

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6109 HOUSE STATE AFFAIRS

5/3

### FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: \_\_\_\_\_  
 Title: An Act relating to state  
warrants and providing for an effective date. BRU: \_\_\_\_\_  
 Sponsor: \_\_\_\_\_ Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

| OPERATING              | FY 89 | FY 90       | FY 91       | FY 92       | FY 93       | FY 94       |
|------------------------|-------|-------------|-------------|-------------|-------------|-------------|
| PERSONAL SERVICES      |       | 59.8        | 24.9        | 24.9        | 24.9        | 24.9        |
| TRAVEL                 |       |             |             |             |             |             |
| CONTRACTUAL            |       | 19.8        | 19.8        | 19.8        | 19.8        | 19.8        |
| SUPPLIES               |       |             |             |             |             |             |
| EQUIPMENT              |       |             |             |             |             |             |
| LAND & STRUCTURES      |       |             |             |             |             |             |
| GRANTS, CLAIMS         |       |             |             |             |             |             |
| MISCELLANEOUS          |       |             |             |             |             |             |
| <b>TOTAL OPERATING</b> |       | <b>79.6</b> | <b>44.7</b> | <b>44.7</b> | <b>44.7</b> | <b>44.7</b> |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

**FUNDING: (Thousands of Dollars)**

|               |  |      |      |      |      |      |
|---------------|--|------|------|------|------|------|
| GENERAL FUND  |  | 79.6 | 44.7 | 44.7 | 44.7 | 44.7 |
| FEDERAL FUNDS |  |      |      |      |      |      |
| OTHER         |  |      |      |      |      |      |
| <b>TOTAL</b>  |  |      |      |      |      |      |

**POSITIONS:**

|           |  |   |   |   |   |   |
|-----------|--|---|---|---|---|---|
| FULL-TIME |  |   |   |   |   |   |
| PART-TIME |  | 1 | 1 | 1 | 1 | 1 |
| TEMPORARY |  | 1 |   |   |   |   |

**ANALYSIS : (Attach a separate page if necessary)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared by: Keith Busch, Director Phone: 465-2240  
 Division: Finance Date: \_\_\_\_\_

Approved by Commissioner: John M. Andrews Date: \_\_\_\_\_  
 Agency: Department of Administration

- 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 186

This bill would grant holder in due course rights to Alaska financial institutions with respect to State warrants. As a result, the state would be compelled to redeem state warrants if an Alaska financial institution cashes the warrant in good faith and without knowledge of a stop payment notice regarding that warrant. Currently warrants are not considered to be negotiable instruments and the state is not required to redeem them.

Because warrants would be subject to holder in due course rights, notice of stop payments must be immediate. In order to accommodate this, it would be necessary to implement program changes in the payroll system to eliminate the delay on stop payments between the payroll system and the accounting system. These changes would require the support of one non-permanent Programmer/Analyst IV position for a period of seven months. This would be a one-time cost of \$34.9

In addition, the support of an additional permanent part-time Accounting Technician III position would be necessary to provide tighter monitoring and control of stop pay items. This position would act as the liaison between the State's clearing bank and the Division of Finance and the Department of Revenue, Treasury Division. Responsibilities would include coordinating all state warrant stop payments (currently about 2,000 are placed annually), advising the clearing bank of stop pay items, and researching and resolving differences. This would be an annual cost of \$24.9 in personal services.

After discussion with the Department of Revenue, Treasury Division, and Key Bank it was determined that the State would be responsible for notifying all Alaska financial institutions of stop pay items. This would involve the daily transmission of stop pay information to 33 financial institutions. This would be done by fax at a minimum cost of \$2.30 per transmission per business day for an annual cost of \$19,734.00 in contractual services/communications. ( $\$2.30 \text{ per transmission} \times 33 \text{ financial institutions} \times 260 \text{ business days annually} = \$19,734.00$ .)

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Revenue  
 Title: State Warrants BRU: Treasury  
 Sponsor: Gruenberg Components: \_\_\_\_\_  
 Requestor: House State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

|                    | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|--------------------|-------|-------|-------|-------|-------|-------|
| <b>OPERATING</b>   |       |       |       |       |       |       |
| PERSONAL SERVICES  | 0     | 0     | 0     | 0     | 0     | 0     |
| TRAVEL             | 0     | 0     | 0     | 0     | 0     | 0     |
| CONTRACTUAL        | 0     | 0     | 0     | 0     | 0     | 0     |
| SUPPLIES           | 0     | 0     | 0     | 0     | 0     | 0     |
| EQUIPMENT          | 0     | 0     | 0     | 0     | 0     | 0     |
| LANDS & STRUCTURES | 0     | 0     | 0     | 0     | 0     | 0     |
| GRANTS, CLAIMS     | 0     | 0     | 0     | 0     | 0     | 0     |
| MISCELLANEOUS      | 0     | 0     | 0     | 0     | 0     | 0     |
| TOTAL OPERATING    | 0     | 0     | 0     | 0     | 0     | 0     |
| <b>CAPITAL</b>     | 0     | 0     | 0     | 0     | 0     | 0     |
| <b>REVENUE</b>     | 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 for analysis.

Prepared By: Milt Barker MB  
 Division: Treasury

Phone: 465-2350  
 Date: 3-8-89

Approved by Commissioner: Milton B. Barker for  
 Agency: Department of Revenue

Date: 3-8-89

Distribution (by preparer):

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

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

Item 3  
STEVE COWPER, GOVERNOR

7TH FLOOR FRONTIER BLDG.  
3601 C STREET, SUITE 722  
ANCHORAGE, ALASKA 99503-5934  
PHONE: (907) 562-728

July 18, 1988

*Banking*

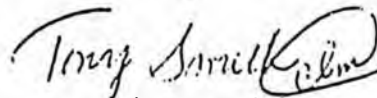
Mr. Robert P. Gray, President  
National Bank of Alaska  
Box 10060  
Anchorage, Alaska 99510-0600

Dear Bob:

John Williams and I have met with Hugh Malone and Milt Barker on the state warrant issue. It seems like the best answer is some change in AS 37.10.078 so there is an opportunity for reasonable banking procedures to be applied to the cashing of warrants over \$5,000 without impacting the state's investments and deposits. I enclose the legislative listing provided by Jeff Bush.

My suggestion would be a reasonable regulation. Please think about it.

