(B) Exception for title 11 cases and insolvent debtors. Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent.

(N) Student loans.

(1) In general. In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) Student loan. For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization.

(g) Special rules for discharge of qualified farm indebtedness.

(1) Discharge must be by qualified person.

(A) In general. Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) Qualified person. For purposes of subparagraph (A), the term "qualified person" has the meaning given to such term by section 46(c)(8)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) Qualified farm indebtedness. For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets.

(A) In general. The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) Adjusted tax attributes. For purposes of subparagraph (A), the term "adjusted tax attributes" means the sum of the tax attributes described in subparagraphs (A), (B), (C), and (E) of subsection (b)(2), determined by taking into account \$3 for each \$1 of the attributes described in subparagraphs (B) and (E) of subsection (b)(2).

(C) Qualified property. For purposes of this paragraph, the term "qualified property" means any property which is used or is held for use in a trade or business or for the production of income.

(D) Coordination with insolvency exclusion. For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

In '88, P.L. 100-647, Sec. 1004(a)(1), deleted "or" at the end of subpara. (a)(1)(A), substituted "or" for the period at the end of subpara. (a)(1)(B) and added subpara. (a)(1)(C). . . . Sec. 1004(a)(2), amended para. (a)(2). . . . Sec. 1004(a)(3)(A), substituted "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)" in para. (b)(1). . . . Sec. 1004(a)(3)(B) deleted "in title 11 case or insolvency" after "attributes" in the heading of subsec. (b). . . . Sec. 1004(a)(4), amended subsec. (g). . . . Sec. 1004(a)(6)(A), substituted "subsections (a), (b) and (g)" for "subsections (a) and (b)" in paras. (d)(6) and (7). . . . Sec. 1004(a)(6)(B), substituted "subsections (a), (b), and (g)" for "subsections (a), (b), and (c)" in the heading of subsec. (d). . . . Sec. 1004(a)(6)(C), substituted "subsections (a), (b) and (g)" for "subsections (a) and (b)", in the headings of para. (d)(6) and subpara. (d)(7)(A), effective for tax yrs. begin. after 12/31/86.

Prior to amendment, para. (a)(2) read as follows:

"(2) Coordination of exclusions. Subparagraph (B) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case."

Prior to amendment, subsec. (g) read as follows:

"(g) Special rules for discharge of qualified farm indebtedness of solvent farmers.

"(1) In general. For purposes of this section and section 1017, the discharge by a qualified person of qualified farm indebtedness of a taxpayer who is not insolvent at the time of the discharge shall be treated in the same manner as if the discharge had occurred when the taxpayer was insolvent.

"(2) Qualified farm indebtedness. For purposes of this subsection, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

"(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

"(B) 50 percent or more of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

"(3) Qualified person. For purposes of this subsection, the term "qualified person" means a person described in section 46(c)(8)(D)(iv)."

In '86, P.L. 99-514, Sec. 104(b)(2), substituted "33 1/4 cents" for "50 cents" in subpara. (b)(3)(C), effective for tax yrs. begin. after 12/31/86.

—P.L. 99-514, Sec. 231(d)(1)(D), amended subpara. (b)(2)(B), effective for tax yrs. begin. after 12/31/83. Prior to amendment, subpara. (b)(2)(B) read as follows:



Official Business

Representative Loren Leman

Alaska State Legislature

3111 C Street
Suite 425
Anchorage, Alaska 99503
561-7614

During Session:

P.O. Box V
Juneau, Alaska 99811
465-2095

M E M O R A N D U M

TO: Rep. Johnny Ellis, Chairman

FROM: Rep. Loren Leman *Loren*

DATE: February 21, 1990

SUBJ: Student Loans (HB370)

I urge the members of the House Health, Education and Social Services Committee to support taking prompt action in defense of Alaskan residents who have earned "forgiveness" for a portion of their student loan.

5,900 Alaskans and 7,743 loans were included in a recent decision made by the I.R.S. to levy taxes with interest on "forgiveness" earned during 1987, 1988 and 1989. The I.R.S. also plans to tax future "forgiveness" earned by Alaskans.

I propose a simple, direct statement by this Legislature that confirms our intention that the Alaskan Student Loan forgiveness provisions are grants earned by graduates who live and work in the State.

Although the Anchorage I.R.S. office, in a January 23 letter to the ACPE, said that it would still consider the "forgiveness" taxable even if it were called a grant, this opinion could be appealed. Passage of HB370 would put the State in a much better position.

