

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5825 HOUSE JUDICIARY

22

alternate payee as soon as a member is both vested and old enough to take early retirement, regardless of whether the member has terminated employment or chooses to take early retirement. Unlike the federal definition, the PERS and TRS definition does not allow payment of benefits to an alternate payee before the member begins to receive a benefit. There is no system in place to allow either PERS or TRS to apply the federal QDRO requirements.

We characterize this second problem as a "potential" problem because we believe that, despite the language of the bill, the better argument is that the federal definition of QDRO would not be applicable to PERS and TRS. This is so because 26 U.S.C. 414(p)(9) provides that the federal definition does not apply to any plan to which 26 U.S.C. 401(a)(13) does not apply. 26 U.S.C. 401(a)(13) does not apply to governmental plans, such as PERS, TRS, and municipal plans. Thus, under federal law, the federal definition of "QDRO," by its own terms, does not apply to PERS and TRS or the other governmental plans. Moreover, this proposed state statute says, in subsec. (c), that the exemptions in (a) "do not prevent" payment under a federally defined QDRO. Payment under such an order is not required by the proposed statute. In other words, if a creditor (spouse) has a domestic relations order that is a qualified one under the federal definition, then the exemptions in proposed AS 09.38.017(a) do not bar the creditor from reaching the pension money. But some other statute might do so -- e.g., our PERS and TRS statutes. This raises questions as to what right a person has to enforce a QDRO against a governmental plan other than PERS or TRS if the exemption is enacted.

The bill states a conclusive presumption that a retirement plan that is exempt from claims under the bill is a spendthrift trust. Proposed AS 09.38.017(d). We seriously doubt that this provision provides a bankruptcy debtor with any additional protection. If the debtor chooses state law exemptions, the provisions of the bill already exempt the debtor's interests in or payments from the specified retirement plans. If the debtor chooses federal Bankruptcy Code exemptions, it is unlikely that a bankruptcy court would give any credence to this presumption in considering whether a plan that is clearly not a spendthrift trust is excludable from the bankruptcy estate under 11 U.S.C. 541(c)(2). (PERS and TRS would not appear to qualify as spendthrift trusts, since, although access to their benefits is, by statute, strictly controlled, the portion of the trust money that is the employee's contribution account may be obtained by the employee upon termination of employment before eligibility for retirement benefits.)

The provisions of the bill that were added in the committee substitute amend the dollar amounts of the value of exemptions which may be claimed under the Alaska Exemptions Act. The statutory amounts were doubled. However, the practical effect is less than double because, as required by statute, the amounts had already been adjusted up by regulation, approximately 10 percent, in accordance with the consumer price index. (These amounts may be adjusted upward again by the Department of Labor by operation of AS 09.38.115, which provides for such changes each even-numbered year.) There are no obvious legal problems with these portions of the bill.

There is a significant policy decision to be made, however, with regard to approving the increases. The effect of the increases will be to allow debtors to keep more of their property while restricting the property available to nonsecured or undersecured creditors trying to recover on loans in default. In approving loans, some creditors may have counted on the availability of property or income that would be exempt under this bill.

It is very difficult to predict what economic effect will result if this bill becomes law. Some suggest that greater exemption amounts will encourage more creditor negotiations with debtors and thus reduce bankruptcy filings. Some suggest that debtors will be more encouraged to file bankruptcy because they will be able to keep more property. Another possibility is that increased exemptions will decrease the availability of credit.

It is worth noting that the Alaska Exemptions Act was based on the Uniform Exemptions Act, promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Alaska is the only state to date that has enacted the uniform Act, and Alaska enacted exemptions in higher amounts than were proposed in the uniform Act. We spoke with John McCabe, legal director for the NCCUSL. He informs us that there is no consistent answer on how any state has approached the exemption situation. For instance, several states exempt the homestead completely, but differ in the definition of the "homestead."

Mr. McCabe reported that Texas is noted for having the most liberal homestead provision. The definition requires that the debtor live on the property and then includes all property to the debtor boundaries. Thus, a debtor could be in bankruptcy, have an urban home worth hundreds of thousands of dollars sitting on millions of dollars worth of oil and the entire property would be exempt from creditors. Mr. McCabe reported that the Texas homestead provision has been criticized as being an imposition on

the credit system and unfairly restrictive for creditors.

When drafting the Uniform Exemptions Act, the drafters first determined what kinds of property should be reasonably included. Next, the drafters tried to ascertain reasonable values that would fairly serve the debtor's interests and not unfairly limit creditors. Mr. McCabe stated that the purpose of an exemptions Act is to preserve some assets for the debtor to make a fresh start without making the exemptions so great as to abuse the credit system. He felt that the actual amounts were derived by almost an intuitive consideration of what was fair and reasonable.

We note that only the new exemption of interests in retirement plans does not apply to assets of a bankruptcy estate in a bankruptcy proceeding filed before the effective date of the bill. Section 11 of the bill. Apparently, the legislature intended the increased exemptions added by the committee substitute to apply to pending bankruptcy proceedings.

We make no recommendation as to the resolution of the policy issue raised by the increased exemption amounts, but only bring the issue to your attention. Although there are no obvious legal problems with adopting the increased exemption amounts, the legal problems identified concerning the retirement plan exemption and the significant policy questions raised by the increased exemptions warrant serious consideration of veto. A veto would allow a bill to be drafted during the interim that would clarify the effects on the state's retirement systems and also allow more studied consideration of the policy issues. We would be happy to assist in drafting an appropriate veto message, if you wish.

Sincerely yours,



for Grace Berg Schaible
Attorney General

GBS:VBR:JJ:pjg

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 568

Retirement Benefits Not Exempt from ODRO

Received February 22, 1990
by the State Affairs Committee

Heard March 28, 1990
Heard March 29, 1990

Passed Out of Committee March 29, 1990
2 Do Pass
4 No Recommendation

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b. Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: HS State Affairs

TC DATE/DAY: Wed, Mar 28 ^{# Thurs, Mar 29}

Pub. Hear Work Ses. Inv. Hear

TIME: Cap 102 8:30-10:0

LEGISLATIVE REFERENCE: HB 568

JUNEAU ROOM: Cap 102

SUBJECT: Retiro. Bene. Not

BRIDGE: _____

Exempt from QDPO

OF PORTS: _____

CONTACT: Ann PH: 4963

DATE TAKEN/BY: 3/23 Becky / 3/28

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

- Anchorage
- Barrow *
- Bethel
- Delta Junction *
- Dillingham *
- Fairbanks
- Glennallen *
- Juneau
- Ketchikan
- Kodiak
- Kotzebue
- Mat-Su
- Nome
- Petersburg *
- Sitka
- Soldotna
- Valdez *

- Homer
- Wrangell

See List on Reverse Side

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

Touch please call when tape arr.
 Lee Wentworth
 OFFNETS: 343-4399
 Mun. Fire & Police Bd.
 P.O. Box 196650

Anch. Police & Fire 99519
 Retirement Board

CHAIRING SITE: Juneau

CHAIRPERSON: Bracher

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

W/ HB 338 -
TC mod w/c

SPECIAL INSTRUCTIONS

Item 2

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to qualified BRU: Retirement and Benefits
domestic relations orders
 Sponsor: House State Affairs Components: Retirement and Benefits
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

There will be no fiscal impact to the retirement systems with passage of this bill.

Prepared by: Sally Smith, Director *Sally Smith* Phone: 465-4470
 Division: Retirement and Benefits Date: 2/28/90
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 3/1/90
 Agency: Department of Administration

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

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 13, 1990

SUBJECT: Sectional Analysis of HB 568
(Definition of certain qualified domestic relations orders)

TO: Representative H.A. "Red" Boucher
Chair, House State Affairs Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

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

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

Section 1 of the bill amends the exemption from the claims of creditors of an individual's interest in a retirement plan. The law already provides that the exemption does not prevent the payment of benefits to an alternate payee if the payment is required by a qualified domestic relations order as that term is defined in the Internal Revenue Code. The bill adds that for a governmental plan as defined in the Employees Retirement Income Security Act (ERISA), "qualified domestic relations order" has the meaning given by the plan or by the law governing the plan. Under ERISA, a "governmental plan" means

a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act.

If I may be of further assistance, please advise.

TC:mi
wkmi6/055

Item 4

**Municipality
of
Anchorage**



P.O. BOX 198650
ANCHORAGE, ALASKA 99519-8850
(907) 343-4295

TOM FINK
MAYOR

POLICE AND FIRE RETIREMENT BOARD

November 20, 1989

The Honorable H. A. "Red" Boucher
P. O. Box 111038
Anchorage, AK 99511

Dear Representative Boucher:

On behalf of the over seven hundred members and retirees covered by the Anchorage Police and Fire Retirement System (APFRS), I would like to solicit your assistance in helping to solve a problem of considerable concern to both the APFRS Board and membership. Under current Alaska law, certain pension benefits are subject to attachment under APFRS, while those under PERS and other state retirement plans are not. The APFRS Board is urging the Legislature to correct this discrepancy.

In 1988, the Alaska Legislature adopted, without much debate or controversy, a statute which protects both public and private pension benefits from assignment except under a "qualified domestic relations order", or "QDRO". Under the statute, codified at AS 09.38.017, a QDRO is defined by reference to federal law, at 26 U.S.C. 414. Under the federal definition, a QDRO may assign a member's pension benefits to satisfy a child or spousal support judgement or property settlement, if the order meets certain statutory requirements. Of particular concern to us is a provision in the federal law that allows a member's benefits to be assigned, at the election of the assignee, at any time following the date a member is first eligible to retire, regardless of when or whether the member has actually retired. This requirement can create considerable difficulties for plan administrators, at substantial cost to the plan.

Fortunately, governmental pension plans, including PERS and other State plans, as well as our own, have never had to contend with this difficulty. Under the Employee Retirement Income Security Act (29 U.S.C 1001 et seq.), public retirement plans are specifically exempt from federal pension regulation; a governmental plan may define or restrict application of QDRO's as its regulators see fit. Thus, the Legislature has adopt statutes -- and the Anchorage Assembly

ordinances -- that allow assignment of governmental plan benefits only from the date the member actually retires. See e.g. AS 39.35.680 (34); AMC 3.85.075.

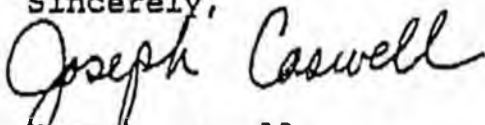
AS 09.38.017 could be interpreted as superseding existing law and thereby jeopardizing the federally-mandated independence of governmental pension plans. The new statute clearly conflicts with existing state pension laws. And if the statute is applied only to municipal pension plans, it clearly denies members of the municipal plan the equal protection of law, treating them differently from members of state governmental plans, without apparent justification.

These problems can be easily solved, however, merely by exempting governmental pension and retirement plans from the definition incorporated in AS 09.38.017 (c). The change is fully consistent with the intent of the federal laws incorporated by reference in the statute. Our attorneys have drafted a bill that should accomplish this purpose.

Please be assured that your efforts on our behalf will be greatly appreciated by the members of the Anchorage Police and Fire Retirement System and their families. I look forward to meeting with you and your staff, if at all possible, before the opening of the next legislative session. If you have any questions, please call me at 343-6440 or Board counsel, Scott Sidell, at 258-6599.

Thank you again for your assistance in this matter.

Sincerely,



Joseph Caswell
Chairman
Police and Fire Retirement Board

JC:lhk

Municipality
of
Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4295

TOM FINK,
MAYOR

RECEIVED
MAR 12 1990

Item 5

POLICE AND FIRE RETIREMENT BOARD

March 5, 1990

The Honorable H. A. "Red" Boucher
House of Representatives
State Capitol
P. O. Box 111038
Anchorage, AK 99511

Dear Mr. Boucher:

Thank you for taking the time to visit with John Cowdery and I during our visit to Juneau on February 20, 1990. The issue we discussed regarding when an alternate payee (i.e. ex-spouse) may receive payments on a Qualified Domestic Relations Orders (QDRO) is of concern to the Police and Fire Retirement Board, the Retirement System members and retirees.

As discussed with you and your staff, the problems are listed below:

1. All government pension plans are specifically exempted by ERISA from federal pension regulations. ERISA allows for government plans to define or restrict application of QDRO's as its regulations see fit. Thus, Alaska State Legislation for PERS and TRS has been adopted which states payment may only be made to an alternate payee at the time the member actually retires.
2. Alaska Statute 09.38.017, passed in 1988, it allows for the alternate payee to elect to receive their payments from other government plans at the time the member is first eligible to retire, not when they actually retire. As stated above, PERS and TRS legislation does not allow for payment to an alternate payee until the retiree actually retires.

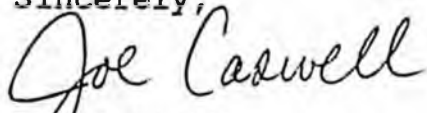
The Honorable H. A. "Red" Boucher
March 5, 1990
Page 2

3. Subsequently, in June 1989, Anchorage Municipal Code (AMC) 3.85.075 was passed which allows the Anchorage Police and Fire Retirement System to make payment to an alternate payee only from the date the member actually retires.
4. AS 09.38.017 may jeopardize the Police and Fire Retirement Board's and the Anchorage Assembly's ability to define or restrict application of QDRO's as allowed under ERISA. AS 09.38.017 clearly denies members of the Anchorage Police and Fire Retirement pension plan the equal protection of law by treating them differently from members of state governmental plans, without apparent justification.
5. The problem can be easily solved by merely clarifying AS 09.38.017 to exempt governmental pension and retirement plans from the definition incorporated in AS 09.38.017(c). The change is fully consistent with the intent of the federal laws incorporated by reference in AS 09.38.017(c).