Cordially,



J. Anthony Smith  
Commissioner

JAS/dm  
0272Z

enclosure

cc; Hugh Malone, Commissioner, Department of Revenue  
John Williams, Deputy Commissioner, DCED  
Milt Barker, Department of Revenue  
Jeff Bush, Assistant Attorney General

*no official position*



# National Bank of Alaska

CORPORATE HEADQUARTERS • BOX 100600 • ANCHORAGE, ALASKA 99510-0600

ROBERT P. GRAY  
PRESIDENT

August 5, 1988

Mr. J. Anthony Smith  
Commissioner  
Department of Commerce & Economic Development  
3601 C Street  
Anchorage, Alaska 99503-5934

Re: Your letter of July 18, 1988

Dear Tony:

Thank you for your attention to the problem that has been presented to you concerning the cashing or negotiating of State Warrants.

Upon reflection, I do not feel the size of the warrant is the issue here; rather, the issue is the rights under a holder in due course. Perhaps if I detail what I perceive is the actual situation we will be able to agree that the problem can be easily resolved without causing the State unnecessary burdens.

I can give you the conclusion first - if the State of Alaska agrees to comply with the Holder in Due Course doctrine and other general principles of the UCC as applies to negotiable instruments, then there is no problem as far as NBA is concerned. The continued insistence by the AG's office that warrants are not negotiable items is not, in my opinion, sensible, and certainly does not coincide with everyday business practices.

It is useful to restate what the Holder in Due Course doctrine states. (I realize you are familiar with it, but some to whom you may discuss this matter may not be.) In laymans terms an entity (individual, corporate or whatever) becomes a holder in due course of a negotiable instrument when he/she or it:

Mr. J. Anthony Smith  
August 5, 1988  
Page 2

1. Receives the instrument for value
2. Receives the instrument in good faith
3. Has no notice of any defect in the instrument or in the title of the person or entity negotiating it.

A holder in due course has a valid, enforceable claim against the maker of the instrument. In the case of a State Warrant, the maker is, of course, the State of Alaska.

In the case of a bank becoming a holder in due course, #1 above would always apply, #2 would apply unless the bank were involved in some sort of conspiracy against the State and #3 is the main issue. Here's where the important distinctions come:

1. If the bank negotiates the item and it is determined that any of the endorsements are forged, the bank is not a holder in due course (defect in title.)
2. If the item is stale dated the bank is not a holder in due course. (The bank has a notice of defect by examining the instrument.) Generally, for these purposes, to clearly protect the Holder in Due Course status, an item should be negotiated within 30 days of the issue date.
3. If the check is altered the bank is not a holder in due course (defect in the instrument.)

Then what are the banks and the State arguing about?

If a bank accepts a State Warrant, with no forgeries and negotiates it, we want to be paid without exception. The fairness of this is clear -- we have no way of determining that there is a potential for dishonor of the item. How can we fairly be asked, and actually forced as per your enclosure, to cash State Warrants under any other circumstances?

Mr. J. Anthony Smith  
August 5, 1988  
Page 3

The problem we have with the Univentures check is exactly to the point. NBA cashed the check for the payee -- no one disputes that fact. The State dishonored it. We contacted the State for payment and it refused. Even though no replacement warrant had been issued. We had no way to know the check would be dishonored. We should be paid.

The reason we're making such a big deal about this is the potential exposure is limited only by the dollar amount of the check. When you think about it, the State's position is exactly analogous to the bank's when we issue a cashier's check. How do we protect ourselves?

When someone claims they lost a cashier's check that they purchased, we usually invoke a 30 day waiting period, we require an indemnity agreement to be signed and, we sometimes require a bond to be posted. And, of course, we are careful when we issue cashier's checks.

As a final point, in relation to your letter to me, whether the State calls its instruments checks or warrants, or how it funds these items is a completely independent matter from whether or not the State abides by the Holder in Due Course doctrine.

I would appreciate your opinion of my suggestions -- that the State observe the Holder in Due Course doctrine and the UCC, as adopted by the State.

Thank you for your attention to this matter.

Sincerely,

Robert P. Gray  
President

RPG:sl

1989 LEGISLATIVE PROPOSAL REQUESTS  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION/AGENCY: Banking, Securities & Corporations

SUBJECT OF PROPOSED LEGISLATION:

State Warrants: Amendment to AS 45.03.302, holder in due <sup>case</sup> cause.

SUMMARY OF PROPOSAL: What does the proposal do; why is it needed; how many incidents have occurred which necessitate the change; has similar legislation been drafted/introduced in the past, and if so, what happened to it? (Attach copy of previous drafts, additional background information if necessary.)

Proposal would make state warrants subject to the Uniform Commercial Code's Holder in Due Course Doctrine for Alaska financial institutions, similar to checks. According to an Attorney General's opinion, current law holds that state warrants are not negotiable instruments. Financial institutions have had problems with the state dishonoring warrants when the institution had no prior knowledge that there was a potential for dishonoring the item. (see attached)

WHO SUPPORTS/OPPOSES THE PROPOSED LEGISLATION: Which interest groups, constituencies, or other departments are affected, and in what way?

First proposed by National Bank of Alaska

ESTIMATED FISCAL IMPACT:

Capital: 0  
Operating: 0

PRECEDENTS IN ALASKA OR OTHER STATES:

WHICH LEGISLATORS WOULD BE INTERESTED IN THE PROPOSAL, PRO AND CON:

OPTIONS THAT THE GOVERNOR SHOULD CONSIDER:

-----  
DIVISION/AGENCY DIRECTOR: William F. Hager

DATE: 8/22/88

COMMISSIONER: William F. Hager

DATE: 8/22/88

DEPARTMENTAL PRIORITY: 3

GOVERNOR'S OFFICE RECOMMENDATION:

# MEMORANDUM

# State of Alaska

TO: Hugh Malone, Commissioner  
Department of Revenue

DATE: August 22, 1988

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: Proposed Legislation on  
State Warrants

FROM:

  
J. Anthony Smith, Commissioner  
Department of Commerce and Economic  
Development

In June, I met with Milt Barker, Assistant Attorney General Jeff Bush, and members of my staff, to discuss a possible solution to a problem raised by National Bank of Alaska (NBA) regarding the treatment of state warrants after the state has issued a stop pay notice. As you may know, in January 1987, Jeff issued an informal AG's opinion to the effect that state warrants are generally not negotiable instruments, and therefore, a holder in due course has no recourse against the state if the state has issued a stop pay notice on a particular warrant. This legal doctrine makes warrants different than normal checks.