I also propose allowing Alaskans who earned forgiveness during those three years to rescind and postpone the receipt of that grant.

We need to make a strong effort to enable these Alaskans to avoid paying retroactive taxes plus interest for forgiveness received in 1987, 1988 and 1989. According to the 1988-89 State of Alaska Student Financial Aid Programs Annual Report (page 10), the amount of forgiveness is close to \$15 million (interest not included).

I would like to be able to tell the 5,900 Alaskans who earned forgiveness that the Legislature took a stand in their favor.

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE LEMAN

NAME: TIMOTHY W. DOEBLER
TITLE: ASSISTANT PROFESSOR-UAA
ADDRESS: P.O. BOX 104698
CITY: ANCHORAGE
PHONE: 786-1403
BILL NO: HB370
SUBJECT: TAXATION OF ALASKA STUDENT LOAN.FORGIVENESS
MESSAGE: I FUNDED MY EDUCATION WITH THE ALASKA STUDENT LOAN. UNDER AGREEMENT WITH THE STATE I AGREED TO RECEIVE HALF OF THIS LOAN AS A GRANT IF I REMINDED IN ALASKA. I REMAINED HERE, I MAKE MY LOAN PAYMENTS AND AM NOW UNFAIRLY TAXED FOR IT. WHAT HAPPENED? THIS ISN'T FAIR! /BN

POMID: 03093449
DATE: 02/07/90
TIME: 09:34:49
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
COLLINS	COTTEN	COGHILL
DAVIDSON	DAVIS, C.	DUNCAN
DAVIS, M.	CONLEY	ELIASON
ELLIS	FINKELSTEIN	FAHRENKAMP
FOSTER	FURNACE	FAIKS
GOLL	GRUENBERG	FISCHER
GRUSSENDORF	HANLEY	FRANK
HOFFMAN	HUDSON	HALFORD
JACKO	KOPCHEN	JONES
KUBINA	LARSON	KELLY
MACLEAN	MARTIN	KERTTULA
MEHARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

HS 370

An educational grant

Dear Editor:

The Alaska Commission on Postsecondary Education recently sent out notices to Alaska Student Loan recipients regarding the possible taxation of loan forgiveness. The forgiveness portion of the Alaska Student Loan should more appropriately be considered an "Educational Grant" instead of taxable income. On the reverse side of the Alaska Student Loan Application form, under special loan provisions, Item No. 2 reads "Up to 50 percent of the total loan may be considered a grant if upon completion of course of study, the loan recipient meets Alaska residency criteria of the loan program."

When individual Alaskans signed the promissory notes for loans received under the Alaska Student Loan program, each person entered into a contractual agreement with the state of Alaska with the irrevocable stipulation that 50 percent of the proceeds of each loan would be forgiven if certain conditions of the loan were met, the same process as described in an educational grant. The state of Alaska, in allowing forgiveness of loan indebtedness, actually benefited from the forgiveness by attracting newly educated students back to the state, but failed to inform loan recipients of possible future tax consequences. Instead, students were actually informed that the forgiveness would be a grant.

Regardless of whether each individual is insolvent or not, as argued by the Alaska Society of Certified Public Accountants, taxation of the Alaska Student Loan forgiveness for any loans obtained prior to tax reform is simply unjust and inappropriate by the IRS. If taxation is going to be levied, then each and every person should be given the opportunity to evaluate the circumstances relative to how future taxation will affect them prior to committing to an elective program, rather than afterwards. Many people may have elected not to request an Alaska student loan knowing the tax consequences as implied. Many students could have and would have sought residency as in-state students in another state and paid less for college tuition, resulting in the need for lesser amounts of funding for college.

This is but one instance that shows how current tax structure in the United States of America actually provides a deterrent for those wanting to pursue higher education, especially in light of the fact that the U.S. is faced with significant shortages of trained professionals for the 1990s and beyond.

Thomas G. Hipsher
Anchorage

AT 8 Nov 89 BS

Petty politics in Juneau

YOU WOULD think the legislators would learn.

They complain and harp and cry that they work hard and long — but that most Alaskans don't appreciate them.

They whine about not understanding the reason for continuing complaints from average Alaskans that the lawmaking sessions last too long and the pay is too high.

And then they keep on playing the same silly games that turn off the people back home, that lower the legislature's prestige and that generally make people think that politicians are just that — politicians who are more interested in posturing and backbiting than they are in doing a job in public service.

A case in point occurred in Juneau a couple of days ago.