As you are aware, the proposed change to State Statute AS 09.38.017 (c) has been reviewed by the State Attorney General's office and has support of the Public Employee Retirement System administration, as well as all the Police and Fire Retirement System members.

If you have any further questions, please call me or the Police and Fire Retirement Board Staff at (907) 343-6440.

Sincerely,



Joe Caswell
Chairman
Police and Fire Retirement Board

JC/lhk
Attachments

Item 4

MEMORANDUM

TO: Representative H.A. "Red" Boucher, Chair
House State Affairs Committee

FROM: Dennis J. Burns, Aide
House State Affairs

DATE: March 28, 1990

RE: HB 568

The following is in response to your request for background information:

Senator Rodey introduced SB 508 on 4/14/88 as a Senate Judiciary Committee bill. This bill was signed into law on 7/12/88 (Chapter 135 SLA 88).

The language in Section 1. AS 09.38.017(c) of HB 568 originated in SB 508.

The purpose of SB 508 was to prevent the attachment of retirement benefits (PERS and TRS) and IRAs in bankruptcy proceedings. During that time, there were a number of Alaskans who were experiencing financial reverses, and it seemed unfair to allow for the total depletion of their financial assets.

The language in Section 1. AS 09.38.017(c) was recommended by Legal Services. The intent was to recognize that there were some situations (QDRO) which should not be exempt. As I understand the intent of this section, however, the QDRO was to fit under the existing state PERS and TERS definition of QDRO, and if no definition existed then the federal definition would apply.

According to an opinion by the former Attorney General Grace Berg Schaible, there are two definitions of QDRO:

Under the federal definition, a QDRO can order payment of a benefit to a spouse as soon as a member is both vested and old enough to take early retirement, regardless of whether the member has terminated employment or chooses to take early retirement.

According to Ms. Schaible, the PERS and TRS definition of QDRO does not allow payment of benefits to a spouse before the member begins to receive the benefit.

However, it is unclear reading the statutes - AS 14.25.220(31) and AS 39.35.680(24) - whether the QDRO definition as defined by Mr. Schaible is implicit.

Ms. Schaible also noted that the federal definition of QDRO would not be applicable to PERS and TRS because 26 U.S.C. 414(p) provides that the federal definition does not apply to PERS or TRS.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

June 6, 1988

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3800

Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, AK 99811

Re: CSSB 508(Fin) -- property ex-
emptions for homesteads, re-
tirement plan interests, etc.
Our file: 883-88-0108

Dear Governor Cowper:

At Judy Fleming's request on your behalf, we have reviewed CSSB 508(Fin), relating to property exemptions for homesteads, retirement plan interests and payments, and other property. The bill raises policy and legal questions, and you might want to consider vetoing it. There are two basic categories of concern: (1) the retirement provisions, and (2) the increases in the exemption values.

This bill was introduced by the Senate Judiciary Committee on April 14, 1988. The Senate Finance Committee Substitute was offered May 3, 1988 and passed by the Senate on May 5, 1988, and the House passed it on May 9, 1988.

We are concerned that the retirement plan provisions in sec. 3 of the bill could be interpreted as requiring the federal definition of "qualified domestic relations order" (QDRO) to apply to the public employees' (PERS) and teachers' (TRS) retirement systems. The statutes for both of those systems include a definition of "QDRO" that differs from the federal definition. The bill also would allow bankruptcy creditors to reach TRS and PERS contributions made by a member within 120 days before the member files for bankruptcy. These are serious and, we believe, unintended effects of the bill.

The Senate Finance Committee's substitute bill (offered six days before the end of the session) doubles the dollar amount of exemptions from claims of creditors. That raises important policy questions. We are concerned about the full effects of that doubling, including the effect on the state's own collection efforts and on the state's private lending institutions. In light of its importance, we believe that the subject merits more

extended consideration than was possible during the extremely brief period that the committee substitute was pending at the hectic end of the legislative session.

As originally introduced, SB 508 related only to exemptions for certain retirement plan interests and payments (i.e., secs. 3, 8, 10, and part of 5 of this final version). The purpose of this part of the bill is not at all clear from the language of the bill itself. However, we have ascertained from documents provided by the Legislative Affairs Agency that, although the only reference to bankruptcy in the proposed AS 09.38.017 is in its subsec. (b), and the basic subsec. (a) is worded in general terms, the purpose is to exclude or exempt from the property of a bankruptcy debtor's estate that is subject to the reach of the debtor's creditors 1/ the bankruptcy debtor's interest in or payments to be received from a pension plan. An understanding of this purpose and the manner in which it is accomplished requires analysis of provisions of federal law, including the U.S. Bankruptcy Code, the Internal Revenue Code, and the Employee Retirement Income Security Act of 1974 (ERISA), as well as the relationship between federal bankruptcy law and state exemption statutes.

This analysis is fairly succinctly provided by the case of Goff v. Taylor, 706 F.2d 574 (5th Cir. 1983). That case explains that, upon filing of bankruptcy, an estate is created that includes all property in which the bankruptcy debtor has a legal or equitable interest. 11 U.S.C. 541(a)(1). An exception for this is that a debtor's interest in a trust that is subject to a restriction under an "applicable nonbankruptcy law" is excluded from the bankruptcy estate. 11 U.S.C. 541(c)(2). The interest in the trust never enters the estate.

After a bankruptcy estate is created, certain property is then exempted from the estate. 11 U.S.C. 522. (Exclusions are different from exemptions.) A bankruptcy debtor may choose whether to take exemptions provided by the Bankruptcy Code (listed at 11 U.S.C. 522(d)) or to take exemptions provided by state law. State law exemptions may be more favorable than the

1/ Notwithstanding that apparently intended purpose, this section also has the effect of providing an exemption in situations other than bankruptcy, for interests in certain governmental pension plans that are not currently protected under the Alaska Exemptions Act or any federal law.

law. State law exemptions may be more favorable than the Bankruptcy Code exemptions, or vice versa, depending on the type of property the bankruptcy debtor owns and depending on the specific provisions of state exemption statutes. In Goff, the bankruptcy debtors had chosen state law exemptions which, unlike the Bankruptcy Code, did not provide a limited exemption for Keogh plans. Nevertheless, the debtors argued that ERISA was an "applicable nonbankruptcy law," and that restrictions on assignment and alienation of interests in the Keogh plan under ERISA prevented their interest in the plan from entering the estate.

The court rejected this argument. It found that Congress did not intend to include ERISA plan restrictions in the reference to "applicable nonbankruptcy law." Rather, it found that Congress only intended "spendthrift trusts" to be excluded from the property of the estate. The Keogh plan was found not to be a spendthrift trust, because of the availability of the assets of the plan to the debtors, with only a 10 percent penalty, at any time before reaching retirement age. Under Goff, if a plan is not a spendthrift trust that is afforded protection under state nonbankruptcy law, a debtor's interest in the plan is not excluded from the bankruptcy estate. If the bankruptcy debtor chooses state law exemptions that do not include an exemption for the debtor's interest in a pension plan, the interest is not exempted from the estate. The result is that bankruptcy debtors may be forced to forego favorable exemptions under state law (such as the Texas homestead exemption discussed later in this bill-review letter) in order to gain at least partial protection of their pension plan interests provided by the federal bankruptcy exemptions.

Current provisions of the Alaska Exemptions Act (AS 09.38) do not provide an exemption for interests in retirement plans which is applicable in bankruptcy proceedings. See existing AS 09.38.055. Both the original and final versions of this bill add a new section, AS 09.38.017 (in sec. 3 of the CS), to the Alaska Exemptions Act, which provides an exemption for interests in certain "retirement plans." That exemption will be applicable in bankruptcy proceedings by virtue of the amendment of AS 09.38.055 in sec. 10 of the CS. By the definition of "retirement plan" in the bill, the new exemption is for interests in qualified plans under 26 U.S.C. 401(a), individual employee annuity plans under 26 U.S.C. 403(a), tax sheltered annuity plans under 26 U.S.C. 403(b), individual retirement accounts and annuities and simplified employee pension plans under 26 U.S.C. 408,

and employee stock ownership plans under 26 U.S.C. 409. 2/ No exemption is provided for interests in pension plans that do not qualify for favorable tax treatment under the specified provisions of the Internal Revenue Code.

The definition of "retirement plan" in the bill includes PERS and TRS, since those plans are qualified plans under 26 U.S.C. 401(a). Two problems arise from application of this bill to PERS and TRS. First, the bill provides that the exemptions do not apply to contributions "made by an individual under a retirement plan within 120 days before the individual files for bankruptcy." We believe that the purpose of this provision is to prevent individuals from increasing their contributions to retirement plans shortly before filing bankruptcy in order to shelter additional assets from creditors. However, PERS and TRS member contributions are statutorily fixed and involuntary, thus preventing the kind of abuse addressed by this provision. 3/ Administration of this provision would require changes in the PERS and TRS statutes, since there is currently no way for the systems to make available to creditors an employee's contributions that are made within 120 days before filing bankruptcy. There are no provisions in either PERS or TRS allowing a partial refund of a member's contribution account to pay creditors (either while the member is still employed or after termination of employment), allowing an adjustment of service credit to reflect a reduction in the contribution account, or allowing a member to repay contributions that have been paid to creditors.

Second, the bill provides that the exemptions do not prevent payment of retirement plan benefits to an alternate payee under a qualified domestic relations order (QDRO) as defined by 26 U.S.C. 414(p). Proposed AS 09.38.017(c). The potential problem with this is that the statutes providing for both PERS and TRS include a definition of "QDRO" that is different in a significant respect from the definition of "QDRO" in 26 U.S.C. 414(p). Existing AS 14.25.220(31) and AS 39.35.680(34). Under the federal definition, a QDRO can order payment of a benefit to an

2/ The federal Bankruptcy Code exemptions provide an exemption for payments under these plans only "to the extent reasonably necessary for the support of the debtor and any dependant of the debtor." 11 U.S.C. 522(d)(10)(E).

3/ This might also be true of some private pension plans that will be affected by this bill.

alternate payee as soon as a member is both vested and old enough to take early retirement, regardless of whether the member has terminated employment or chooses to take early retirement. Unlike the federal definition, the PERS and TRS definition does not allow payment of benefits to an alternate payee before the member begins to receive a benefit. There is no system in place to allow either PERS or TRS to apply the federal QDRO requirements.

We characterize this second problem as a "potential" problem because we believe that, despite the language of the bill, the better argument is that the federal definition of QDRO would not be applicable to PERS and TRS. This is so because 26 U.S.C. 414(p)(9) provides that the federal definition does not apply to any plan to which 26 U.S.C. 401(a)(13) does not apply. 26 U.S.C. 401(a)(13) does not apply to governmental plans, such as PERS, TRS, and municipal plans. Thus, under federal law, the federal definition of "QDRO," by its own terms, does not apply to PERS and TRS or the other governmental plans. Moreover, this proposed state statute says, in subsec. (c), that the exemptions in (a) "do not prevent" payment under a federally defined QDRO. Payment under such an order is not required by the proposed statute. In other words, if a creditor (spouse) has a domestic relations order that is a qualified one under the federal definition, then the exemptions in proposed AS 09.38.017(a) do not bar the creditor from reaching the pension money. But some other statute might do so -- e.g., our PERS and TRS statutes. This raises questions as to what right a person has to enforce a QDRO against a governmental plan other than PERS or TRS if the exemption is enacted.

The bill states a conclusive presumption that a retirement plan that is exempt from claims under the bill is a spendthrift trust. Proposed AS 09.38.017(d). We seriously doubt that this provision provides a bankruptcy debtor with any additional protection. If the debtor chooses state law exemptions, the provisions of the bill already exempt the debtor's interests in or payments from the specified retirement plans. If the debtor chooses federal Bankruptcy Code exemptions, it is unlikely that a bankruptcy court would give any credence to this presumption in considering whether a plan that is clearly not a spendthrift trust is excludable from the bankruptcy estate under 11 U.S.C. 541(c)(2). (PERS and TRS would not appear to qualify as spendthrift trusts, since, although access to their benefits is, by statute, strictly controlled, the portion of the trust money that is the employee's contribution account may be obtained by the employee upon termination of employment before eligibility for retirement benefits.)

The provisions of the bill that were added in the committee substitute amend the dollar amounts of the value of exemptions which may be claimed under the Alaska Exemptions Act. The statutory amounts were doubled. However, the practical effect is less than double because, as required by statute, the amounts had already been adjusted up by regulation, approximately 10 percent, in accordance with the consumer price index. (These amounts may be adjusted upward again by the Department of Labor by operation of AS 09.38.115, which provides for such changes each even-numbered year.) There are no obvious legal problems with these portions of the bill.

There is a significant policy decision to be made, however, with regard to approving the increases. The effect of the increases will be to allow debtors to keep more of their property while restricting the property available to nonsecured or undersecured creditors trying to recover on loans in default. In approving loans, some creditors may have counted on the availability of property or income that would be exempt under this bill.

It is very difficult to predict what economic effect will result if this bill becomes law. Some suggest that greater exemption amounts will encourage more creditor negotiations with debtors and thus reduce bankruptcy filings. Some suggest that debtors will be more encouraged to file bankruptcy because they will be able to keep more property. Another possibility is that increased exemptions will decrease the availability of credit.

It is worth noting that the Alaska Exemptions Act was based on the Uniform Exemptions Act, promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Alaska is the only state to date that has enacted the uniform Act, and Alaska enacted exemptions in higher amounts than were proposed in the uniform Act. We spoke with John McCabe, legal director for the NCCUSL. He informs us that there is no consistent answer on how any state has approached the exemption situation. For instance, several states exempt the homestead completely, but differ in the definition of the "homestead."