NBA has asked us to consider sponsoring legislation to make warrants subject to the Uniform Commercial Code's holder in due course doctrine, similar to checks. According to NBA, the federal government treats its warrants as negotiable instruments. After numerous discussions with Bob Gray, NBA's president, we believe we may have reached a compromise that will protect the state from incurring substantial additional risks while granting Alaskan financial institutions the benefits of the doctrine. We, therefore, plan to include in the legislative package of the Department of Commerce and Economic Development a proposal to amend AS 45.03.302, which defines a holder in due course, to include holders of state warrants, but only when the holder is an Alaska financial institution or a branch of a national bank, if the branch is located in Alaska.

As you know, the AG's office and Milt are concerned about protecting the state from warrants cashed after the state issues a stop pay notice. The holder in due course doctrine provides that the holder of a check normally can recover from the issuer even if the issuer has attempted to stop payment on the check. The only exception is that a holder may not recover if he had notice that the check was not negotiable, or that a stop payment notice was out, prior to cashing it. Thus, in order to protect the state, we will have to modify the state contract with Keybank to require the bank, to notify all Alaska institutions within a certain, preferably short, period of time of any stop payment notices issued by the state. We believe this would be relatively simple for Keybank, given the sophis-

Commissioner Hugh Malone

- 2 -

August 22, 1988

tication of today's communications between the shrinking number of institutions and the relatively few stop pay notices issued by the state.

In light of your department's interest in this issue in the past, your comments on this proposal would be welcome.

JAS/LW/pal/C.52  
082288b

DEPARTMENT OF ADMINISTRATION  
POSITION PAPER

Division: Finance Bill Number: HB 186

Bill Title: An act relating to state warrants; and providing for an effective date

House Bill 186, "An act relating to state warrants; and providing for an effective date", will amend AS 45.03.104(b) to include state warrants making all state warrants a negotiable instrument. It will also repeal AS 43.05.170 which would grant holder in due course rights to Alaska financial institutions with respect to state warrants. As a result, the state would be compelled to redeem any state warrant that an Alaska financial institution cashes in good faith without knowledge of a stop payment notice regarding the warrant.

This bill raises several areas of concern regarding the potential costs and risks to the state. The first concern is the liability placed on the state each time a stop payment is processed against a state warrant.

Historically, state and city governmental agencies have been authorized to issue warrants for disbursement of funds and this method of disbursement is commonly used by many states including Texas, California and Washington. The State of Alaska has been issuing warrants since pre-statehood. As warrants are payable on acceptance by the State, their issuance allows the State to provide good management of public funds and prevent funds from being disbursed without a valid appropriation.

As a part of managing public funds, it is the State's responsibility to ensure monies are properly disbursed. At times this necessitates a stop payment be placed on a previously issued warrant. Stop payments are generally requested for one of three reasons:

- The warrant was issued in error. In these cases funds may be overspent if the warrant is allowed to redeem.
- The payee has notified the state of nonreceipt of a warrant and the warrant has not been redeemed.
- The payee has notified the state of nonreceipt of a warrant and the warrant has been redeemed. In these cases fraud is most likely involved and the stop payment request becomes a nonissue.

During FY 88 approximately 2,000 stop payments were placed on state warrants amounting to over \$4,800,000. If state warrants are considered to be negotiable instruments, each of these stop payments becomes a potential liability to the state. Should a financial institution cash a warrant in good faith without prior knowledge of a stop payment and then be unable to recover funds on the stop pay warrant from the payee, it will be necessary for the issuing agency to either reimburse the funds from it's existing budget or request a supplemental appropriation. In these instances the state would be obligated to reimburse financial institutions for unrecoverable stop pay items, which in turn could force the state into the illegal over expenditure of appropriations (AS 37.05.170).

The actual dollar amount that would be expended for unrecoverable stop payments is undeterminable. Although a stop payment notification system between the state and the financial institutions would be implemented, there could be as much as a 24-hour delay between the time the stop payment is placed in the state's accounting system and the banks are notified. During the first ten months of calendar year 1988, 156 warrants with stop payments were cashed by the payee and presented to the state for redemption. These warrants totaled \$156,506. Of the 156 warrants cashed with stop payments, 17.8 percent were cashed within one day of the date of issue. Therefore, it can be concluded that the state may have to absorb 17.8 percent of its stop pays at the very minimum and undoubtedly a great deal more if the financial institution cannot readily collect from the payee of a sizable warrant.

The second area of concern is the direct impact on the Division of Finance. It is a responsibility of the Division of Finance to maintain a reconciliation system for all state issued warrants. The following provides a brief overview of this reconciliation process:

#### Warrant Reconciliation:

Warrant reconciliation includes the monitoring and control of all warrant issues, warrant redemptions, stop payments, cancels and staledates. Warrant reconciliation is provided for all eleven types of state issued warrants.

#### State Warrants:

There are currently eleven different types of state warrants. The Division of Finance is directly responsible for the stock control for seven of the warrant types, Payroll, AKSAS, Longevity Bonus, Permanent Fund, Refundable Credit, Handwrite, Field Warrant and Post Secondary, which includes releasing stock for print, ordering or assisting in the ordering of new stock, verifying the print process, releasing the warrants for distribution and performing physical

inventory of stock on hand. The other three warrant types, Welfare, Court Warrants and Medical Assistance are maintained and printed by the issuing agency.

**Warrant Issues:**

Each warrant issue must be recorded in the accounting system as a warrant outstanding. General warrants are recorded when a request for a warrant is entered into the accounting system. All other types of warrants are external to the accounting system and issue data is recorded through a daily subsystem interface process. All warrant issue data is verified against warrant issue logs to ensure the accounting system is in sync with the actual warrants issued. The state issued approximately 1,835,943 warrants during FY 88 for a total of \$3,080,068,968.

**Redemptions:**

Warrants are presented for redemption by the State's clearing bank, Key Bank, on a daily basis. Redemption data is passed from Key Bank to the accounting system via bulk data transfer. This data is then matched against the warrants outstanding file. Any errors are researched and the Treasury Division is notified of items that should be returned to the bank, such as warrants cashed for an incorrect amount or stop pay items. Other types of errors, such as issue data, are manually corrected in the accounting system.