The ladies and gentlemen of the state House had before them a relatively simple, non-controversial measure to expand the student loan program to include people attending college on a part-time basis.

A good idea. Not every Alaskan can be a full-time student. Many have to work. Many have family obligations. Many pursue their academic degrees over a long period of years.

A BILL TO make loans available to them — in an amount of up to 50 percent of what a full-time student might obtain — could provide a helpful boost. It has Democratic sponsorship and surely will draw bipartisan support.

But when it came up for action, it was bumped back to committee because a Republican, Rep. Loren Leman

of Anchorage, proposed an amendment that likewise deserves bipartisan support.

Mr. Leman's amendment would retroactively change the state's forgiveness of portions of the student loans to a grant — in hopes that the Internal Revenue Service might then reverse its ruling that the forgiveness portion of the loan amounts to income, subject to taxation.

Yesterday, the IRS rejected the idea, calling the write-off earned income.

BUT THAT is immaterial to this discussion.

The point is that Mr. Leman had a good idea.

There's no reason on earth why his amendment should not be an appropriate amendment to this worthwhile bill.

Except one.

The Democrats — or some of them, anyway — don't want a Republican to be able to take credit for a good piece of legislation, or a part of a good piece of legislation, to be more precise.

How foolish and how petty.

But it's the kind of claptrap that happens over and over and over again in the legislature — as the lawmakers fritter away hours and days with little regard to the huge cost involved in keeping them in Juneau.

And with little real regard, too, to what reaction such monkey business causes among the voters.

It's no wonder that legislators, in the minds of many, are held in low esteem. And they're so befogged in Juneau they never seem to see why.

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:
VETERANS' AFFAIRS (HONORARY MEMBER)
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS
INDIAN AFFAIRS
INTELLIGENCE

United States Senate

WASHINGTON, DC 20510
(202) 224-8885

January 12, 1990

HB 370

ANCHORAGE
U.S. FEDERAL BUILDING
701 C STREET, BOX 1, 99513
(907) 271-3736

FAIRBANKS
U.S. FEDERAL BUILDING
101 12TH AVENUE, BOX 7, 99701
(907) 458-0233

JUNEAU
U.S. FEDERAL BUILDING
BOX 1847, 99802
(907) 886-7400

JAN 23 1990

The Honorable Loren Leman
3111 C St, Suite 425
Anchorage, Alaska 99503

Dear Loren:

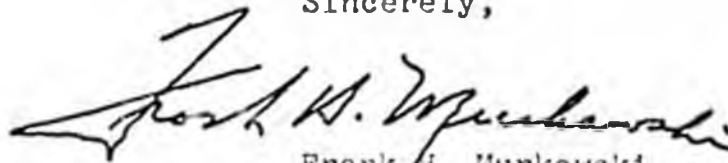
Thank you for contacting me about about the decision made by the IRS to tax the debt forgiveness many Alaskans have received through the Alaska student loan program.

I commend you on your efforts to address this issue in the State Legislature by modifying the state's student loan program. As you know, I am working with Senator Stevens and Congressman Young to enact legislation which would provide for an exclusion from gross income for the amount forgiven under the program. The bill was originally introduced in the House by Congressman Young.

The congressional delegation will continue to press for a solution to this issue on the federal level. Please feel free to keep me advised of your progress on the issue in the Legislature.

With warm regards,

Sincerely,



Frank H. Murkowski
United States Senator

TAX ON STUDENT LOAN FORGIVENESS STILL IN LIMBO

At the October meeting, CARTAs passed a resolution objecting to the recent IRS ruling to tax Alaskans on the forgiven portion of their student loans. Letters were subsequently written in part as follows to Senators Murkowski and Stevens and Congressman Young:

The Central Alaska Retired Teachers Association has gone on record as objecting to the Internal Revenue Service ruling that forgiveness of student loans is to be treated as income. Teachers know that education can be expensive and the loan forgiveness gives beneficiaries an opportunity to reestablish themselves in Alaska. To make this retroactive ruling after years of different treatment is totally unfair to the individuals targeted. This forgiveness for returning to Alaska was regarded by everyone as a kind of scholarship that was awarded after rather than before the college work was completed.

The following reply dated December 7, 1989, has come from Senator Murkowski:

Thank you for contacting me about the decision made by the IRS to tax the debt forgiveness received through the Alaska student loan program. I share your concerns about the unfairness of this change. Recently I cosponsored a bill introduced by Senator Stevens which would provide for an exclusion from gross income for the amount forgiven under the program. The bill was originally introduced in the House by Congressman Young.