Mr. McCabe reported that Texas is noted for having the most liberal homestead provision. The definition requires that the debtor live on the property and then includes all property to the outer boundaries. Thus, a debtor could be in bankruptcy, have an urban home worth hundreds of thousands of dollars sitting on millions of dollars worth of oil and the entire property would be exempt from creditors. Mr. McCabe reported that the Texas homestead provision has been criticized as being an imposition on

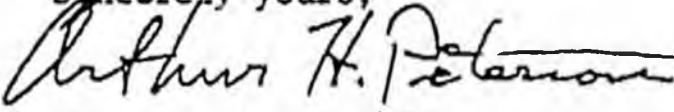
the credit system and unfairly restrictive for creditors.

When drafting the Uniform Exemptions Act, the drafters first determined what kinds of property should be reasonably included. Next, the drafters tried to ascertain reasonable values that would fairly serve the debtor's interests and not unfairly limit creditors. Mr. McCabe stated that the purpose of an exemptions Act is to preserve some assets for the debtor to make a fresh start without making the exemptions so great as to abuse the credit system. He felt that the actual amounts were derived by almost an intuitive consideration of what was fair and reasonable.

We note that only the new exemption of interests in retirement plans does not apply to assets of a bankruptcy estate in a bankruptcy proceeding filed before the effective date of the bill. Section 11 of the bill. Apparently, the legislature intended the increased exemptions added by the committee substitute to apply to pending bankruptcy proceedings.

We make no recommendation as to the resolution of the policy issue raised by the increased exemption amounts, but only bring the issue to your attention. Although there are no obvious legal problems with adopting the increased exemption amounts, the legal problems identified concerning the retirement plan exemption and the significant policy questions raised by the increased exemptions warrant serious consideration of veto. A veto would allow a bill to be drafted during the interim that would clarify the effects on the state's retirement systems and also allow more studied consideration of the policy issues. We would be happy to assist in drafting an appropriate veto message, if you wish.

Sincerely yours,


for Grace Berg Schaible
Attorney General

GBS:VER:JJ:pjg

(27) "part-time teacher" means a teacher occupying a position requiring teaching on a regular basis for at least 50 percent of the normal workweek at a teaching assignment, excluding teaching as an assistant or graduate assistant, or teaching on a substitute, temporary, or per diem basis;

(28) "permanent disability" means a physical or mental condition which, in the judgment of the administrator, based upon medical reports and other evidence satisfactory to the administrator, presumably prevents a member from satisfactorily performing the member's usual duties for the member's employer or the duties of another position or job which an employer makes available for which the member is qualified by training or education;

(29) "prescribed rate of interest" means the rate of interest used for computing employer contributions, for preparing actuarial tables used by the system, for crediting interest to members' contributions, and for charging interest on members' indebtedness accounts;

(30) "public school" means a school operated by publicly elected or appointed school officials in which the program and activities are under the control of those officials and which is supported by public funds;

(31) "qualified domestic relations order" means a divorce or dissolution judgment under AS 25.24, including an order approving a property settlement, that

(A) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a member;

(B) sets out the name and last known mailing address, if any, of the member and of each alternate payee covered by the order;

(C) sets out the amount or percentage of the member's benefit, or of any survivor's benefit, to be paid to the alternate payee, or sets out the manner in which that amount or percentage is to be determined;

(D) sets out the number of payments or period to which the order applies;

(E) does not require any type or form of benefit or any option not otherwise provided by this chapter;

(F) does not require an increase of benefits in excess of the amount provided by this chapter, determined on the basis of actuarial value; and

(G) does not require the payment, to an alternate payee, of benefits that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

(32) "retired teacher or member" means a member who is terminated, who has not received a refund from the system, and who is receiving a benefit, other than disability, from the system;

(33) "retirement" means that period of time from the first day of the month following

CURRENT STATUS: (S) STA

STATUS DATE: 04/11/88

JRN-DATE	JRN-PG		ACTION
04/11/88	2959	(S)	READ THE FIRST TIME - REFERRAL(S)
04/11/88	2959	(S)	STA, THEN FIN

SB 504

"An Act relating to contributions from permanent fund dividends to Yukon Quest International, Ltd.; and providing for an effective date."

PRIME SPONSOR: FINANCE COMMITTEE

CURRENT STATUS: (S) STA

STATUS DATE: 04/11/88

JRN-DATE	JRN-PG		ACTION
04/11/88	2959	(S)	READ THE FIRST TIME - REFERRAL(S)
04/11/88	2960	(S)	STA, THEN FINANCE

SB 505

"An Act establishing the Alaska Children's Commission; and providing for an effective date."

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: (S) CALENDAR 5/9

STATUS DATE: 05/09/88

JRN-DATE	JRN-PG		ACTION
04/12/88	2984	(S)	READ THE FIRST TIME - REFERRAL(S)
04/12/88	2984	(S)	STA, THEN HES, FIN
04/28/88	3244	(S)	STA RPT CS JDP SAME TITLE
04/28/88	3244	(S)	FISCAL NOTE PUBLISHED
05/06/88	3524	(S)	HES REFERRAL WAIVED
05/09/88	3751	(S)	FIN REFERRAL WAIVED
05/09/88	3758	(S)	RULES TO 2ND SUPPLEMENTAL CALENDAR
05/09/88	3758	(S)	NOT TAKEN UP

SB 506

"An Act providing for the issuance of general obligation bonds in the amount of \$64,000,000 for the purpose of paying the cost of highway, road, and trail projects; and providing for an effective date."

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: (S) TRA

STATUS DATE: 04/12/88

JRN-DATE	JRN-PG		ACTION
04/12/88	2984	(S)	READ THE FIRST TIME - REFERRAL(S)
04/12/88	2984	(S)	TRA, THEN FIN

SB 507

"An Act relating to bonds of contractors for public buildings and works; and providing for an effective date."

PRIME SPONSOR: RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

CURRENT STATUS: (S) TRA

STATUS DATE: 04/13/88

JRN-DATE	JRN-PG		ACTION
04/13/88	3006	(S)	READ THE FIRST TIME - REFERRAL(S)
04/13/88	3006	(S)	TRA, THEN L&C, FINANCE
04/13/88	3006	(S)	ZERO FISCAL NOTE PUBLISHED
04/13/88	3007	(S)	GOVERNOR'S TRANSMITTAL LETTER

SB 508

CSSB 508(FIN)

"An Act relating to property exemptions for homesteads, for certain retirement plan interests and payments, and for other property."

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: CHAPTER 135 SLA 88

STATUS DATE: 06/08/88

JRN-DATE	JRN-PG		ACTION
04/14/88	3030	(S)	READ THE FIRST TIME - REFERRAL(S)
04/14/88	3030	(S)	JUD, THEN FINANCE
04/21/88	3148	(S)	JUD WAIVED FIVE-DAY NOTIFICATION RULE
04/25/88	3182	(S)	JUD RPT 4DP
04/25/88	3182	(S)	ZERO FISCAL NOTE PUBLISHED
05/03/88	3393	(S)	FIN RPT CS 4DP 2NR NEW TITLE
05/03/88	3394	(S)	ZERO FISCAL NOTE PUBLISHED
05/03/88	3459	(S)	RULES TO CALENDAR
05/05/88	3461	(S)	READ THE SECOND TIME
05/05/88	3461	(S)	FIN CS ADOPTED UNAM CONSENT
05/05/88	3461	(S)	ADVANCED TO THIRD READING UNAM CONSENT
05/05/88	3461	(S)	READ THE THIRD TIME CSSB 508(FIN)
05/05/88	3461	(S)	PASSED Y20 N-
05/05/88	3485	(S)	TRANSMITTED TO (H)
05/06/88	3515	(H)	READ THE FIRST TIME - REFERRAL(S)
05/06/88	3515	(H)	LABOR & COMMERCE THEN JUDICIARY
05/07/88	3607	(H)	L&C REFERRAL WAIVED
05/08/88	3639	(H)	JUD RPT 4DP
05/09/88		(H)	RULES TO CALENDAR 5/9/88
05/09/88	3685	(H)	READ THE SECOND TIME
05/09/88	3685	(H)	ADVANCED TO THIRD READING UNAM CONSENT
05/09/88	3685	(H)	READ THE THIRD TIME CSSB 508(FIN)
05/09/88	3685	(H)	PASSED Y35 N- AS
05/09/88	3685	(H)	RETURN TO (S), TRANSMIT TO GOVERNOR NEXT
05/27/88	3812	(S)	1:15 PM 5/17/88 TRANSMITTED TO GOVERNOR
07/12/88	3851	(S)	SIGNED INTO LAW 6/8 CHAPTER 135 SLA 88
07/12/88	3852	(S)	EFFECTIVE DATE OF LAW 9/6/88

Chapter 135

AN ACT

Relating to property exemptions for homesteads, for certain retirement plan interests and payments, and for other property.

Section 1. AS 09.38.010(a) is amended to read:

09.38.010(a)

(a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of the [THAT] individual or the dependents of the [THAT] individual, but the value of the homestead exemption may not exceed \$34,000 [\$27,000].

Sec. 2. AS 09.38.010(b) is amended to read:

09.38.010(b)

(b) If property owned by the entirety or in common is used by one or more individual owners or their dependents as their principal residence, each owner is entitled to a homestead exemption of that owner's interest in the property as provided in (a) of this section. The aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed \$34,000 [\$27,000]. If there are multiple owners of property exempt as a homestead, the value of the exemption of each individual owner may not exceed the [THAT] individual owner's pro rata portion of \$34,000 [\$27,000].

Sec. 3. AS 09.38 is amended by adding a new section to read:

09.38.017

Sec. 09.38.017. EXEMPTION OF RETIREMENT PLAN INTERESTS AND PAYMENTS. (a) In addition to the exemption under AS 09.38.010(b), the following are exempt from a claim of an individual's creditor:

-1-

CSSR 108(Fin)

Chapter 135

(1) the interest of the individual in a retirement plan, and

(2) the money or other assets payable to the individual from a retirement plan.

(b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a retirement plan within 120 days before the individual files for bankruptcy.

(c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a retirement plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).

(d) A retirement plan, exempt from claims under (a) of this section is conclusively presumed to be a spendthrift trust under this section.

(e) In this section,

(1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

(2) "individual" means an individual who is a participant in, a beneficiary of, or an alternate payee of a retirement plan;

(3) "retirement plan" means a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, or 26 U.S.C. 409 (Internal Revenue Code).

Sec. 4. AS 09.38.020 is amended to read:

Sec. 09.38.020. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE LIMITATIONS. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$3,000 [\$1,000] chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably

CSSR 508(Fin)

-2-

09.38.020

Chapter 135

necessary for one household;

(2) if reasonably held for the personal use of the individual or a dependent, books and musical instruments; and

(3) family portraits and heirlooms of particular sentimental value to the individual.

(b) An individual is entitled to exemption of jewelry, not exceeding \$1,000 [\$500] in aggregate value, if held for the personal use of the individual or a dependent.

(c) An individual is entitled to exemption, not exceeding \$2,800 [\$1,400] in aggregate value, of implements, professional books, and tools of the trade.

(d) An individual is entitled to the exemption of pats to the extent of a value not exceeding \$1,000 [\$500].

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$3,000 [*\$1,500] if the full value of the motor vehicle does not exceed \$10,000 [\$10,000].

* Sec. 5. AS 09.38.025(a) is amended to read:

(a) Except as provided in this section or AS 09.38.017, an individual is entitled to exemption of unexpired life insurance and annuity contracts owned by the individual. If the contracts have accrued dividends and loan values available to the individual aggregating more than \$10,000 [\$5,000], a creditor may obtain a court order requiring the individual debtor to pay the creditor, and authorizing the creditor on the debtor's behalf to obtain payment of, the amount of the accrued dividends and loan values in excess of \$10,000 [\$5,000] or the amount of the creditor's claim, whichever is less.

* Sec. 6. AS 09.38.030(a) is amended to read:

(a) Except as provided in (b) and (c) of this section and AS 09.38.030, an individual debtor is entitled to an exemption of the

-3-

CSSB 508(Fin)

09.38.025(u)

09.38.030(a)

Chapter 135

individual debtor's weekly net earnings not to exceed \$350 .5175]. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

* Sec. 7. AS 09.38.030(b) is amended to read:

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$3,400 [\$700], except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

* Sec. 8. AS 09.38.030(c) is amended to read:

(c) The following property, unless exempt without limitation under AS 09.38.015 or 09.38.017, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of

CSSB 508(Fin)

-4-

09.38.030(b)

09.38.030(c)

Chapter 135

whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service.

* Sec. 9. AS 09.38.030(b) is amended to read:

(b) The exemption amounts under AS 09.38.030 may be increased when the individual submits an affidavit, under penalty of perjury, stating that the individual's earnings alone support the individual's household; by so doing, the maximum part of the individual's aggregate disposable earnings for any week subject to execution may not exceed the amount by which the individual's disposable earnings for that week exceed \$500 [\$275], or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.030(b), a maximum amount of \$2,200 [\$1,100] available in a [ANY] month is exempt.

* Sec. 10. AS 09.38.055 is amended to read:

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

* Sec. 11. AS 09.38.017, added by sec. 3 of this Act, does not apply to the assets of a bankruptcy estate in a proceeding filed under 11 U.S.C. (Bankruptcy) before the effective date of this Act.

09.38.050(b)

09.38.055

Eff. 9/6/88

Chapter 136

AN ACT

Providing for the establishment of the Institute for Circumpolar Health Studies within the University of Alaska; and providing for an effective date.