**Stop Payments:**

At times, warrants are issued but not received by the payee or warrants are issued in error. In these instances the issuing agency will request a stop payment be placed on the warrant. A stop payment may only be placed if the physical warrant is not in the state's possession. Warrants in the state's possession are canceled as explained in the following paragraph. For each stop payment, a Warrant Status Change form is completed by the issuing agency and a stop payment transaction entered into the accounting system. This information is then forwarded to the Division of Finance where it is verified and the transaction is authorized for processing. Approximately 1,753 stop payments were placed in FY 88 for a total dollar amount of \$4,813,123. This does not include stop payments placed on payroll warrants. Payroll procedures do not allow for the accumulation of stop payment detail separately from payroll warrant cancels and cancel/reissues. Stop payments for other warrant types ranged from \$3.50 to \$1,532,325.63. Attached are several charts detailing stop payment volume by warrant type, dollar amount and monthly activity.

Cancels:

Warrant issued in error are canceled in the accounting system. To cancel a warrant, the issuing agency must have the physical warrant in hand. The issuing agency then enters a cancel transaction into the accounting system and forwards the physical warrant to the Division of Finance for verification and authorization of the transaction. 21,167 warrants were canceled in FY 88 totaling \$25,663,429.

Staledates:

According to AS 37.05.180 warrants issued and not redeemed within two years of the date of issue are considered to be staledated and no longer redeemable. Each month during a warrant purge process these warrants are identified and listed on a hardcopy report. Using this report, a transaction is entered into the accounting system for each warrant to record the warrant as a staledated item. 3,587 warrants were staledated during FY 88 totaling \$597,510.

Attached is a breakdown by warrant type of total counts and dollar amounts for warrant issues, stop payments, cancels and staledates during FY 88.

The volume of data managed in the warrant reconciliation process is tremendous. The implementation of the bill relating to the negotiability of state warrants would only further increase this workload. To reduce the potential liability each stop payment creates, it would be necessary to enforce stricter control over stop payment transactions. At best it would be necessary to notify the state's clearing bank immediately of each stop payment at the time it is entered into the accounting system. This would require daily contact with the bank for the transmitting of stop payment data (most likely by fax). It is possible that the state would be responsible for also notifying other Alaska financial institutions of stop pay items. In addition, there would be an increase in research, inquiries and legal battles. We cannot provide the increased services with existing staff while at the same time continuing to provide adequate control over state-issued warrants. Additional support of a part time Accounting Technician III position, at an annual cost of \$24.9, would be required.

As a part of the above need to provide the bank with immediate stop payment data, it would also be necessary to implement program changes in the State's payroll system. Currently, stop payments on payroll warrants are input into the payroll system and then passed to the accounting system on the following day. To ensure the state's clearing bank is notified of all stop payments timely, it will be necessary to reverse this process and eliminate the one day lag prior to the stop payment placed in the accounting system. To program and implement the changes needed in the payroll system, the

support of one non-permanent Programmer/Analyst IV position for a period of seven months would be required. This will be an estimated one-time cost of \$34.9.

The Department of Administration does not support this bill and recommends it not be passed. If the banking industry has been harmed it may be less expensive to the state to remedy that harm rather than increase state operating costs and potential exposure for checks cashed that have had stop payments placed against them. The Department of Revenue supports the Department of Administration's position on this bill.

APPROVED:

Director: Keith Busch

Signature: Keith Busch Date: 3/10/89

Commissioner: John M. Andrews

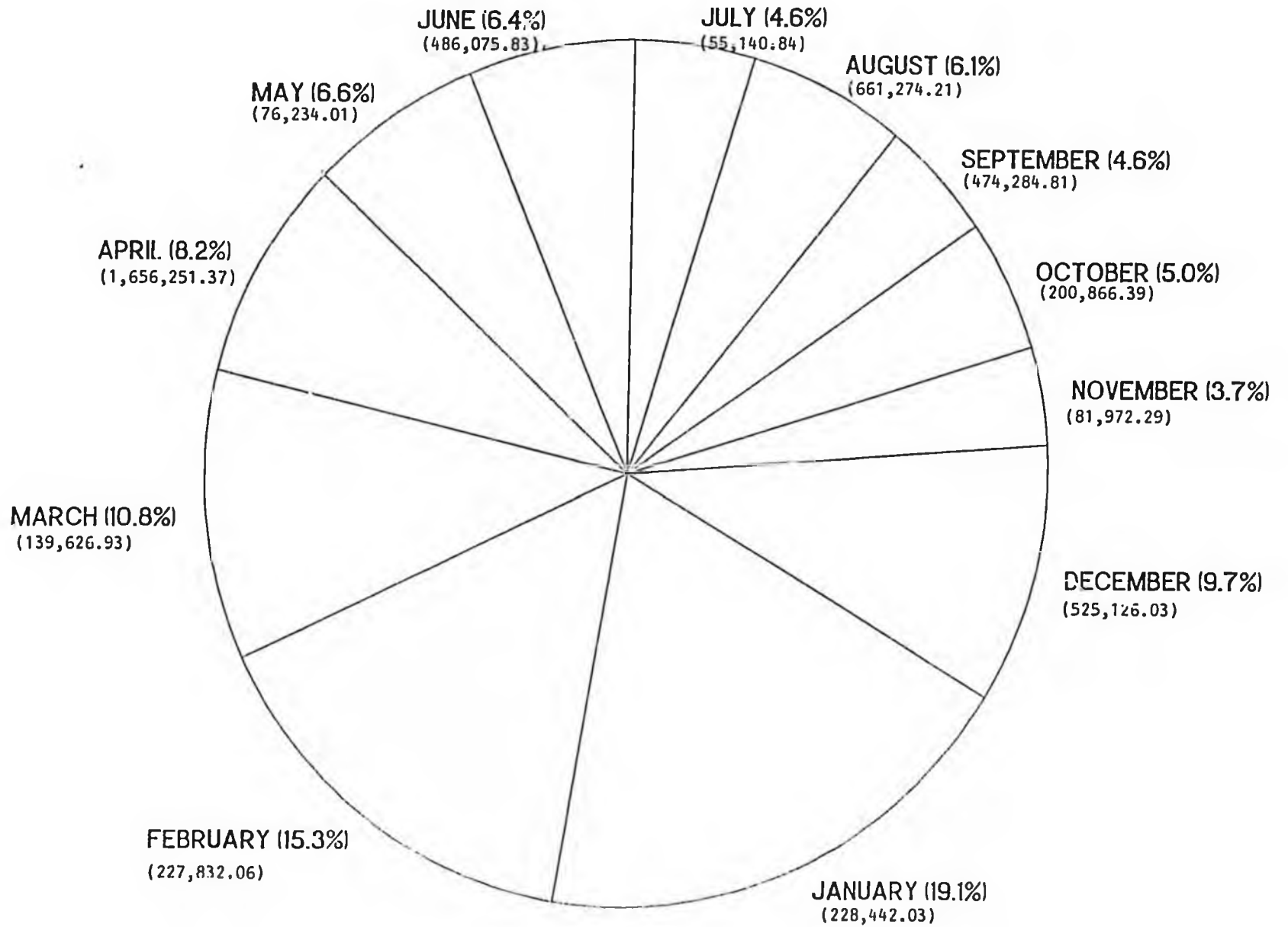
Signature: J.M.A. Date: 3/13/89

For further information call Dean Gottehrer at 465-2200

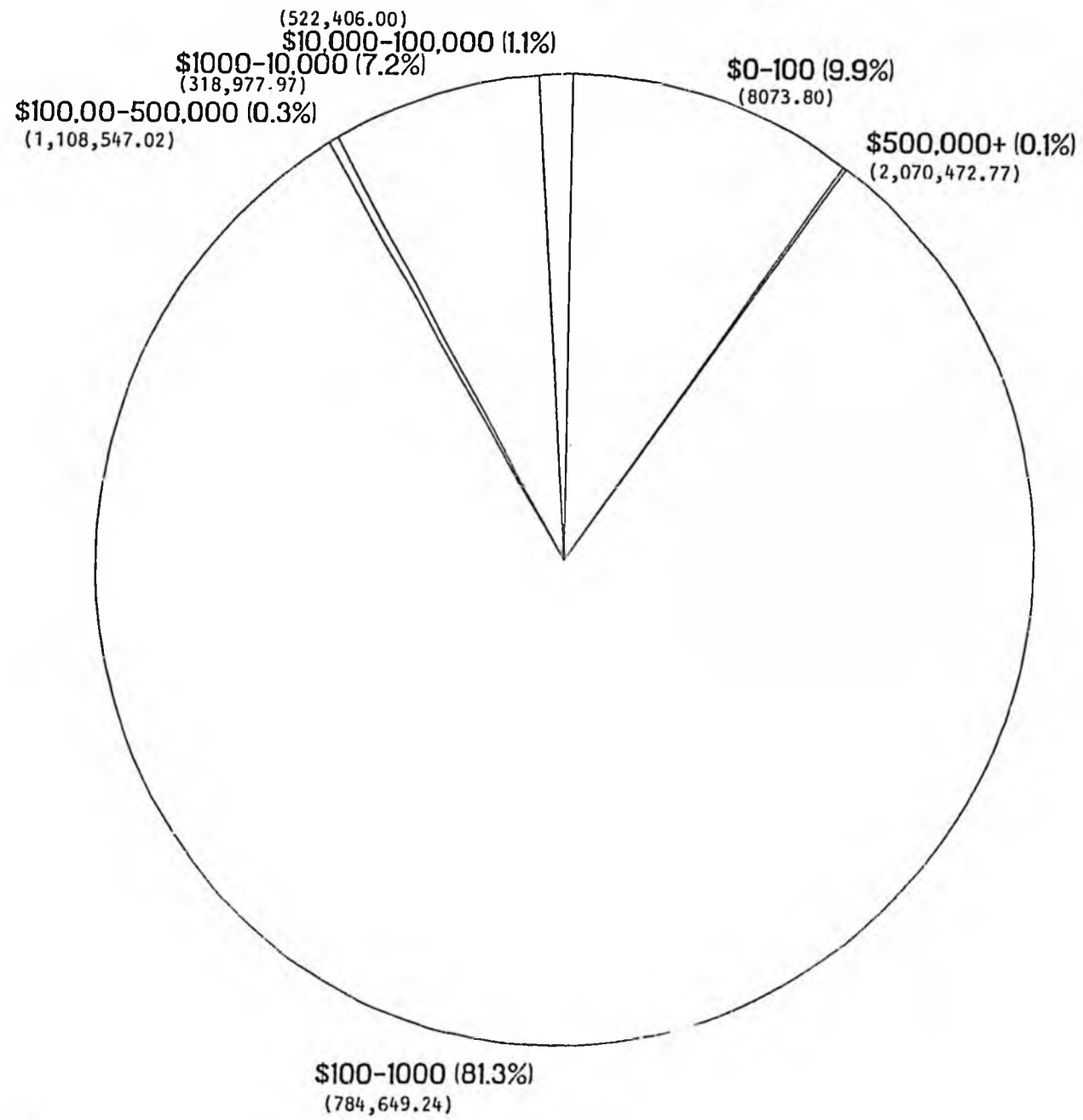
## WARRANT RECONCILIATION DATA - FY 88

| WARRANT CLASS      | WARRANT ISSUES   |                      | STOP PAYMENTS |                  | CANCELS       |                   | STALE DATED  |                |
|--------------------|------------------|----------------------|---------------|------------------|---------------|-------------------|--------------|----------------|
|                    | COUNT            | AMOUNT               | COUNT         | AMOUNT           | COUNT         | AMOUNT            | COUNT        | AMOUNT         |
| PAYROLL            | 409,875          | 418,665,891          | not avail     | not availabl     | 1,349         | 1,393,204         | 107          | 55,191         |
| AKSAS              | 402,150          | 2,071,933,989        | 412           | 2,480,461        | 4,134         | 8,637,998         | 1,375        | 136,929        |
| LONGEVITY BONUS    | 202,381          | 50,322,869           | 164           | 41,000           | 796           | 183,000           | 125          | 29,250         |
| WELFARE            | 197,112          | 73,861,567           | 248           | 114,289          | 2,433         | 871,844           | 328          | 91,482         |
| PERMANENT FUND     | 527,205          | 362,334,626          | 800           | 543,179          | 6,306         | 4,250,740         | 705          | 248,014        |
| FIELD WARRANT      | 30,620           | not available        | 52            | 11,206           | 377           | 70,192            | 224          | 25,235         |
| COURT WARRANT      | 32,665           | 1,061,834            | 19            | 1,481            | 502           | 23,489            | 694          | 9,474          |
| POST SECONDARY     | 31,384           | 71,087,670           | 53            | 108,030          | 5,033         | 9,989,174         | 0            | 0              |
| MEDICAL ASSISTANCE | 2,433            | 6,563,821            | 3             | 1,052            | 43            | 231,062           | 0            | 0              |
| REFUNDABLE CREDIT  | 0                | 0                    | 1             | 100              | 194           | 12,726            | 29           | 1,935          |
| HANDWRITE          | 118              | 24,236,701           | 1             | 1,532,325        | 0             | 0                 | 0            | 0              |
| <b>TOTAL</b>       | <b>1,835,943</b> | <b>3,080,068,968</b> | <b>1,753</b>  | <b>4,813,123</b> | <b>21,167</b> | <b>25,663,429</b> | <b>3,587</b> | <b>597,510</b> |