Be assured I intend to work with Senator Stevens and Congressman Young to ensure that this legislation is enacted as quickly as possible.

Sincerely,
s/Frank H. Murkowski
United States Senator

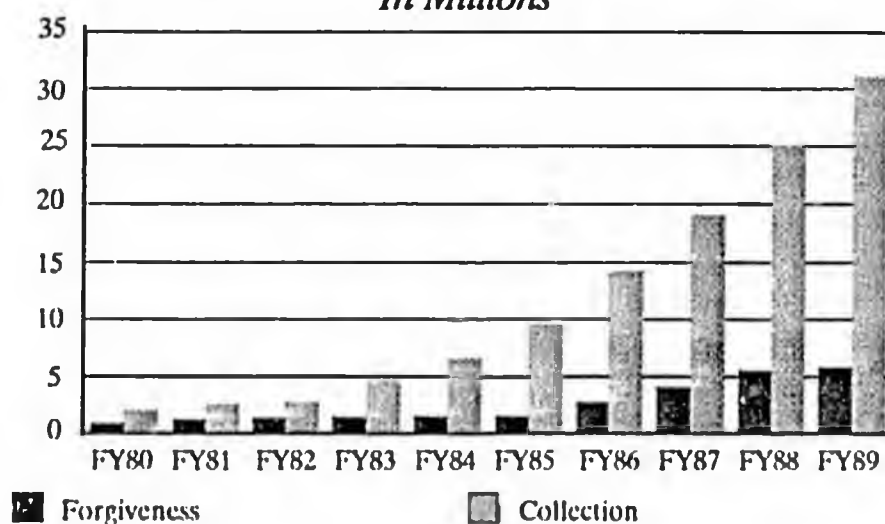
The appropriate initial steps have been taken, but continued watchfulness is in order. Letters to our Congressional delegation from concerned individuals would undoubtedly be helpful.

Loan Repayments

The student loan program is based upon a revolving fund with the students' loan repayments being re-utilized for future student loans. Since 1971-72 (actually 1974-75, since there were no repayments received the first few years), Alaskans have repaid close to \$120 million on their educational loans. As can be seen in Figure 8, these repayments are rapidly increasing each year. Also presented in Figure 8 is a representation of the forgiveness history of the student loan program. Students who received loans before 1987-88 and reside in Alaska after completion of their course of study are eligible to have up to 50 percent of their loans forgiven. Beginning with the first such forgiveness in 1974-75, the total amount of loan funds (including interest) which the State of Alaska has forgiven has generally shown large annual increases, with the exception of 1979-80 when forgiveness benefits temporarily leveled. Since the inception of the program, almost 10,000 Alaskans have received partial forgiveness of their student loans. Increases are projected to continue over the next few years as larger numbers of students complete their educational programs. However, loan forgiveness provisions were repealed beginning with 1987-88 loans, so these totals will begin to decline over time and will eventually be non-existent.

Figure 8

Forgiveness Benefits and Collection Receipts
In Millions



STATE OF ALASKA THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 15, 1989

SUBJECT: Retroactive amendment of student financial aid program (Work Order No. 6-1665)

TO: Senator Pat Rodey

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft of the bill that you requested to retroactively amend the student loan program under AS 14.43 so as to prevent the borrowers from having to pay tax on the portion of the loans paid by the state (under former AS 14.43.120(j)).

1. PROBLEM. The Internal Revenue Service appears to be taking the position that if the state pays/has paid part of a student's loan under AS 14.43.120(j), the amount so paid is income to the student, and the student must pay federal tax on it. The IRS bases this position on 26 U.S.C. 61(a)(12), which makes a discharge of indebtedness taxable as income (unless it is strictly a gift, with no strings attached). The IRS can assess the tax (and any penalties) for three years after the return is filed. (This period can be extended to six years if the unreported income is more than 25% of the person's income for the year, or indefinitely if they can prove fraud.) 26 U.S.C. 6501. Therefore, back through approximately 1986, student borrowers with part of their loans "forgiven" because they met the state residency requirements may be subject to a demand by the IRS for taxes and penalties if they did not declare the amount in their tax returns.

2. PROPOSED SOLUTION. The draft attempts to avoid this result by using the scholarship exclusion in the Internal Revenue Code. Under 26 U.S.C. 117, scholarships are excluded from income and are not taxable. To achieve this result, the draft allows the affected borrowers to retroactively convert their loans into a new form of financial assistance. In the new program one-half of the

assistance is a grant. Instead of forgiving part of the loan for residency, a percentage (up to 100%) of the grant is converted into a loan if the borrower does not satisfy certain residency requirements. The borrower starts out with 50% of the financial assistance not being subject to repayment if the borrower meets the maximum residency requirements.