* Section 1. FINDINGS. The legislature finds that

(1) the severe health problems of depression, alcoholism, and suicide are endemic to Alaska;

(2) millions of dollars and countless expenditures of energy and time have been spent attempting to solve or at least adequately address these problems in the state, but that major successes have not been achieved and that a new approach to these problems is needed;

(3) other circumpolar areas and nations, including Canada, Siberia, Greenland, and Scandinavia, also suffer from these problems, but that Alaska has failed to exchange research and information with these countries;

(4) the establishment of an Institute for Circumpolar Health Studies within the University of Alaska would be a major new step toward addressing and finding solutions to the health problems of Alaskans and inhabitants of other circumpolar regions;

(5) establishment of the Institute is a concept strongly supported by the International Union for Circumpolar Health and the American Public Health Association's national Arctic health science policy;

(6) Alaska is an especially appropriate location for such an

**Municipality
of
Anchorage**



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4295

TOM FINK,
MAYOR

POLICE AND FIRE RETIREMENT BOARD

RECEIVED
APR 2 1990

April 10, 1990

The Honorable Peter Goll, Co-Chairman
House of Representatives
Judiciary Committee
P. O. Box V, Capitol, Room 122
Juneau, AK 99811

Dear Representative Goll:

On April 10, 1990, we sent you correspondence on House Bill (HB) 568, which has been referred to the House Judiciary Committee. It is our understanding that this bill is on the calendar for the House Judiciary Committee during the week of April 16, 1990.

The members of the Anchorage Police and Fire Retirement Board would like to testify, via teleconference, at the time the bill is discussed by the Judiciary Committee. Please contact us at 343-4399.

As you are aware, HB 568 was sponsored by Representative Boucher and a similar bill (Senate Bill 252) has been drafted by the Senate Judiciary Committee and is sponsored by Senator Faiks. The Police and Fire Retirement System is not asking for a change to practical application of AS 09.38.017(c) but only clarification that governmental retirement plans are not included in the definition incorporated in AS 09.38.017(c), and have the right to establish the meaning given QDRO by the Plan.

Under AS 09.38.017(c), certain pension benefits are arguably subject to attachment as this statute states pension plans in Alaska must comply with a Qualified Domestic Relations Order (QDRO) as defined by ERISA (U.S.C. 414). This Federal legislation allows for payment of benefits to an alternate payee (i.e. spouse) at the time members are first eligible to retire, not when they actually retire. At 26 U.S.C., 401(c), all governmental retirement plans are specifically exempt from ERISA and U.S.C. 414 allows governmental retirement plans to draft local legislation for the administration of QDRO's.

The Honorable Peter Goll, Co-Chairman
House of Representatives
Judiciary Committee
April 10, 1990
Page 2

AS 39.35.370(e), for Public Employees Retirement System (PERS) and AS 14.25.110 for the Teachers Retirement System (TRS), do not allow for payment of QDRO's until a member actually retires.

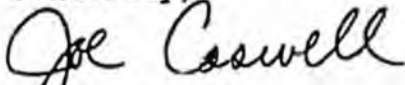
Anchorage Municipal Code (AMC) 3.85.075, which passed in June 1988, allows the Police and Fire Retirement System to make payments to an alternate payee only from the date the member actually retires.

The Alaska State Attorney General provided an opinion to Governor Cowper, dated June 6, 1988, on AS 09.38.017(c) prior to it being signed into law by the Governor. It is the Alaska State Attorney General's opinion that AS 09.38.017(c) does not apply to governmental plans, such as PERS, TRS and municipal retirement plans as the definition of a QDRO under 26 U.S.C. 414(P)(9) does not apply to governmental plans.

With this confusion in Federal, State and Local statutes, the Police and Fire Retirement System is asking only that AS 09.38.017(c) be clarified to reflect that governmental retirement plans are not included in the definition incorporated in AS 09.38.017(c). The Police and Fire Retirement Board feels the clarification of the State Statute would stop any costly litigation in the courts as to which statute is applicable to the Police and Fire Retirement System.

We have attached a copy of the State Attorney General's opinion and HB 568, as well as a fact sheet which outlines the problems as we see them. If you have any questions, please call me or the Police and Fire Retirement Board Staff at 343-6440.

Sincerely,



Joe Caswell
Chairman

JC/lhk
Attachments

cc: Representative Boucher

(D.78/PGoll2.Ltr)

BY THE STATE AFFAIRS COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 568

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 definition of qualified

7

domestic relations orders for retirement plan inter-

8

est and payment exemptions."

9

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

10

* Section 1. AS 09.38.017(c) is amended to read:

11

(c) The exemptions provided by (a) of this section do not pre-

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vent the payment of benefits under a retirement plan to an alternate

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payee under a qualified domestic relations order. In this subsection,

14

"qualified domestic relations order" has the meaning given in 26

15

U.S.C. 414(p), except as applied to "governmental plans" as defined

16

under 29 U.S.C. 1002 in which case "qualified domestic relations

17

order" has the meaning given by the plan or by the law governing the

18

plan.

ALASKA

STEVE COWPER, GOVERNOR

F A X T R A N S M I T T A L M E M O

TO: LEE WENTWORTH

DEPT: _____ FAX #: 343-4450

FROM: C.S. CHRISTENSEN PHONE: 465-4523

CO: _____ FAX #: _____

Post-It brand fax transmittal memo 7871

NO. OF PAGES
7

DEPT OF LAW
ATTORNEY GENERAL
June 6, 1988

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0330
PHONE: (907) 485-3600

Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, AK 99811

Re: CSSB 508(Fin) -- property ex-
emptions for homesteads, re-
tirement plan interests, etc.
Our file: 883-88-0108

Dear Governor Cowper:

At Judy Fleming's request on your behalf, we have re-
viewed CSSB 508(Fin), relating to property exemptions for home-
steads, retirement plan interests and payments, and other proper-
ty. The bill raises policy and legal questions, and you might
want to consider vetoing it. There are two basic categories of
concern: (1) the retirement provisions, and (2) the increases
in the exemption values.

This bill was introduced by the Senate Judiciary Com-
mittee on April 14, 1988. The Senate Finance Committee Substi-
tute was offered May 3, 1988 and passed by the Senate on May 5,
1988, and the House passed it on May 9, 1988.

We are concerned that the retirement plan provisions in
sec. 3 of the bill could be interpreted as requiring the federal
definition of "qualified domestic relations order" (QDRO) to ap-
ply to the public employees' (PERS) and teachers' (TRS) retire-
ment systems. The statutes for both of those systems include a
definition of "QDRO" that differs from the federal definition.
The bill would allow bankruptcy creditors to reach TRS and
PERS contributions made by a member within 120 days before the
member files for bankruptcy. These are serious and, we believe,
unintended effects of the bill.

The Senate Finance Committee's substitute bill (offered
six days before the end of the session) doubles the dollar amount
of exemptions from claims of creditors. That raises important
policy questions. We are concerned about the full effects of
that doubling, including the effect on the state's own collection
efforts and on the state's private lending institutions. In
light of its importance, we believe that the subject merits more

extended consideration than was possible during the extremely brief period that the committee substitute was pending at the hectic end of the legislative session.

As originally introduced, SB 508 related only to exemptions for certain retirement plan interests and payments (i.e., secs. 3, 8, 10, and part of 5 of this final version). The purpose of this part of the bill is not at all clear from the language of the bill itself. However, we have ascertained from documents provided by the Legislative Affairs Agency that, although the only reference to bankruptcy in the proposed AS 09.38.017 is in its subsec. (b), and the basic subsec. (a) is worded in general terms, the purpose is to exclude or exempt from the property of a bankruptcy debtor's estate that is subject to the reach of the debtor's creditors 1/ the bankruptcy debtor's interest in or payments to be received from a pension plan. An understanding of this purpose and the manner in which it is accomplished requires analysis of provisions of federal law, including the U.S. Bankruptcy Code, the Internal Revenue Code, and the Employee Retirement Income Security Act of 1974 (ERISA), as well as the relationship between federal bankruptcy law and state exemption statutes.

This analysis is fairly succinctly provided by the case of Goff v. Taylor, 706 F.2d 574 (5th Cir. 1983). That case explains that, upon filing of bankruptcy, an estate is created that includes all property in which the bankruptcy debtor has a legal or equitable interest. 11 U.S.C. 541(a)(1). An exception for this is that a debtor's interest in a trust that is subject to a restriction under an "applicable nonbankruptcy law" is excluded from the bankruptcy estate. 11 U.S.C. 541(c)(2). The interest in the trust never enters the estate.

After a bankruptcy estate is created, certain property is then exempted from the estate. 11 U.S.C. 522. (Exclusions are different from exemptions.) A bankruptcy debtor may choose whether to take exemptions provided by the Bankruptcy Code (listed at 11 U.S.C. 522(d)) or to take exemptions provided by state law. State law exemptions may be more favorable than the

1/ Notwithstanding that apparently intended purpose, this section also has the effect of providing an exemption in situations other than bankruptcy, for interests in certain governmental pension plans that are not currently protected under the Alaska Exemptions Act or any federal law.

law. State law exemptions may be more favorable than the Bankruptcy Code exemptions, or vice versa, depending on the type of property the bankruptcy debtor owns and depending on the specific provisions of state exemption statutes. In Goff, the bankruptcy debtors had chosen state law exemptions which, unlike the Bankruptcy Code, did not provide a limited exemption for Keogh plans. Nevertheless, the debtors argued that ERISA was an "applicable nonbankruptcy law," and that restrictions on assignment and alienation of interests in the Keogh plan under ERISA prevented their interest in the plan from entering the estate.

The court rejected this argument. It found that Congress did not intend to include ERISA plan restrictions in the reference to "applicable nonbankruptcy law." Rather, it found that Congress only intended "spendthrift trusts" to be excluded from the property of the estate. The Keogh plan was found not to be a spendthrift trust, because of the availability of the assets of the plan to the debtors, with only a 10 percent penalty, at any time before reaching retirement age. Under Goff, if a plan is not a spendthrift trust that is afforded protection under state nonbankruptcy law, a debtor's interest in the plan is not excluded from the bankruptcy estate. If the bankruptcy debtor chooses state law exemptions that do not include an exemption for the debtor's interest in a pension plan, the interest is not exempted from the estate. The result is that bankruptcy debtors may be forced to forego favorable exemptions under state law (such as the Texas homestead exemption discussed later in this bill-review letter) in order to gain at least partial protection of their pension plan interests provided by the federal bankruptcy exemptions.

Current provisions of the Alaska Exemptions Act (AS 09.38) do not provide an exemption for interests in retirement plans which is applicable in bankruptcy proceedings. See existing AS 09.38.055. Both the original and final versions of this bill add a new section, AS 09.38.017 (in sec. 3 of the CS), to the Alaska Exemptions Act, which provides an exemption for interests in certain "retirement plans." That exemption will be applicable in bankruptcy proceedings by virtue of the amendment of AS 09.38.055 in sec. 10 of the CS. By the definition of "retirement plan" in the bill, the new exemption is for interests in qualified plans under 26 U.S.C. 401(a), individual employee annuity plans under 26 U.S.C. 403(a), tax sheltered annuity plans under 26 U.S.C. 403(b), individual retirement accounts and annuities and simplified employee pension plans under 26 U.S.C. 408,

and employee stock ownership plans under 26 U.S.C. 409. 2/ No exemption is provided for interests in pension plans that do not qualify for favorable tax treatment under the specified provisions of the Internal Revenue Code.

The definition of "retirement plan" in the bill includes PERS and TRS, since those plans are qualified plans under 26 U.S.C. 401(a). Two problems arise from application of this bill to PERS and TRS. First, the bill provides that the exemptions do not apply to contributions "made by an individual under a retirement plan within 120 days before the individual files for bankruptcy." We believe that the purpose of this provision is to prevent individuals from increasing their contributions to retirement plans shortly before filing bankruptcy in order to shelter additional assets from creditors. However, PERS and TRS member contributions are statutorily fixed and involuntary, thus preventing the kind of abuse addressed by this provision. 3/ Administration of this provision would require changes in the PERS and TRS statutes, since there is currently no way for the systems to make available to creditors an employee's contributions that are made within 120 days before filing bankruptcy. There are no provisions in either PERS or TRS allowing a partial refund of a member's contribution account to pay creditors (either while the member is still employed or after termination of employment), allowing an adjustment of service credit to reflect a reduction in the contribution account, or allowing a member to repay contributions that have been paid to creditors.

Second, the bill provides that the exemptions do not prevent payment of retirement plan benefits to an alternate payee under a qualified domestic relations order (QDRO) as defined by 26 U.S.C. 414(p). Proposed AS 09.38.017(c). The potential problem with this is that the statutes providing for both PERS and TRS include a definition of "QDRO" that is different in a significant respect from the definition of "QDRO" in 26 U.S.C. 414(p). Existing AS 14.25.220(31) and AS 39.35.680(34). Under the federal definition, a QDRO can order payment of a benefit to an

2/ The federal Bankruptcy Code exemptions provide an exemption for payments under these plans only "to the extent reasonably necessary for the support of the debtor and any dependant of the debtor." 11 U.S.C. 522(d)(10)(E).

3/ This might also be true of some private pension plans that will be affected by this bill.

alternate payee as soon as a member is both vested and old enough to take early retirement, regardless of whether the member has terminated employment or chooses to take early retirement. Unlike the federal definition, the PERS and TRS definition does not allow payment of benefits to an alternate payee before the member begins to receive a benefit. There is no system in place to allow either PERS or TRS to apply the federal QDRO requirements.