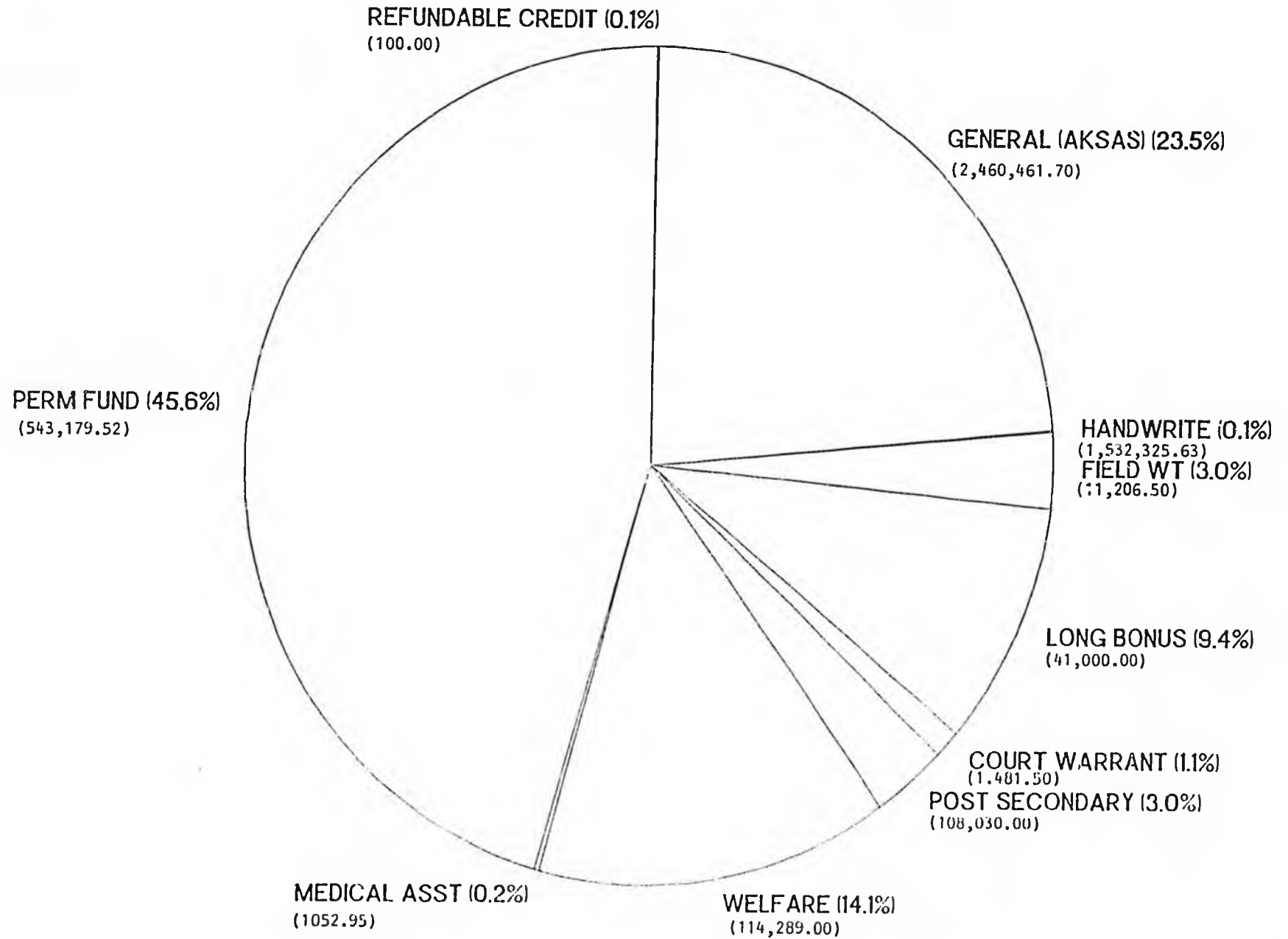
# FY 88 STOP PAYMENTS - BY MONTH



# FY 88 STOP PAYMENTS - BY DOLLAR AMOUNT



# FY 88 STOP PAYMENTS - BY WARRANT CLASS



# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### DIVISION OF FINANCE

Item 5

P.O. BOX C  
JUNEAU, ALASKA 99811-0204  
PHONE: (907) 465-2240

March 20, 1989

The Honorable Max Gruenberg  
Alaska State Representative  
P.O. Box V  
Juneau, AK 99811-3100

Dear Representative Gruenberg:

I have reviewed your request for an alternative to House Bill 186 which would provide some assurance to the banking industry that the State would honor its warrants, and at the same time minimize the administrative costs. I believe the following proposal is consistent with the concept of fairness to the private sector, minimizing increased operating costs to the State, and providing continued collection participation by the banking industry.

#### Alternate Proposal

The State of Alaska will indemnify an Alaska financial institution who, unknowing, accepts a State warrant under ten thousand dollars which has been voided or which has had a stop payment placed upon it based upon the following procedures:

- A) The State will continue to operate the warrant redemption process. We will notify a financial institution in accordance with Uniform Commercial Code (UCC) when a warrant with a stop payment has been submitted for redemption, and will return the warrant to the financial institution through our warrant redemption and clearing bank.
- B) The financial institution will be responsible for taking all reasonable steps to collect returned warrants from customers. If after taking reasonable steps, they are unable to recover such funds, and the warrant is under ten thousand dollars, the financial institution may submit the warrant to the Department of Administration for indemnification. Reasonable steps includes the financial institution's attempt to collect funds from clients' accounts, or through personal contact, the balance due, if that person has insufficient funds and resides in the state.
- C) If the Department of Administration is satisfied the financial institution has taken reasonable collection actions, the department will pay to the institution the value of the warrant if sufficient funds exist or from a

March 20, 1989

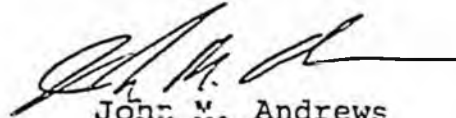
supplemental appropriation. The disbursement will be charged against the originating authorization if sufficient authorization exists. If insufficient authorization exists, a supplemental appropriation will be submitted to the legislature through the budget process. Upon approval of the legislature and Governor, appropriated funds would be paid to the financial institution.