The requirements and loan/grant conditions, including the percentages and residency requirements, are designed to be the same as the old program. The new program is only available to replace loans made under the old financial assistance program after January 1, 1978, and only if the borrower is/was eligible for state payment of the loan under the old program. Since the IRS will examine the factual situation and documentation for each taxpayer, the student financial aid committee is directed to retroactively redo the loan documentation for each loan to reflect a person's retroactive selection of the new program.

3. REASON FOR MAKING OPTIONAL. The program is made optional because some persons may not want to convert their former loan to the new program for some reason, and without their consent, the conversion might violate the federal and state constitutional prohibitions against impairing contracts. In addition, it may not be possible to contact every person or to convert every contract (e.g. disappearance or death of the borrower). Therefore, each eligible borrower has the option to make the conversion.

5. RETROACTIVITY TO 1978. The selection of 1978 is to cover persons who received loans for the maximum period of 8 years. AS 14.43.120(d). Since the loans are not payable until 1 year after the schooling is completed and since the forgiveness cannot begin for at least two years after the completion, a person with loans extending back to 1978 may just be starting to pay back the loans in 1988 and to receive an adjustment for state residency. You may wish to request the Alaska Commission on Postsecondary Education to review its files to make sure that all of the affected borrowers are covered by this date.

6. APPLICATION PERIOD. The selection of 1-1-92 for ending the application period for the new financial aid program is completely arbitrary. You may wish to adjust this date.

7. LIMITATIONS OF PROPOSED SOLUTION. The proposed solution

Senator Pat Rodey
Page 3
November 15, 1989

may not be sufficient to prevent taxation. First, the exclusion for scholarships is not allowed when the donor receives consideration for the grant. Even though it is not designed that way, it is possible that the IRS would take the position that the new program actually imposes future residency as a condition of the grant. Second, the IRS may not accept the converted financial assistance as affecting what happened in the past. The IRS may refuse to accept the existence of the new program when during the time for which the return was filed, the person was actually under the old loan program. This problem would not exist for tax returns for years during or following the re-doing of the financial aid documents under the amendment. Then the person's claim for exclusion of the scholarship grant would be totally consistent with what was occurring at the time for which the return was made.

If I can be of further assistance, please advise.

TLB:lmb
L8/026

Enclosure



Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE LOREN LEMAN

465-2095

Official Business

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

January 16, 1990

Representative Johnny Ellis
Chairman
House Health, Education and Social Services Committee
PO Box V
Juneau, AK 99811

Dear Representative Ellis,

One of the most startling developments during the legislative interim was the revelation that the Internal Revenue Service had reconsidered its assessment of the status of the forgiveness provisions of our student loan program.

In response to the IRS action, I have introduced HB370, An Act Relating to Student Loans and Grants. This proposal is designed to restructure the forgiveness provisions as a grant program. I believe such a restructuring would better represent the Legislature's original intent.

We have an obligation to the students who accepted assistance from the State and who now are faced with taxes and penalties. We must do what we can to restore the original tax status of the program.

Senators Stevens and Murkowski and Representative Young have introduced corrective legislation in Congress. Rep. Koponen has introduced HJR65 to support their effort. HB370 is a further supportive effort to help Alaskans.

I urge you to hold hearings on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Loren".

Loren Leman
Representative

Jim



State of Alaska
ombudsman

Duncan C. Fowler

February 27, 1990

Garrey Peska, Chief of Staff
Office of the Governor
Post Office Box A
Juneau, Alaska 99811-0101

RE: Ombudsman Complaints J89-0964, J89-0967, J89-0975,
J89-0979, J89-0989, A89-1467 and F89-0690

Dear Mr. *Peska*:

My office has investigated the controversy of the Internal Revenue Service's (IRS) decision to assess taxes on the forgiven portion of Alaska state student loans, and how the issue was handled by the Alaska Commission on Postsecondary Education. The commission was aware for several years that loan forgiveness probably was taxable income, yet for several reasons decided not to tell the borrowers the bad news.

I have enclosed a copy of my final report on the case, and I ask that you take the time to review the issue and consider my suggestion to:

Direct state agencies that find themselves in circumstances similar to the student loan office to promptly warn program participants of any potential for tax liability.