We characterize this second problem as a "potential" problem because we believe that, despite the language of the bill, the better argument is that the federal definition of QDRO would not be applicable to PERS and TRS. This is so because 26 U.S.C. 414(p)(9) provides that the federal definition does not apply to any plan to which 26 U.S.C. 401(a)(13) does not apply. 26 U.S.C. 401(a)(13) does not apply to governmental plans, such as PERS, TRS, and municipal plans. Thus, under federal law, the federal definition of "QDRO," by its own terms, does not apply to PERS and TRS or the other governmental plans. Moreover, this proposed state statute says, in subsec. (c), that the exemptions in (a) "do not prevent" payment under a federally defined QDRO. Payment under such an order is not required by the proposed statute. In other words, if a creditor (spouse) has a domestic relations order that is a qualified one under the federal definition, then the exemptions in proposed AS 09.38.017(a) do not bar the creditor from reaching the pension money. But some other statute might do so -- e.g., our PERS and TRS statutes. This raises questions as to what right a person has to enforce a QDRO against a governmental plan other than PERS or TRS if the exemption is enacted.

The bill states a conclusive presumption that a retirement plan that is exempt from claims under the bill is a spendthrift trust. Proposed AS 09.38.017(d). We seriously doubt that this provision provides a bankruptcy debtor with any additional protection. If the debtor chooses state law exemptions, the provisions of the bill already exempt the debtor's interests in or payments from the specified retirement plans. If the debtor chooses federal Bankruptcy Code exemptions, it is unlikely that a bankruptcy court would give any credence to this presumption in considering whether a plan that is clearly not a spendthrift trust is excludable from the bankruptcy estate under 11 U.S.C. 541(c)(2). (PERS and TRS would not appear to qualify as spendthrift trusts, since, although access to their benefits is, by statute, strictly controlled, the portion of the trust money that is the employee's contribution account may be obtained by the employee upon termination of employment before eligibility for retirement benefits.)

The provisions of the bill that were added in the committee substitute amend the dollar amounts of the value of exemptions which may be claimed under the Alaska Exemptions Act. The statutory amounts were doubled. However, the practical effect is less than double because, as required by statute, the amounts had already been adjusted up by regulation, approximately 10 percent, in accordance with the consumer price index. (These amounts may be adjusted upward again by the Department of Labor by operation of AS 09.38.115, which provides for such changes each even-numbered year.) There are no obvious legal problems with these portions of the bill.

There is a significant policy decision to be made, however, with regard to approving the increases. The effect of the increases will be to allow debtors to keep more of their property while restricting the property available to nonsecured or undersecured creditors trying to recover on loans in default. In approving loans, some creditors may have counted on the availability of property or income that would be exempt under this bill.

It is very difficult to predict what economic effect will result if this bill becomes law. Some suggest that greater exemption amounts will encourage more creditor negotiations with debtors and thus reduce bankruptcy filings. Some suggest that debtors will be more encouraged to file bankruptcy because they will be able to keep more property. Another possibility is that increased exemptions will decrease the availability of credit.

It is worth noting that the Alaska Exemptions Act was based on the Uniform Exemptions Act, promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Alaska is the only state to date that has enacted the uniform Act, and Alaska enacted exemptions in higher amounts than were proposed in the uniform Act. We spoke with John McCabe, legal director for the NCCUSL. He informs us that there is no consistent answer on how any state has approached the exemption situation. For instance, several states exempt the homestead completely, but differ in the definition of the "homestead."

Mr. McCabe reported that Texas is noted for having the most liberal homestead provision. The definition requires that the debtor live on the property and then includes all property to the outer boundaries. Thus, a debtor could be in bankruptcy, have an urban home worth hundreds of thousands of dollars sitting on millions of dollars worth of oil and the entire property would be exempt from creditors. Mr. McCabe reported that the Texas homestead provision has been criticized as being an imposition on

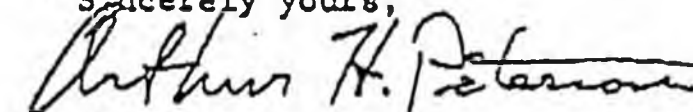
the credit system and unfairly restrictive for creditors.

When drafting the Uniform Exemptions Act, the drafters first determined what kinds of property should be reasonably included. Next, the drafters tried to ascertain reasonable values that would fairly serve the debtor's interests and not unfairly limit creditors. Mr. McCabe stated that the purpose of an exemptions Act is to preserve some assets for the debtor to make a fresh start without making the exemptions so great as to abuse the credit system. He felt that the actual amounts were derived by almost an intuitive consideration of what was fair and reasonable.

We note that only the new exemption of interests in retirement plans does not apply to assets of a bankruptcy estate in a bankruptcy proceeding filed before the effective date of the bill. Section 11 of the bill. Apparently, the legislature intended the increased exemptions added by the committee substitute to apply to pending bankruptcy proceedings.

We make no recommendation as to the resolution of the policy issue raised by the increased exemption amounts, but only bring the issue to your attention. Although there are no obvious legal problems with adopting the increased exemption amounts, the legal problems identified concerning the retirement plan exemption and the significant policy questions raised by the increased exemptions warrant serious consideration of veto. A veto would allow a bill to be drafted during the interim that would clarify the effects on the state's retirement systems and also allow more studied consideration of the policy issues. We would be happy to assist in drafting an appropriate veto message, if you wish.

Sincerely yours,



for Grace Berg Schaible
Attorney General

GBS:VBR:JJ:pjg

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HOUSE COMMITTEE REPORT

4/10

(9)

Date Referred: February 28, 1990

FURTHER REFERRALS:

Date of Committee Action: 4-9-90

JUDICIARY

*added finance
4/10*

The RESOURCES Committee considered:

HB 572

HOUSE BILL NO. 572

PIPELINE TARIFF CASE MANAGEMENT

"An Act relating to management of cases involving interstate regulation of pipeline carriers."

RECOMMENDATIONS:

- be replaced with CS HB 572 (RES) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the Fin Committee

ADOPTS: _____ letter of intent

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

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

SIGNING DO PASS:

Cliff Davidson DAVIDSON

Carl Hennard HENARD

Jacko JACKO

Richard Foster FOSTER

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Bill Hudson</u> HUDSON		<input checked="" type="checkbox"/>	
<u>Scott Sharp</u> SHARP		<input checked="" type="checkbox"/>	
<u>W. Eugene</u> EUGENE	<input checked="" type="checkbox"/>		

Cliff Davidson
CO- Chairman's Signature

HB 572

Transfer of Responsibility for Federal Pipeline Tariff Proceedings from Department of Law to Department of Natural Resources

This bill amends AS 42.06.140 to give the Department of Natural Resources (DNR), which is currently expanding its pipeline monitoring role, direct control of the inter-state pipeline tariff management. To make sure that revenue and environmental consequences of pipeline tariffs receive due weight, DNR should coordinate its efforts closely with the Departments of Revenue, Environmental Conservation, Fish and Game and Law.

This change would reduce critical delays in apprehension of resource management problems. (Procedurally, in the short run this shift would make little difference, since Law would still be the legal arm for the Department of Natural Resources.) The central premise of HB 572 is that pipeline tariffs directly impact resource development issues and should therefore be managed by a line agency.

The Department of Law was assigned this function in 1976 under AS 42.06.140(a)(10), apparently pursuant to its statutory mandate under AS 44.23.050 to appear as attorney before distant courts. When the Alaska Pipeline Commission became part of the APUC in 1981, the same arrangement with the Department of Law was carried over.

- [Statute Reference: AS 42.06.140(a)(10); AS 42.06.230; AS 44.37.020(c)]
- [See Fineberg Report: recommendation #12 (Chapter IV, p. 28)]

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPITOL
JUNEAU ALASKA 998
907 455 2800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 9, 1990

SUBJECT: House Bill 572 -- sectional analysis

TO: Representative Cliff Davidson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel 

The measure would re-assign the responsibility for representing the interests of the state in certain federal proceedings relating to the interstate regulation of pipelines from the Department of Law to the Department of Natural Resources.

Bill section 1 enunciates the purpose of the bill.

The principal operative provision of the measure appears in bill section 4, adding a new subsection to the duties of the Department of Natural Resources. The department is given "principal responsibility in all federal proceedings involving the interstate regulation of a pipeline carrier."

The amendments set out in bill sections 2 and 3, both applicable to the Alaska Public Utilities Commission, make related changes necessitated by the shift of responsibility in federal proceedings to the Department of Natural Resources.

JBC:lmb
L10/007

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "... relating to... cases involving
interstate regulation of pipeline carriers."
Sponsor: House Resources
Requestor: House Resources

Agency Affected: Department of Law
BRU: Oil and Gas Special Projects
Components: Operations

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						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: March 21, 1990

Approved by Commissioner: Richard I. Pegues (FOR)
Agency: Department of Law
Douglas B. Bailly Attorney General

Date: March 21, 1990

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 572

This bill amends AS 42.06.140(a) and adds a new subsection to AS 44.37.020 in a way that transfers responsibility for representation of the interests of the state, in federal proceedings involving regulation of pipeline carriers, from the Department of Law to the Department of Natural Resources.

If it is the intent of the legislation to change the state agency client status for pipeline matters before the Federal Energy Regulatory Commission, the Department of Law has no objection to the bill and there should not be a fiscal impact. If, on the other hand, it is the intent of the legislation to confer primary responsibility for representation of the state in legal proceedings in this or any other forum (as is stated in Section 1 of the bill), to a department of state government other than the Department of Law, the department totally objects. Administration of the state's legal affairs must be coordinated and directed from a single authority. The state's legal representation cannot be conducted by two attorneys general for the same reason that there cannot be two governors, or two speakers of the house, or two presidents of the senate.

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FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to fines of individuals convicted of certain crimes."
Sponsor: House Judiciary
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: All

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						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
Division: Administrative Services Date: April 12, 1990
Approved by Commissioner: Richard I. Peques / FOR / Date: April 12, 1990
Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

CSHB 595 (Jud)

For Bill/Resolution No. _____

This bill adds a new subsection to AS 12.55.035 that would provide that money received from payment of a fine by a defendant convicted of any violent crime, sexual assault in any degree, and driving while intoxicated, shall be deposited in the general fund. The bill further provides that the commissioner of administration shall separately account for the money deposited in the general fund, and that the annual estimated balance in the account may be used by the legislature to make appropriations to the crime victim compensation fund. This is a post-conviction activity that does not involve the Department of Law and there should not be any fiscal impact.

6-24 | 3E
Cook
4/9/90

Original sponsor(s): Judiciary Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 595 (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 fines of individuals convicted of
7 certain crimes."

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

9 * Section 1. AS 12.55.035 is amended by adding a new subsection to
10 read:

11 (e) Money received from payment of a fine by a defendant as a
12 result of conviction of an offense listed in AS 18.67.101(2) shall be
13 deposited in the general fund. The commissioner of administration
14 shall separately account for the money deposited in the general fund
15 under this subsection. The annual estimated balance in the account may
16 be used by the legislature to make appropriations to the crime victim
17 compensation fund (AS 18.67.162).
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HOUSE COMMITTEE REPORT

Date Referred: January 27, 1989

FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee recommends that:

HOUSE CONCURRENT RESOLUTION NO. 1

[AMEND UNIFORM RULE 56: SESSION SCHEDULE]

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to deadlines for session work.

[] be replaced with CSHCR 1 (JUD) [] the same title
[] a new title

[] have attached amendment(s)

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

ADOPTS: _____ letter of intent

ATTACHES ~~YES~~ FISCAL NOTE(S):

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

APPROVES PREVIOUS:

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

SIGNING DO PASS:

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

[Handwritten signatures: Holly, Steve, Mike, Terry, Mike, etc.]

[Handwritten signature]

Chairman's signature

Original sponsors: Ellis, Brown,
M.Davis, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 1 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Proposing an amendment to the Uniform
6 Rules of the Alaska State Legislature
7 relating to deadlines for session work;
8 and providing for an effective date.

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

10 * Section 1. The Uniform Rules of the Alaska State Legislature are
11 amended by adding a new rule to read:

12 RULE 56. SESSION SCHEDULE. (a) The following schedule applies
13 during a first and second session to consideration of a bill:

14 (1) the house of origin may not calendar a bill for second
15 reading after the 105th legislative day of a first session or after
16 the 90th legislative day of a second session;

17 (2) a bill may not be transmitted by the house of origin to
18 the second house after the 110th legislative day of a first session or
19 the 95th legislative day of a second session;

20 (3) the second house may not calendar a bill for first or
21 second reading after the 113th legislative day;

22 (4) a bill may not be transmitted by the second house to
23 the house of origin after the 115th legislative day;

24 (5) a report of a Conference Committee, Conference Commit-
25 tee with limited powers of free conference, or Free Conference Commit-
26 tee may not be submitted after the 117th legislative day.

27 (b) A report of a Conference Committee with limited powers of
28 free conference may not be voted on by a house until at least 24 hours
29 after it is duplicated and delivered to the chief clerk or secretary

1 of the house for distribution to each member. The chief clerk or
2 secretary shall certify the time of delivery of the report for record-
3 ing in the journal.

4 (c) An appropriation bill or a committee substitute for an
5 appropriation bill may not be voted on by a house until at least 24
6 hours after it is duplicated and delivered to the chief clerk or
7 secretary of the house for distribution to each member. The chief
8 clerk or secretary shall certify the time of delivery of the report
9 for recording in the journal.

10 (d) This rule may be suspended by a concurrent resolution ap-
11 proved by majority vote in each house. This rule does not apply to
12 resolutions.

13 * Sec. 2. The amendment proposed by this resolution takes effect on the
14 convening of the Second Session of the Sixteenth Alaska State Legislature.
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technical change.