- D) For warrants in excess of ten thousand dollars the financial institution will have the option of calling the State for verification that no stop payment has been placed on a warrant prior to cashing it. There will be available a current listing of stop payments in the Division of Finance. If the financial institution calls and are informed the warrant is valid, and a subsequent stop payment is placed, the State will honor the warrant if there is a sufficient appropriation balance. If insufficient authorization exists, a supplemental appropriation will be submitted to the legislature through the budget process. If the financial institution does not call or calls and are informed the warrant is not valid, subsequent redemption of the warrant will be rejected, and the warrant will be returned to the financial institution.

In addition we are presently studying the possibility of putting a listing of stop payments on the State's computer network so that financial institutions can access that information directly.

This proposal has several advantages over the proposed bill. First, State warrants will not become negotiable instruments subject to holder in due course. The issue of being required to overspending an appropriation is addressed. There would be no increased administrative cost, and we estimate that the cost of indemnification for stop payments would be about the same under this proposal as under the proposed bill.

Sincerely,



John M. Andrews  
Commissioner

JMA/KB/tln  
8/3D4/031622-9  
cc: Division of Finance  
Department of Administration

Position Paper  
House Bill 186

House Bill 186, "An act relating to state warrants; and providing for an effective date, will amend AS 45.03.104(b) to include state warrants making all state warrants a negotiable instrument. It will also repeal AS 43.05.170 which would grant holder in due course rights to Alaska financial institutions with respect to state warrants. As a result, the state would be compelled to redeem any state warrant that an Alaska financial institution cashes in good faith and without knowledge of a stop payment notice regarding the warrant.

This bill raises several areas of concern regarding the potential costs and risks to the state. The first concern is the liability placed on the state each time a stop payment is processed against a state warrant.

Stop payments are generally requested for one of three reasons:

- The warrant was issued in error. In these cases funds may be overspent if the warrant is allowed to redeem.
- The payee has notified the state of non receipt of a warrant and the warrant has not been redeemed.
- The payee has notified the state of non-receipt of a warrant and the warrant has been redeemed. In these cases fraud is most likely involved and the stop payment request becomes a non-issue.

During FY 88 approximately 2,000 stop payments were placed on state warrants amounting to over \$4,800,000 in state funds. If state warrants are considered to be a negotiable instrument, each of these stop payments becomes a potential liability to the state. Should a financial institution be unable to recover funds for a stop pay warrant from the payee, it will be necessary for the issuing agency to either reimburse the funds from their existing budget or request a supplemental appropriation. The state would be obligated to reimburse financial institutions for unrecoverable stop pay items, which in turn could force the state into the illegal over expenditure of appropriations.

The actual dollar amount that would be expended for unrecoverable stop payments is undeterminable. Although a stop payment notification system between the state and the financial institutions would be implemented, there could be as much as a 24 hour delay between the time the stop payment is placed in the state's accounting system and the banks are notified. During the first ten months of calendar year 1988, 156 warrants with stop payments were cashed by the payee and presented to the state for redemption. These warrants totaled \$156,506. Of the 156 warrants cashed with stop payments, 17.8 percent were cashed within one day of the date of issue. Therefore, it can be concluded that the state may have to absorb 17.8 percent of its stop pays at the very minimum and undoubtedly a great deal more if the

financial institution cannot readily collect from the payee of the warrant.

The second area of concern is the direct impact on the Division of Finance. It is a responsibility of the Division of Finance to maintain a reconciliation system for all state issued warrants. The following provides a brief overview of this reconciliation process:

#### Warrant Reconciliation:

Warrant reconciliation includes the monitoring and control of all warrant issues, warrant redemptions, stop payments, cancels and staledates. Warrant reconciliation is provided for all eleven types of state issued warrants.

#### State Warrants:

There are currently eleven different types of state warrants. The Division of Finance is directly responsible for the stock control for seven of the warrant types, Payroll, AKSAS, Longevity Bonus, Permanent Fund, Refundable Credit, Handwrite, Field Warrant and Post Secondary, which includes releasing stock for print, ordering or assisting in the ordering of new stock, verifying the print process, releasing the warrants for distribution and performing physical inventory of stock on hand. The other three warrant types, Welfare, Court Warrants and Medical Assistance are maintained and printed by the issuing agency.

#### Warrant Issues:

Each warrant issue must be recorded in the accounting system as a warrant outstanding. General warrants are recorded when a request for a warrant is entered into the accounting system. All other types of warrants are external to the accounting system and issue data is recorded through a daily subsystem interface process. All warrant issue data is verified against warrant issue logs to ensure the accounting system is in sync with the actual warrants issued. The state issued approximately 1,835,943 warrants during FY 88 for a total of \$3,080,068,968.

#### Redemptions:

Warrants are presented for redemption by the State's clearing bank, Key Bank, on a daily basis. Redemption data is passed from Key Bank to the accounting system via bulk data transfer. This data is then matched against the warrants outstanding file. Any errors are researched and the Treasury Division is notified of items that should be returned to the bank, such as warrants cashed for an incorrect amount or stop pay items. Other types of errors, such as issue data, are manually corrected in the accounting system.

#### Stop Payments:

At times warrants are issued but not received by the payee. In these instances the issuing agency will request a stop payment

be placed on the warrant. A stop payment may only be placed if the physical warrant is not in the state's possession. Warrants in the state's possession are canceled as explained in the following paragraph. For each stop payment, a Warrant Status Change form is completed by the issuing agency and a stop payment transaction entered into the accounting system. This information is then forwarded to the Division of Finance where it is verified and the transaction is authorized for processing. Approximately 1,753 stop payments were placed in FY 88 for a total dollar amount of \$4,813,123. This does not include stop payments placed on payroll warrants. Payroll procedures do not allow for the accumulation of stop payment detail separately from payroll warrant cancels and cancel/reissues. Stop payments for other warrant types ranged from \$3.50 to \$1,532,325.63. Attached are several charts detailing stop payment volume by warrant type, dollar amount and monthly activity.