Granted, this suggestion may sound simplistic, but I believe it conveys a philosophy to program managers we both endorse. It is not fair to withhold information from program participants.

As an example, one of our complainants chose to apply for her 50% loan forgiveness over a two year period rather than spread it out. As a result, several things happened. First of all, the years she applied for were the years the IRS began to tax the loans. Secondly, her income was increasing and the tax liability was greater. Consequently, she tells me she would have acted differently if she had known of a potential tax liability. I suspect other loan recipients were similarly harmed.

My suggestion is for the state to always provide whatever information it may have that could help borrowers, grant recipients and program participants be aware of possible tax or other liabilities.

Reply to:

- P.O. Box 102636
Anchorage, AK 99510-2636
(907) 563-3673
(800) 478-2624
- P.O. Box W0
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
- P.O. Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257



State of Alaska
ombudsman

Duncan C. Fowler

February 27, 1990

Jane Byers Maynard, Executive Director
Alaska Commission on Postsecondary Education
Post Office Box FP
Juneau, Alaska 99811-0505

RE: Ombudsman Complaints J89-0964, J89-0967, J89-0975,
J89-0979, J89-0989, A89-1467 and F89-0690

Dear Ms.  Maynard:

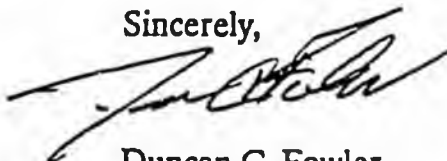
Thank you for your February 2, 1990, letter and response to my findings and recommendations regarding the referenced complaints. I am writing to conclude the investigation and close the respective case files.

While you concurred with the first three allegations of the four presented in these complaints, you took issue with some of the statements regarding the fourth allegation. However, you still found the evaluation of this allegation reasonable and accepted the related recommendation. In fact, your office has stepped beyond merely notifying borrowers of potential tax liabilities. You indicated that your office is working with the Internal Revenue Service, Alaska's Congressional Delegation and the State Legislature on improvements to the forgiveness aspects of the student loan program.

For these reasons I find the disposition of these complaints to be fully rectified and the recommendation accepted. I have notified the complainants of the status of these complaints and made the report available to them.

Again, thanks for the cooperation of you and your staff and I hope your efforts continue to improve the student loan program.

Sincerely,



Duncan C. Fowler
Ombudsman

DWH:pjc

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CORRECTION

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



State of Alaska
ombudsman

Duncan C. Fowler

February 27, 1990

Garrey Peska, Chief of Staff
Office of the Governor
Post Office Box A
Juneau, Alaska 99811-0101

RE: Ombudsman Complaints J89-0964, J89-0967, J89-0975,
J89-0979, J89-0989, A89-1467 and F89-0690

Dear Mr. *Garrey Peska*

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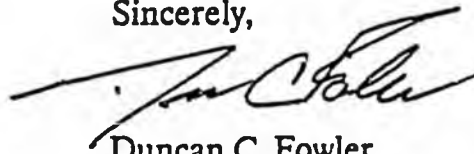
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February 27, 1990

If you have any questions about these cases, please call. Although my suggestion to you is not a formal part of this case, I would be interested in your response to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Duncan C. Fowler". The signature is fluid and cursive, with a prominent initial "D" and "F".

Duncan C. Fowler
Ombudsman

DWH:pjc
Enclosure
cc: Doug Baily, Attorney General



State of Alaska
ombudsman

Duncan C. Fowler

February 27, 1990

Jane Byers Maynard, Executive Director
Alaska Commission on Postsecondary Education
Post Office Box FP
Juneau, Alaska 99811-0505

RE: Ombudsman Complaints J89-0964, J89-0967, J89-0975,
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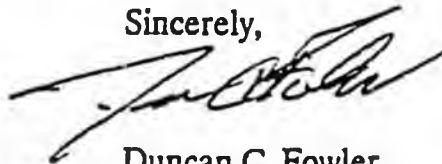
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Duncan C. Fowler
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MEMORANDUM

DATE: February 27, 1990
TO: Duncan C. Fowler, Ombudsman
FROM: David W. Haas, Assistant Ombudsman *DWH*
SUBJ: Ombudsman Complaints J89-0964, J89-0967, J89-0975, J89-0979,
J89-0989, A89-1467 and F89-0690

Our office received several calls in early October when the words "Internal Revenue Service" and "student loans" were linked together in a taxing controversy. The calls started soon after the Alaska Commission on Postsecondary Education reported that the IRS had requested the names of student loan borrowers for possible taxation of their state loan forgiveness. Callers to the ombudsman's office complained that the commission: (1) should not have turned over the information to the IRS; (2) should pay the borrowers' tax bills; (3) that the IRS was unfair; and (4) that the student loan office should have told borrowers of the tax liability.