CONFERENCE AND FREE CONFERENCE COMMITTEES

RULE 42. CONFERENCE AND FREE CONFERENCE COMMITTEES. (a) If one house refuses to concur in the amendments of the other it so notifies the amending house and requests that it recede from its amendments. The vote on receding from amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. A house recedes from its amendments only by a majority vote of the full membership of the house. If the house refuses to recede, the presiding officer of each house appoints three members to sit as a Conference Committee. The committee meets when mutually agreeable to its members. If the committee reaches agreement on previously adopted amendments to a bill adopted by either house, the committee then submits an identical report to each house. The report is not subject to amendment in either house. If the report is adopted by each house the bill is enrolled, signed, and transmitted to the governor. If the members of the Conference Committee cannot agree on amendments, or if one or both houses refuses to adopt the committee report, the Conference Committee submits an identical written report to each house listing the specific points of disagreement for which the committee requests powers of free conference. The presiding officer of each house may then give limited powers of free conference only on the specific points listed. If the members of a Conference Committee with limited powers of free conference cannot agree on amendments, or one or both houses refuses to adopt the committee report, it is then in order to appoint a Free Conference Committee. A member who served on a Conference Committee or a Conference Committee with limited powers of free conference may not be appointed to a subsequent Conference Committee or Free Conference Committee concerning the same measure. The vote on adoption of a conference committee report is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership of each house.

(b) A Free Conference Committee is appointed in the same manner as a Conference Committee and may suggest in its report any new amendments clearly germane to the question. When a majority of the membership of the committee from each house agrees on amendments, the amendments are attached to the bill and reported back to each house in an identical report. The report is not subject to amendment in either house. If the report is adopted in each house the bill is then ordered enrolled by its house of origin. If the members of a Free Conference Committee fail to agree on amendments or one or both houses refuses to adopt the free conference report, a second Free Conference Committee may be appointed, but no member of the first committee may be reappointed. A free conference report may not be voted on by the house until at least 24 hours after the report is duplicated and delivered to the chief clerk or secretary of the house for distribution to each member. The chief clerk or secretary shall certify the time of delivery of the report for recording in the journal. The vote on adoption of a free conference committee report is taken by the

calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership of each house.

(c) A Conference Committee with limited powers of free conference or a Free Conference Committee may not include in its report on an appropriation bill an item which was not included in a version of that appropriation bill adopted in third reading by a house and the amount appropriated by an item may not exceed the higher amount appropriated by that item in a version of the bill adopted in third reading by a house. An item in an appropriation bill includes a line item, an allocation, and an appropriation.

(d) Notwithstanding the provisions of (c) of this rule, a Free Conference Committee may consider and include in its report on an appropriation bill appropriations as requested by attached fiscal notes on new legislation and resolutions that have been passed by both houses.

(e) A Conference Committee, a Conference Committee with limited powers of free conference, or a Free Conference Committee may not adopt a report that requires a change in the title of a bill other than a clerical or technical change.

ENROLLMENT

RULE 43. ENROLLMENT. (a) When a bill has passed both houses the presiding officer of the house of origin directs that it be enrolled. The clerk or secretary transmits the engrossed bill to the enrolling secretary of the legislature, who, with the revisor of statutes, checks the bill before placement in final form according to the legislative drafting manual. The enrolling secretary is authorized to correct form and manifest errors which are clerical, typographical, or errors in spelling or errors by way of additions or omissions. The enrolling secretary is required to report errors by way of addition or omission and deficiencies when the bill is returned to the house of origin. When an error or deficiency has been reported, the clerk or secretary shall advise the presiding officers of both houses before the bill is signed and transmitted to the governor.

(b) Bills consisting of several pages need not be formally enrolled if the presiding officer announces that, for reasons of economy and time, formal enrollment is being waived. If enrollment is waived, and the presiding officer of the other house consents, the first page and signatory pages of the bill will be enrolled and then affixed to the engrossed bill along with any certified amendments and when signed by the officers of both houses will be transmitted to the governor with a letter noting that enrollment was waived. Engrossment of such bills may also be waived in the same manner.

TIME LIMIT ON INTRODUCTION

RULE 44. TIME LIMIT ON INTRODUCTION. No bill or resolution other than one sponsored by a standing committee may be introduced after the thirty-fifth day

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ANCHORAGE, ALASKA 99503
(907) 561-7628

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
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ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP



CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES

JUDICIARY

SPECIAL COMMITTEE ON
FOREIGN & DOMESTIC TRADE

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Rep. Johnny Ellis
RE: Proposed changes to HCR 1 - REVISED
DATE: March 21, 1999

Attached is a draft committee substitute which incorporates changes to HCR 1 as suggested by members of the Judiciary Committee. The changes are as follows:

- 1) Deadlines for committee action and floor action on bills in the house of origin during the first session were extended to the 105th and 110th days respectively.
- 2) The deadline for conference committee action was moved from the 118th day to the 117th day to compensate for possible parliamentary delays.
- 3) Floor action on Senate bills was moved up to the 115th day to allow at least 2 days for any differences to be resolved before conference committee action is required.
- 4) Committee action on Senate bills was moved to the 113th day to allow at least 2 days for House floor action on Senate bills.
- 5) A subsection (c) was added which requires all appropriation bills to be available for review by members at least 24 hours in advance of a floor vote.
- 6) An effective date was added to have the resolution take effect beginning the next legislative session.

Also attached is a revision of the deadline chart which incorporates changes 1 through 4 above. Other revisions to the chart include: (i) addition of Uniform Rule 44, which established a personal bill introduction deadline for the

Memorandum
March 21, 1989
Page Two

second session, (ii) clarification that "Committee Action" includes the Rules Committee calendaring of bills, and (iii) clarification that the chart applies to actions required by the House.

If you have any comments or suggestions, please contact me or Jim Nordlund of my staff.

Original sponsors: Ellis, Brown,
M.Davis, et al.

1 IN THE HOUSE

2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 1 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Proposing an amendment to the Uniform
6 Rules of the Alaska State Legislature
7 relating to deadlines for session work;
8 and providing for an effective date.

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

10 * Section 1. The Uniform Rules of the Alaska State Legislature are
11 amended by adding a new rule to read:

12 RULE 56. SESSION SCHEDULE. (a) The following schedule applies
13 during a first and second session to consideration of a bill:

14 (1) the house of origin may not calendar a bill for second
15 reading after the 105th legislative day of a first session or after
16 the 90th legislative day of a second session;

17 (2) a bill may not be transmitted by the house of origin to
18 the second house after the 110th legislative day of a first session or
19 the 95th legislative day of a second session;

20 (3) the second house may not calendar a bill for first or
21 second reading after the 113th legislative day;

22 (4) a bill may not be transmitted by the second house to
23 the house of origin after the 115th legislative day;

24 (5) a report of a Conference Committee, Conference Commit-
25 tee with limited powers of free conference, or Free Conference Commit-
26 tee may not be submitted after the 117th legislative day.

27 (b) A report of a Conference Committee with limited powers of
28 free conference may not be voted on by a house until at least 24 hours
29 after it is duplicated and delivered to the chief clerk or secretary

1 of the house for distribution to each member. The chief clerk or
2 secretary shall certify the time of delivery of the report for record-
3 ing in the journal.

4 (c) An appropriation bill or a committee substitute for an
5 appropriation bill may not be voted on by a house until at least 24
6 hours after it is duplicated and delivered to the chief clerk or
7 secretary of the house for distribution to each member. The chief
8 clerk or secretary shall certify the time of delivery of the report
9 for recording in the journal.

10 (d) This rule may be suspended by a concurrent resolution ap-
11 proved by majority vote in each house. This rule does not apply to
12 resolutions.

13 * Sec. 2. The amendment proposed by this resolution takes effect on the
14 convening of the Second Session of the Sixteenth Alaska State Legislature.
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3111 C STREET SUITE 455
ANCHORAGE, ALASKA 99503
(907) 561-7828

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE

OFFICE OF M. JONNY WHIP



CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES

JUDICIARY

SPECIAL COMMITTEE ON
FOREIGN & DOMESTIC TRADE

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Members of the House Judiciary Committee

FROM: Rep. Johnny Ellis *JE*

RE: Proposed changes to HCR 1

DATE: March 10, 1989

Attached is a draft committee substitute which incorporates changes to HCR 1 as suggested by members at the March 8th Judiciary Committee meeting. The changes are as follows:

- 1) Deadlines for committee action and floor action on bills in the house of origin during the first session were extended to the 105th and 110th days respectively.
- 2) The deadline for conference committee action was moved from the 118th day to the 117th day. The deadlines for committee and floor actions on bills originating in the other house were also moved up by one day to conform to this revision.
- 3) A subsection (c) was added which requires all appropriation bills to be available for review by members at least 24 hours in advance of a floor vote.
- 4) An effective date was added to have the Resolution take effect beginning the next legislative session.

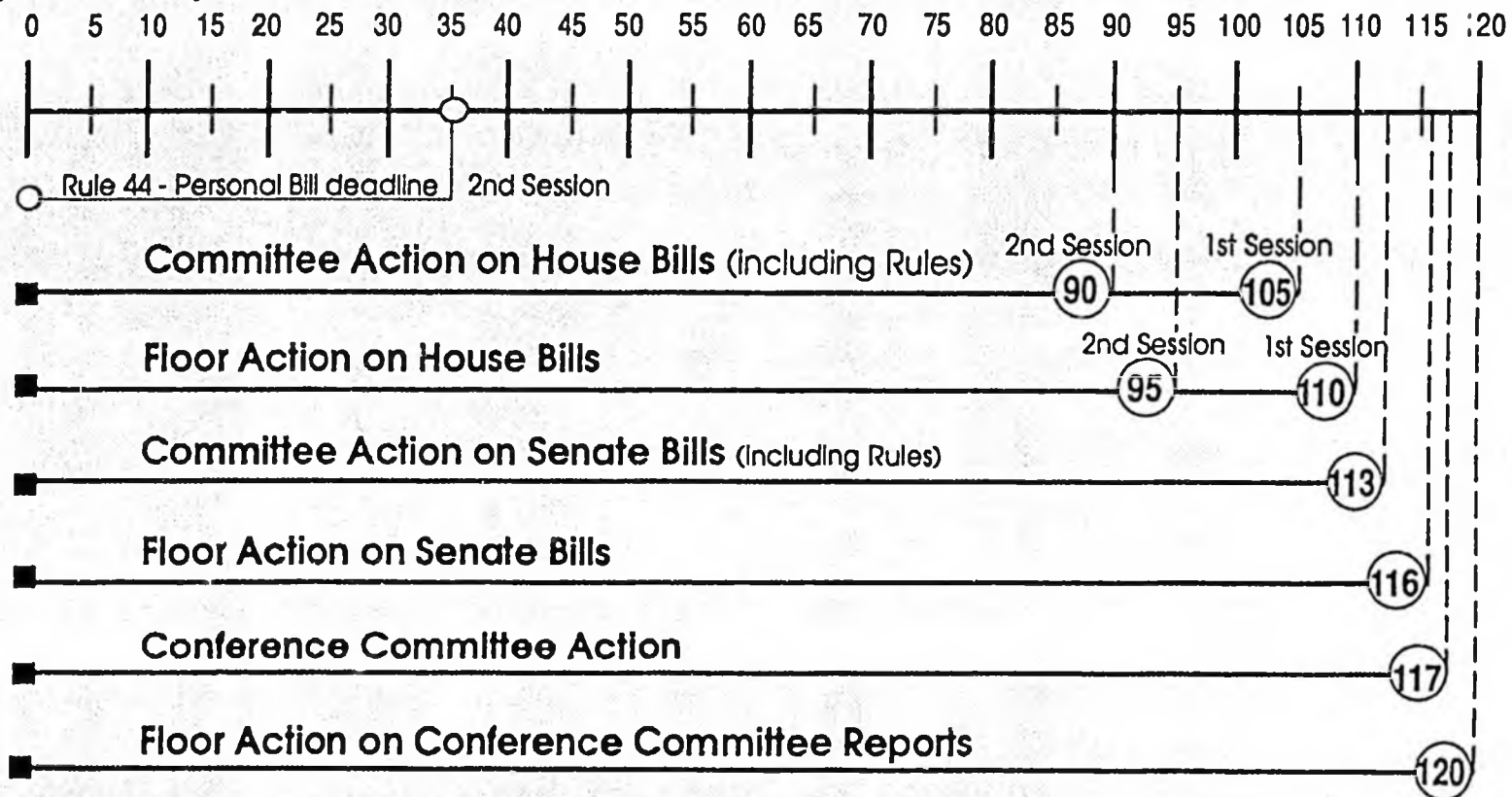
Also attached is a revision of the deadline chart which incorporates changes 1 and 2 above. Other revisions to the chart include: (i) addition of Uniform Rule 44, which established a personal bill introduction deadline for the second session, (ii) clarification that "Committee Action" includes the Rules Committee calendaring of bills, and (iii) clarification that the chart applies to actions required by the House.

If you have any comments or suggestions, please contact me or Jim Nordlund of my staff.

Actions Required on Bills Under HCR1*

(This example is for the House of Representatives)

Legislative Days



* Pursuant to Article II, Section 8 of the Alaska Constitution: "The legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session."