We eventually opened seven complaints from state student loan borrowers and the cases were assigned to Assistant Ombudsman Larry Persily. Mr. Persily contacted the commission's current executive director, Jane Byers Maynard, on October 6 to notify them of the complaints and to begin review of the controversy.

Rather than treat each complaint separately, we handled all of the issues as one investigation, and reviewed the following allegations:

* The Commission on Postsecondary Education was unreasonable in failing to notify student loan borrowers that the forgiven portion of their loans might be considered as taxable income by the IRS.

* The commission acted illegally in providing the names and addresses of loan borrowers to the IRS without first obtaining the approval of individual borrowers.

* The commission was unreasonable in failing to provide ongoing tax advice services to borrowers.

* The commission, because of its unreasonable conduct in failing to provide borrowers with tax advice, should pay the tax bills of borrowers affected by the IRS ruling.

February 27, 1990

Before opinions were formed on each allegation, Mr. Persily reviewed the history of the problem, the elements of the controversy and the status of the IRS dispute.

HISTORY OF ALASKA STUDENT LOANS

The state-subsidized student loan program started in 1968-69. It offered a limited forgiveness program in its first year, according to loan officer Julie Bennett. The program grew in subsequent years to a point where thousands of borrowers have enjoyed, are enjoying and will enjoy the financial benefit of having up to half their loan debt forgiven by the state as a reward for living in Alaska for at least five years after graduation.

A requirement that graduates work in Alaska in order to qualify for loan forgiveness was added in 1971-72, Ms. Bennett said, but the work requirement was eliminated in 1981-82 and again all a graduate had to do was reside in Alaska to qualify for loan forgiveness.

In a move to make the loan program self-sufficient, the legislature abolished the forgiveness provision starting with 1987-88 school year loans. Changes in the forgiveness program through the years affected only new loans and did not reach back and change the terms of pre-existing borrower contracts.

IRS RULES ON LOAN FORGIVENESS

WORK PROVS

The federal tax code is clear on the taxation of loan forgiveness. Section 108(f)(1) says the forgiven portion of a student loan debt shall be considered as income, unless the forgiveness was based on a loan provision that required the borrower to work "for a certain period of time in certain professions for any of a broad class of employers." Even when the Alaska student loan program required that borrowers work in the state, there was no requirement that graduates work "for a certain period of time in certain professions," and certainly the "no work required" provision of the forgiveness program from 1981-82 to 1987-88 would not fall within the IRS taxable-income exemption.

Although the exemption likely would apply to borrowers under Alaska's rural teacher loan program, which requires the graduate to work as a teacher in a rural area of the state in order to qualify for loan forgiveness, the majority of borrowers who benefitted from loan forgiveness appear to be within the grasp of IRS tax collectors.

Despite some rumors making their way through the ranks of borrowers, federal tax law changes of 1986 did not change the status of student loan forgiveness, said Marilyn Steen of the IRS Anchorage office. Forgiven loan debt has been taxable all along, she said, although Steen was unable to totally explain why the IRS had been dormant in its collection efforts for so many years and only this past summer had asked for a list of borrowers from the Alaska loan office. The agency is always looking for lost income, but "the IRS can't be everywhere," she said.

GRANT

Although some people argue that the "intent" of Alaska's loan forgiveness program actually is a grant, and therefore should be tax exempt, that is a question for the IRS to rule on and is outside the jurisdiction of our office.

IRS NOTICE TO POSTSECONDARY EDUCATION COMMISSION

An IRS employee called the commission's offices in Juneau on August 7, asking for information on student loan borrowers who had benefitted from the forgiveness program, said Kevin Hanon, a finance officer for the loan program, who was interviewed in December for our report. After consulting with the commission's executive director, Ron Phipps, Mr. Hanon asked the IRS to put its request in writing.

The IRS letter, dated August 22, asked for the name, address and social security number for all individuals with state loans who had portions of their loans forgiven in 1987 and 1988. "The requested information will be used for tax administration purposes," wrote Dorothy Svatos, disclosure officer at the IRS office in Anchorage.

The letter was vague, Mr. Hanon said, so he called Ms. Svatos on August 28 for a clarification. A second IRS letter, dated September 5, asked for the same information as the August 22 letter and also asked for the amount of debt forgiven for each borrower. After consulting with the attorney general's office, the information was sent to the IRS via certified mail on September 28.

The list covered 7,743 loans to about 5,900 borrowers, totaling \$10.6 million in forgiveness for 1987 and 1988, according to a memo you sent to commission members on October 12.

The student loan office the first week of October sent a letter to each borrower, notifying them that their name and account information had been given to the IRS, advising them that the IRS would use the information for tax administration purposes, warning them that "the commission understands that the amount of forgiveness benefits may be taxable income to the borrower," and recommending that the borrower should call the IRS with any questions.

IRS HANDLING OF ALASKA BORROWERS

Borrowers will be required to pay back taxes and interest, but not penalties, on their loan forgiveness for tax years 1987 and 1988, Ms. Steen said, and for 1989 and subsequent years. Loan forgiveness prior to 1987 will escape the IRS, she said, because of a statute of limitations.

Interest will be charged on 1987 income as of April 15, 1988, when 1987 tax returns were due, and interest on 1988 income will start accruing as of April 15, 1989, Ms. Steen said. The interest rate is set quarterly and has ranged between 10 and 12 percent in the past three years and currently is set at 11 percent, she said. Interest for each quarter will be computed at the rate in effect at that time.

Upon receipt of the borrowers list from the student loan office this fall, IRS agents started comparing the names and loan forgiveness amounts with individual tax returns. Letters are being sent to borrowers, informing them that they failed to report the income of their loan forgiveness and that they owe taxes and interest, as computed by the IRS. Borrowers are offered the options of immediately paying the taxes and interest as stated in the letter, agreeing to accept the debt and choosing to wait for an official bill from the IRS before making payment, or challenging the debt under IRS appeal procedures. It could take a year for the IRS to review all of the returns and send letters to each borrower, Ms. Steen said.

February 27, 1990

In the meantime, she recommended borrowers should file amended returns on their own rather than wait for the IRS review of their case. Interest continues until the day the debt is paid, so it is in a borrower's financial interest to file amended returns for 1987 and 1988 and pay the bill as soon as possible, rather than waiting for the IRS to do the work, Ms. Steen said.

As for borrowers who can't afford to pay their entire tax bill with one check, Ms. Steen said the IRS is willing to consider payment plans on a case-by-case basis, but the borrower first needs to settle with the IRS on the amount owed.

In the case of a borrower under the rural teacher loan program who apparently is exempt from taxes, Ms. Steen said the person needs to tell the IRS that he or she borrowed under that program and not the non-exempt general loan program.

WHAT THE STUDENT LOAN OFFICE KNEW AND WHEN IT KNEW IT

The student loan office knew more than six years ago of the potential tax liability from loan forgiveness, but on the advice of the attorney general's office decided not to pass along any advice to borrowers.

A one-page memo of March 9, 1983, from Diane Colvin of the attorney general's office said, "As I told you on the phone, the amount forgiven probably is taxable in the year forgiven. . . ." The assistant attorney general's memo was addressed to Kevin Hanon at the postsecondary education commission.

Although her 1983 tax advice was proven correct by the IRS action of 1989, Ms. Colvin's memo included a cautious note: "You should not use this information to provide federal tax advice to loan recipients. Rather you should instruct any student who makes an inquiry on this issue to seek advice from the Internal Revenue Service."

Contacted in December at Seattle, where she works for the Alaska Department of Revenue, Ms. Colvin said she has no recollection of any events leading up to the memo or any discussions involving the tax question. Mr. Hanon said he has no recollections of any IRS requests for borrower names and loan amounts prior to August 1989.

Kerry Romesburg, who served as commission director from 1975-87, remembers some details of the 1983 attorney general's office memo. Congress was debating the question of taxing stipends paid to graduate students and other financial aid programs, and the commission asked the attorney general for an opinion on Alaska's loan forgiveness program. Contacted in December at his job as president of Utah Valley Community College, Mr. Romesburg said he remembers discussing the 1983 opinion at a commission meeting and being told by the attorney general's representative: "You guys aren't in the tax advice business, so don't get into it."

Although he believed students should have been notified of the possible tax liability, Mr. Romesburg said the loan office followed the attorney general's advice and did nothing to warn borrowers. The loan office sends annual notices to its borrowers of loan forgiveness and interest paid, and a line could have been added to the statement to advise borrowers of the tax issue, but that never was done.