1 IN THE HOUSE

2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 1 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Proposing an amendment to the Uniform
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7 relating to deadlines for session work;
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9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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13 during a first and second session to consideration of a bill:

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15 reading after the 105th legislative day of a first session or after
16 the 90th legislative day of a second session;

17 (2) a bill may not be transmitted by the house of origin to
18 the second house after the 110th legislative day of a first session or
19 the 95th legislative day of a second session;

20 (3) the second house may not calendar a bill for first or
21 second reading after the 113th legislative day;

22 (4) a bill may not be transmitted by the second house to
23 the house of origin after the 116th legislative day;

24 (5) a report of a Conference Committee, Conference Commit-
25 tee with limited powers of free conference, or Free Conference Commit-
26 tee may not be submitted after the 117th legislative day.

27 (b) A report of a Conference Committee with limited powers of
28 free conference may not be voted on by a house until at least 24 hours
29 after it is duplicated and delivered to the chief clerk or secretary

1 of the house for distribution to each member. The chief clerk or
2 secretary shall certify the time of delivery of the report for record-
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6 hours after it is duplicated and delivered to the chief clerk or
7 secretary of the house for distribution to each member. The chief
8 clerk or secretary shall certify the time of delivery of the report
9 for recording in the journal.

10 (d) This rule may be suspended by a concurrent resolution ap-
11 proved by majority vote in each house. This rule does not apply to
12 resolutions.

13 * Sec. 2. The amendment proposed by this resolution takes effect on the
14 convening of the Second Session of the Sixteenth Alaska State Legislature.
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WHILE IN SESSION
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ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP



CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES

JUDICIARY

SPECIAL COMMITTEE ON
FOREIGN & DOMESTIC TRADE

REPRESENTATIVE JOHNNY ELLIS

TO: Members of the House Judiciary Committee
FROM: Rep. Johnny Ellis *JE*
RE: HCR 1 - "relating to deadlines for session work"
DATE: February 6, 1989

This resolution proposes to amend the Uniform Rules by setting deadlines for the passage of bills through the legislature. It is identical to HCR 41 which passed the House last year by a vote of 35 to 3, and died in Senate Rules.

We are all aware of the rush of legislation that is brought to the floor in the final days of the session. Bills are often rushed or waived through committees, and adequate consideration and debate of each bill is simply not possible during marathon floor sessions jammed with the most important and often complex legislation.

When the voters passed the session limitation section to the State Constitution in 1984, they also approved language that "the Legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session," (Article II, Section 8). In my view, the Legislature has not lived up to this constitutional mandate, and the public is growing less tolerant of the chaos during the final days.

Last year, the National Conference of State Legislatures (NCSL) released Review of the Operations and Procedures of the Alaska House of Representatives, in which the first recommendation was the adoption of a system of deadlines for scheduling session work. This is similar to a recommendation made by NCSL to The Joint Special Committee on Legislative Reform in 1983. Several other states have systems such as the one suggested in this resolution.

Attached is relevant backup material for this resolution. Please call me or Jim Norlund of my staff if you have any questions. Thank you for your consideration of this important reform measure.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION : _____
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: _____
Title: Uniform Rules Amendment
relating to deadlines for session work BRU: _____
Sponsor: Ellis Components: _____
Requestor: Ellis

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

Prepared by: House State Affairs Committee Phone: 465-4931
Division: _____ Date: Jan 23, 1989

Approved by Commissioner: Rep. Boucher *[Signature]* Date: Jan 23, 1989
Agency: _____

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



Alaska State Legislature

Official Business

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

MEMORANDUM

TO: Rep. H.A. "Red" Boucher, Chairman
and Members of the House State Affairs Committee

FROM: Rep. Johnny Ellis ^{JE}

RE: HCR 1 - "relating to deadlines for session work"

DATE: January 24, 1989

Attached you will find backup materials for HCR 1. This resolution proposes to amend the Uniform Rules by setting deadlines for the passage of bills through the legislature. It is identical to HCR 41 which passed the House last year by a vote of 35 to 3, and died in Senate Rules.

We are all aware of the rush of legislation that is brought to the floor in the final days of the session. Bills are often rushed or waived through committees, and adequate consideration and debate of each bill is simply not possible during marathon floor sessions jammed with the most important and often complex legislation.

When the voters passed the session limitation section to the State Constitution in 1984, they also approved language that "the Legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session." (Article II, Section 8). In my view, the Legislature has not lived up to this constitutional mandate, and the public is growing less tolerant of the chaos during the final days.

Last year, the National Conference of State Legislatures (NCSL) released Review of the Operations and Procedures of the Alaska House of Representatives, in which the first recommendation was the adoption of a system of deadlines for scheduling session work. This is similar to a recommendation made by NCSL to The Joint Special Committee on Legislative Reform in 1983. Several other states have systems such as the one suggested in this resolution.

Thank you for your consideration of this important reform measure.

CONSTITUTION - ARTICLE II

Item 4

ing to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace.

Salary and Expenses

SECTION 7. Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.

Regular Sessions

SECTION 8. The legislature shall convene in regular session each year on the fourth Monday in January, but the month and day may be changed by law. The legislature shall adjourn from regular session no later than one hundred twenty consecutive calendar days from the date it convenes except that a regular session may be extended once for up to ten consecutive calendar days. An extension of the regular session requires the affirmative vote of at least two-thirds of the membership of each house of the legislature. The legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session. [Amendment approved November 6, 1984]

*
Special Sessions

SECTION 9. Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.

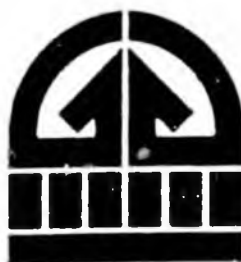
(The amendment of this section was approved by the voters of the state November 2, 1976 and became effective December 23, 1976. This amendment deleted "or" preceding "to subjects" in the third sentence and added "and the reconsideration of bills vetoed by him after adjournment of the last regular session.")

Adjournment

SECTION 10. Neither house may adjourn or recess for longer than three days unless the other concurs. If the two houses cannot agree on the time of adjournment and either house certifies the disagreement to the governor, he may adjourn the legislature.

FINAL REPORT

Review of the Operations and Procedures of the Alaska House of Representatives



prepared by

**Rich Jones and Brian Weberg
National Conference of State Legislatures**

April 12, 1988

RECOMMENDATION: THE ALASKA LEGISLATURE SHOULD ADOPT A SYSTEM OF DEADLINES FOR SCHEDULING SESSION WORK. AT A MINIMUM, THE SYSTEM SHOULD INCLUDE DEADLINES FOR THE FOLLOWING ACTIONS:

- 1) INTRODUCTION OF BILLS IN THE HOUSE OF ORIGIN;
- 2) COMMITTEE ACTION ON HOUSE OF ORIGIN BILLS;
- 3) FINAL FLOOR ACTION IN HOUSE OF ORIGIN;
- 4) COMMITTEE ACTION ON BILLS FROM OPPOSITE HOUSE;
- 5) FINAL FLOOR ACTION ON BILLS FROM OPPOSITE HOUSE; AND
- 6) CONFERENCE COMMITTEE REPORTS.

The Alaska House does operate under one bill introduction limit. Rule 44 of the Uniform Rules prohibits the introduction of personal bills after the 35th day of the second session. Bill introduction data from 1986 (see Table 1 below) suggests that this deadline is strictly enforced. Indeed, 87 percent of all the 1986 House bills and resolutions were introduced by this deadline. The 1986 performance is in stark contrast to 1985, when only 44 percent of these items were introduced by the 36th day. Although it is difficult to relate this deadline directly to an improvement in the end-of-session logjam, it is interesting to note that although the House passed about the same number of House bills and resolutions in both years (1985=140, 1986=137), they passed twice as many in the last week of the 1985 session (29) as they did in the 1986 session (14). [Note: These figures represent House bills and resolutions engrossed and forwarded to the Senate for consideration. See Appendices A and B for further illustration of the Alaska House logjam.]

ALASKA LEGISLATIVE PROCEDURES STUDY

FINAL REPORT

Submitted to:

The Joint Special Committee on Legislative Reform



Prepared by the

NATIONAL CONFERENCE OF STATE LEGISLATURES

1125 Seventeenth Street, Suite 1500

Denver, Colorado 80202

May 15, 1983

PART I

RULES AND PROCEDURES

The National Conference of State Legislatures' study of the Alaska Legislature's rules and procedures began with a detailed review of the uniform rules and the gathering of information on staff size, turnover, committee makeup, committee budgets, session deadlines, past session patterns, bill flow, and interim work. Four areas - - session length, the committee process, the interim period and staff - - were examined. The National Conference of State Legislatures' staff conducted numerous interviews with leaders, committee chairmen, other members and staff of the Alaska Legislature to determine areas of concern. Lobbyists, members of the press and public interest groups also were interviewed. The study is not a comprehensive review of the Alaska Legislatures' rules and procedures, but focuses on the specific problem areas identified through the interviews.

What follows is a series of recommendations for the Alaska Legislature to consider covering various aspects of session length, the committee process, the interim period and staff. The recommendations are accompanied by a discussion of the problems as raised by members of the Alaska Legislature and information on other state practices as possible solutions for Alaska.

A. Session Length

Background: Legislatures today face extremely complex issues and tremendous bill volumes. To maintain the part-time citizen legislature and still deliberate on and screen bills has become increasingly difficult. Scheduling session time effectively is critical. Scheduling helps to avoid some of the last minute chaos, and assures important bills are not lost in the process. Scheduling helps regulate session work and can help to expedite session time.

1. The Alaska Legislature should establish a series of deadlines for scheduling session work and controlling the length of the session. The legislature should consider, at a minimum, scheduling session work (whether by rules or leadership direction) to cover the following:

- o Bill draft requests
- o Introduction of bills in house of origin
- o Committee action for house of origin bills
- o Final floor action in house of origin
- o Committee action for bills from opposite house
- o Final floor action for bills from the opposite house
- o Conference committee reports.

2. The Alaska Legislature should adopt a session scheduling system which emphasizes committee work early in the session and floor activity in the later weeks. The legislature should consider removing the limit of ten prefiled bills per member and encourage

members to prefile the majority of bills during the interim before the start of the session. Leadership should be able to assign bills to committees during the interim.

Discussion: There is concern among members of the Alaska legislature and the public that the legislature is spending too much time in session. They are concerned about preserving the part-time, citizen legislature. Yet, there is a lack of consensus, as evidenced by the interviews and votes on constitutional amendments, for limiting the number of session days or instituting a per diem cut off. Clearly, the number of session days has increased over the last four bienniums. The first and second sessions of the Eighth Alaska Legislature were 95 and 96 days, respectively. The first session of the Twelfth Alaska Legislature, however, was 165 days and the second session was 144 days. The length of sessions has been affected by a variety of factors, the most significant being the dramatic growth in Alaskan oil revenues. With population growth doubling over the past fifteen years, the Alaska legislature has had to respond to a myriad of social problems. In addition, being a relatively young state, Alaska is still faced with developing a body of law of its own.

Another factor that points to the need for deadlines is the build-up of bills on the floor of the Alaska Legislature at the end of session. For example, out of the 201 bills passed by the Alaska Senate during the 21-week 1980 session, 53% passed out during the last four weeks of the session.

The flow of legislation through the process also affects session length. The majority of bills considered by the Alaska Legislature are introduced during the first several weeks of the session, but few are passed out of either chamber. For instance, in 1979 during the first five weeks of the session 75% of the total number of Senate bills had been introduced, but the Senate had only passed out 7.8% of the total number of Senate and House bills passed out that session. During the 1980 session, the same pattern is evident. Fifty-two percent of the total number of bills had been introduced by the fifth week, but only 5.5% of the total number of bills passed had been passed out. In addition, out of 792 bills introduced in 1979, only 102 were prefiled. In 1980, 833 bills were introduced and 51 were prefiled by members of the Alaska Legislature.

By instituting a series of deadlines, encouraging prefiling, and establishing committee time in the early part of the session when floor work is not particularly heavy, the Alaska Legislature can help reduce committee and floor jams near the end of the session and place some controls on the length of the session.

Deadlines for introduction and action on bills are the most common techniques adopted by legislatures for handling bill flow and scheduling work. Three-fourths of the 99 state legislative bodies employ deadlines for introduction of bills, and one-half also provide deadlines for committee action on bills. Colorado, Illinois, and South Dakota have the detailed schedule of deadlines outlined in the recommendation.

Deadlines can be set up either formally by rule or informally enforced by leadership. In order to be effective, deadlines need to be established systematically and adhered to. If followed, deadlines will enable the legislature to schedule and plan the session.

Most legislatures permit pre-filing of legislation, and in several states leadership refers prefiled bills to committee before the session begins. This enables committees to begin work immediately when the session starts. Prefiling by itself is not always effective, but when coupled with a deadline system, such as in Florida, it can be a very effective device. The Florida House makes the first day of the session the deadline for all member bills, effectively requiring all bills to be prefiled. Incumbent members may prefile bills immediately following sine die adjournment of the previous session. If an incumbent is defeated for reelection, those prefiled bills are dead unless cosponsored by a reelected legislator. New members may begin pre-filing immediately following the November organizational session. Prefiled bills are referred to committees by leadership and the committees, which are appointed and begin work in November, study, amend and act on bills up until the opening day of the session in April. Between the first and second session committees actively work on carry-over legislation.

Other states have encouraged pre-filing by placing a limit on the number of bills a member can introduce during the session. For example, Montana lawmakers may introduce only five bills once the session has begun. However, the limit does not apply to prefiled bills prior to the session, interim committee bills, state agency bills or resolutions. In Colorado, the joint rules specify a six bill limitation for the number of measures a member can introduce during session. Detailed deadlines for various legislative actions also are set. To allow for emergencies, a Committee on Delayed Bills is established in each house. The committee, composed of the presiding officer and two party floor leaders, can approve late introductions. Appropriations bills are excluded from the limitation.

Increased committee time in the early part of the session can help expedite the process. This mechanism enables committees to work uninterrupted when floor activity is generally slow. Therefore, committees can act on more bills earlier. Increased committee time in the early part of the session can be scheduled in a variety of ways. For instance, from January to March in Connecticut, floor sessions are held only once a week and the rest of the time is devoted to committee work. Iowa utilizes the first four to eight weeks of session for all committee work. Only committee meetings are held in the Pennsylvania House in January and February, after which floor action alternates weekly with committee meetings. Nebraska and the Kentucky and Pennsylvania Senates utilize a recess period for increased committee meeting time.

3. Committee Process

Background: An effective and efficient legislature depends upon a strong committee system. Committees are the workhorses of the legislature, mini-legislatures, performing policy and program formulation and control. Committee chairmen play a key management function in directing the committee process. The success of a committee system depends significantly on how chairmen plan and manage committee time. Staff also play an important role in the committee process by providing information and analysis to committees -- the keys to informed decision making. Finally, committees serve as the



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

July 22, 1986

MEMORANDUM

TO: Representative Max Gruenberg
ATTN: Jim Nordland
FROM: Katherine Hazard *KH*
Legislative Analyst
RE: Scheduling Bills through the Legislature
Research Request 87-003

You asked our agency to provide information on how other state legislatures schedule bills in order to prevent logjamming of bills during the last few days of the session. You asked specifically for information about these legislative rules in states which have a limit on session length. You also requested information on the number of bills passed during the last two days of the Alaska legislative session in 1986.

Bill Scheduling Rules in Other States

During the last two decades, the number of bills introduced in most state legislatures has increased. The attached graph shows that the number of bills introduced in the Alaska Legislature increased substantially through the 1960s and 70s. Since 1981 there has been a downward trend in the number of bills introduced in the Alaska Legislature.

As of 1983, 37 states had an effective limit on the length of legislative sessions: 30 states had a limit in statutory or constitutional provisions; 1 had a limit proclaimed in the legislative rules; and 6 states had indirect limits on session length through restrictions on legislators pay, per diem, or daily allowance. Only 13 states had no limit on length of the legislative session.

¹The amendment to the Alaska Constitution, Article II, Section 8, which limits the legislative session length, was passed in the general election held on November 6, 1984; thus, in the statistics from 1983, Alaska is included as a state with no session limit.

Because of the constraints on session length and in response to the increase in legislation, several states have adopted rules to assure the timely movement of bills through committees and/or through each house in order to prevent logjamming of bills toward the end of the session. I spoke with legislative staff in six states with such rules: Connecticut, Illinois, Colorado, Iowa, Montana, and North Dakota. Some of the states schedule bills by setting deadlines for transmittal from one house to the other; others establish deadlines for reporting bills out of committee. These rules are described below based on conversations with staff in the respective legislatures.

Connecticut. Rules of the Connecticut legislature include bill submission deadlines and deadlines for the movement of bills through committees. In Connecticut, legislators submit bill and resolution proposals to the legislative commissioner's office in informal language. These are read on the floor and assigned to committees. In 1985 members of the general assembly could submit bill and resolution proposals through January 23rd. Additional information or documentation to the committees needed to be submitted by February 1 in 1985.

Fully drafted bills may be introduced only by committees. In 1985, deadlines for committees to submit drafting requests to the legislative commissioner's office ranged from February 19th to February 28th depending upon the committee. Deadlines for Finance, Revenue and Bonding; Judiciary; and Appropriations Committees were last. Deadlines for drafting requests on proposed bills and resolutions on which hearings are held are later yet; these request deadlines are 10 days prior to the date by which bills must be reported out of committee.

There are also deadlines for reporting bills out of committees. In 1985, deadlines ranged from March 26th through May 8th. Bills not reported out of committee are deemed failed. However, bills may be forced out of committee if: (1) the speaker of the house and the president of the senate certify that the legislation should be acted on by the general assembly; or (2) a majority of the members of the house of origin petition the clerk. There are no deadlines governing transmittal of bills from one house to the other.

Illinois. The Illinois legislature adjourns on or before June 30th. All substantive bills must pass out of committee before the end of the first Friday in May. If a bill has not moved out of committee by this date, it is dead unless the deadline is suspended by a two-thirds vote. Bills may also be petitioned out of committee. Bills must be out of the appropriations committee by the second Friday in May. There is no deadline for transmittal to the other house.

Colorado. The Colorado legislature has rules governing the dates for movement of bills through committee, to the floor, and for transmittal from one house to the other. However, there are no deadlines for appropriations or revenue bills. The Colorado legislature has alternating long and short sessions, with the long session following election years. The calendar for 1986 (a short session) is described below.

Jan 8: begin session
Jan 17: bill drafting deadline
Feb 1: deadline for introducing bills
Feb 21: bills must be out of committee in the house of origin
Mar 3: deadline for passage of bills in the house of origin
Mar 18: bills must be reported out of committee in the second house
Mar 28: deadline for passage of bills in the second house
Apr 29: reconvene for adjournment²
May 27: deadline for adjournment.

Iowa. Although Iowa has no limit on the length of legislative sessions expenses are paid for a maximum of 110 legislative days (100 days in even years). The legislative rules scheduling movement of bills through the legislature in Iowa are similar to those in Colorado. There are no deadlines on Appropriations and Ways and Means bills and the majority and minority leaders may co-sponsor a bill at any time. Other bills, however, must move according to the following schedule in even years.

2nd week: deadlines for bill drafting requests; committee chairs may still make requests
8th week: bills must be out of committee in the house of origin
9th week: deadline for passage of bills in the house of origin
11th week: bills must be out of committee in the second house
12th week: deadline for passage of bills in the second house

Beginning in the 13th week, the legislative bodies address co-sponsored minority and majority bills, conference committee reports, ways and means bills, appropriation bills, unfinished business and other legislative action exempted from the deadlines applicable to most legislation.

According to Diane Bolender, of the Iowa Legislative Service Bureau, this scheduling method is effective and few exceptions are made to the deadlines.

Montana. Montana has a session limit of 90 legislative days. Bills, excepting appropriation and revenue bills, must be transmitted from one house to the other on or before the 45th legislative day of the session. Amendments to these bills must be sent back to the other house by the 70th day. If a bill is not transmitted to the other house by the deadline, it may be transmitted only if there is a two-thirds vote to accept transmittal of the bill by the house to which it is to be transmitted.

²In some legislative sessions, the rules for recessing are suspended and the legislature meets until the adjournment deadline.

In Montana, all appropriations bills originate in the House. Revenue and appropriations bills from the House must be transmitted to the Senate on or before the 70th legislative day. Senate amendments to these bills must be transmitted to the House on or before the 85th day. Revenue bills originating in the Senate must be transmitted to the House on or before the 60th legislative day. Amendments from the House to the Senate on Senate revenue bills must be transmitted to the Senate by the 70th legislative day. In addition, several types of legislative action may occur at any time during the session; interum study resolutions; bills repealing, adopting, or amending administrative rules; and joint resolutions advising or requesting a change in administrative rules. Montana has no deadlines for committee reports.

North Dakota. The North Dakota legislature has a session limit of 80 legislative days. Their rules, however, are based on a 60 legislative day session.

After the 10th day, no legislator may introduce more than 3 bills.

After the 15th day, no bills may be introduced.

After the 18th day, no resolutions excepting study resolutions or resolutions regarding the US Constitution may be introduced.

After the 23rd day, any bill with a fiscal note of more than \$5,000 must be moved to the appropriations committee.

By the end of the 31st day, all bills must be reported out of committee.

By the end of the 33rd day: (1) all study resolutions and proposed resolutions regarding the U.S. Constitution must be out of committee; and (2) all bills must be transmitted to the other house.

By the end of the 46th day, all bills must be reported out of committee of the second house.

If a bill is not reported out of committee on schedule, it is pulled out of committee at the deadline and taken to the floor or referred to the appropriations committee as necessary. There is a floor vote upon every bill introduced.

Legislative procedures in North Dakota also differ from those in Alaska in that state agencies (comparable to departments in the State of Alaska) may introduce bills. Most agency bills are first assigned to the Senate because the Senate has fewer bills introduced; this evens out the load somewhat.

In addition to the rules adopted to schedule movement of bills through the legislature, many state legislatures have adopted rules to limit the number of bills introduced. Most states (79 of 99 legislative bodies) have deadlines for bill introduction, as Alaska does for the second session of each legislature. Forty-six legislative bodies have cut-off dates for requesting bill drafts.

Other methods for reducing the number of bills introduced include:

- a skeleton bill system where an outline is submitted to the appropriate committee, and the committee is responsible for having the bill drafted;
- a limit on the number of bills a legislator may introduce; and
- a prohibition on duplication of bill introductions in the two houses.

Bills Passed in the Final Days of the Legislative Session

You also requested information about legislative action during the final days of the 1986 Fourteenth Legislature. Thirty-two percent (68 bills) of the bills passed by the House during the second session were passed in the last two days; 34 percent (62 bills) of the bills passed by the Senate during the second session were passed in the last two days. In addition, the House voted on 16 other measures during the last two days: three conference committee substitute bills, five joint resolutions, six concurrent resolutions, and two letters of intent. The Senate voted on 9 other measures: four joint resolutions, four concurrent resolutions, and one Senate resolution.

Statistical Summary of Legislation 1985-1986

	<u>Bills Introduced</u>			<u>Bills Passed</u>			<u>Bills Passed Last 2 Days</u>		
	<u>1st</u> <u>Ses</u>	<u>2nd</u> <u>Ses</u>	<u>Total</u>	<u>1st</u> <u>Ses</u>	<u>2nd</u> <u>Ses</u>	<u>Total</u>	<u>May 11</u> <u>86</u>	<u>May 12</u> <u>86</u>	<u>Total</u>
<u>House</u>	448	262	710	158	208	366	17	51	68
<u>Senate</u>	322	167	489	142	184	326	8	54	62

* * * *

We requested copies of the legislative rules from the six states discussed in this memorandum. Please let us know if you would like us to forward copies of these rules to you; or if we may provide additional information.

KH

Attachment



Alaska State Legislature

Official Business

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

MEMORANDUM

TO: Reps. Peter Goll and Max F. Gruenberg, Jr.,
Co-Chairs, House Judiciary Committee

FROM: Rep. Johnny Ellis *JE*

RE: HCR 1 - "relating to deadlines for session work"

DATE: January 25, 1989

I respectfully request that your Committee hear HCR 1 at the earliest possible convenience. This resolution proposes to amend the Uniform Rules by setting deadlines for the passage of bills through the legislature. It is identical to HCR 41 which passed the House last year by a vote of 35 to 3, and died in Senate Rules.

We are all aware of the rush of legislation that is brought to the floor in the final days of the session. Bills are often rushed or waived through committees, and adequate consideration and debate of each bill is simply not possible during marathon floor sessions jammed with the most important and often complex legislation.

When the voters passed the session limitation section to the State Constitution in 1984, they also approved language that "the Legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session," (Article II, Section 8). In my view, the Legislature has not lived up to this constitutional mandate, and the public is growing less tolerant of the chaos during the final days.

Last year, the National Conference of State Legislatures (NCSL) released Review of the Operations and Procedures of the Alaska House of Representatives, in which the first recommendation was the adoption of a system of deadlines for scheduling session work. This is similar to a recommendation made by NCSL to The Joint Special Committee on Legislative Reform in 1983. Several other states have systems such as the one suggested in this resolution.

Thank you for your consideration of this important reform measure.



4336 E. 101st St.
Anchorage, Alaska 99516

Dear Members of the House Judiciary Committee:

I urge your support for HCR 1, proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to deadlines for session work. The Alaska League of Women Voters believes that the Alaska legislative system should be responsive, representative, accessible, efficient, and accountable. To that end, we support measures that will lead to efficient and effective operation of the legislative process with full opportunities for citizen input.

A survey that was conducted some time ago by one of our study committees found that legislators, lobbyists, administrators and members of the press alike felt that end of the session "logjamming" and bill trading between the Houses have a detrimental effect on legislation that is finally passed. Our position includes strongly advocating for improved operations, clearly stated schedules and well publicized and coordinated opportunities for access to the public policy making process. HCR 1 is one step in the right direction.

Sincerely,

Charlotte Fox (by CFS)

Charlotte A. Fox
President

HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HCR 1**

Amend Uniform Rule 56: Session Schedule

Received January 9, 1989

by Reps. Ellis, Brown, M. Davis, Hanley, Koponen,
Navarre, Ulmer, Zawacki, Donley and Collins

Heard January 25, 1989

Passed Out of Committee January 25, 1989
6 Do Pass

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- Item 4: Article II of the Alaska State Constitution
- Item 5: Final Report: Review of the Operations and
Procedures of the Alaska House of Representatives
prepared April 12, 1988
- Item 6: Alaska Legislative Procedures Study Final Report
Submitted to the Joint Special Committee on
Legislative Reform May 15, 1983
- Item 7: House Research Request 87-003
Scheduling Bills Through the Legislatue

HOUSE COMMITTEE REPORT

(5)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE CONCURRENT RESOLUTION NO. 1 [AMEND UNIFORM RULE 56: SESSION SCHEDULE]
Proposing an amendment to the Uniform Rules of the Alaska State Legislature
relating to deadlines for session work.

[] be replaced with _____ [] 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):

APPROVES PREVIOUS:

- fiscal impact
- zero fiscal note
- zero with analysis

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

SIGNING DO PASS:

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

Derek Bouley

Alvin Halverson

Carl H. Gault

Jim Bawardi

Edwin D. Minton

D. A. Brubaker

D. A. Brubaker

Chairman's signature