Cancels:

Warrant issued in error are canceled in the accounting system. In order to cancel a warrant the issuing agency must have the physical warrant in hand. The issuing agency then enters a cancel transaction into the accounting system and forwards the physical warrant to the Division of Finance for verification and authorization of the transaction. 21,167 warrants were canceled in FY 88 totaling \$25,663,429.

Staledates:

According to AS 37.05.180 warrants issued and not redeemed within two years of the date of issue are considered to be staledated and no longer redeemable. Each month during a warrant purge process these warrants are identified and listed on a hardcopy report. Using this report, a transaction is entered into the accounting system for each warrant to record the warrant as a staledated item. 3,587 warrants were staledated during FY 88 totalling \$597,510.

Attached is a breakdown by warrant type of total counts and dollar amounts for warrant issues, stop payments, cancels and staledates during FY 88.

The volume of data managed in the warrant reconciliation process is tremendous. The implementation of the bill relating to the negotiability of state warrants would only further increase the workload in this area. To reduce the potential liability each stop payment creates, it would be necessary to enforce stricter control over stop payment transactions. At best it would be necessary to notify the state's clearing bank immediately of each stop payment at the time it is entered into the accounting system. This would require daily contact with the bank for the transmitting of stop payment data (most likely by fax). It is possible that the state would be responsible for also notifying other Alaska financial institutions of stop pay items. In addition, there would be an increase in research, inquiries and legal battles. We cannot provide the increased services with existing staff while at the same time continuing to provide adequate control over state issued warrants. Additional support of a

part time Accounting Technician III position, at an annual cost of \$24.9, would be required.

As a part of the above need to provide the bank with immediate stop payment data, it would also be necessary to implement program changes in the State's payroll system. Currently, stop payments on payroll warrants are input into the payroll system and then passed to the accounting system on the following day. In order to ensure the state's clearing bank is notified of all stop payments timely, it will be necessary to reverse this process and eliminate the one day lag prior to the stop payment placed in the accounting system. To program and implement the changes needed in the payroll system, the support of one non-permanent Programmer/Analyst IV position for a period of seven months would be required. This will be an estimated one-time cost of \$34.9.

The Department of Administration does not support this bill and recommends it not be passed. If the banking industry has been harmed it may be less expensive to the state to remedy that harm rather than increase state operating costs and potential exposure for check cashed that have had stop payments placed against them.

F:\Lauri\Warrants\HB168.doc

# Alaska State Legislature



## House of Representatives House Judiciary Committee

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990  
(907) 465-4712

February 28, 1989

### MEMORANDUM

TO: Representative Red Boucher  
Chair, House State Affairs Committee

FROM: Max Gruenberg *MG*

RE: HB 186, "An Act relating to state warrants; and  
date."

3111 C Street  
Anchorage, Alaska 99503  
(907) 561-7621

P. O. Box V  
Juneau, Alaska 99811  
(907) 465-4986

**ALASKA HOUSE OF REPRESENTATIVES**

Mark T. Handley  
Attorney at Law  
Judiciary Committee



I schedule a hearing for HB

the legal equivalent of checks  
I introduced the bill at  
y.

# **CORRECTION**

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



**Mark T. Handley**

Attorney at Law

Judiciary Committee

---

**ALASKA HOUSE OF REPRESENTATIVES**

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4986

3111 C Street  
Anchorage, Alaska  
(907) 561-7600

# Alaska State Legislature



## House of Representatives House Judiciary Committee

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990  
(907) 465-4712

February 28, 1989

### MEMORANDUM

TO: Representative Red Boucher  
Chair, House State Affairs Committee

FROM: Max Gruenberg *MG*

RE: HB 186, "An Act relating to state warrants; and  
providing for an effective date."

I would appreciate it if you would schedule a hearing for HB 186 as soon as possible.

HB 186 will make state warrants the legal equivalent of checks under the Uniform Commercial Code. I introduced the bill at the request of the banking community.

Thank you.

1 IN THE HOUSE

BY GRUENBERG

2

HOUSE BILL NO. 186

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state warrants; and providing for  
7 an effective date."

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

9 \* Section 1. AS 45.03.104(b) is amended to read:

10 (b) A writing which complies with the requirements of this  
11 section is

12 (1) a "draft" ("bill of exchange") if it is an order;

13 (2) a "check" if it is

14 (A) a draft drawn on a bank or a state warrant, and

15 (B) payable on demand;

16 (3) a "certificate of deposit" if it is an acknowledgment  
17 by a bank of receipt of money with an engagement to repay it;

18 (4) a "note" if it is a promise other than a certificate of  
19 deposit.

20 \* Sec. 2. AS 43.05.170 is repealed.

21 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

↑ ?

CONCERNS



\*

→ elimin agency spend of 'wctoo'  
Appropriation ✓ ?

WORST PUBLIC POLICY



→ B of N - state does redemption  
↑ of costs - not by stop  
pmt -

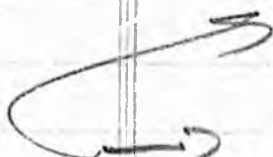
→ tighten up manage policy;  
not by Agency ?



→ PF → should get PF check &  
WILLIAM WARRON, -

→ stop interest working ?

→ put on line ?



→ appear Act. At OWN BANK ?

2.7 & check

CONFUSION (15+)

20d  
schedule?

Decide what STATE DOES

→ centralize location to notify?  
NO

→ How about within?  
set up BANK ACCOUNT?

→ continue to be own Broker -  
+ r a payor BANK

because  
wage

→ have to ref.

→ NO. 100% restored  
US NON-REGULATED

→ feels the risk shouldn't FAIL hold  
ON PRAISE

→ BRUNBERG suggestion

→ WCS COMPANY

→ 5,000 limit - stop in od by check

★  
sol of 100s?

***HB***

***192***

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF  
HB 192

Absentee Ballots/Court Ordered Elections

Received February 22, 1989  
by The Judiciary Committee

Heard March 21, 1989

Committee Substitute adopted March 21, 1989

Passed Out of Committee March 21, 1989  
5 Do Pass  
2 No Recommendation

## TABLE OF CONTENTS

### HB 192: Absentee Ballots/Court Ordered Elections

- Item 1:** HB 192 by The Judiciary Committee  
CSHB 192 (SA)
- Item 2:** Fiscal Note
- Item 3:** Research Request 89.137: Procedures for  
Resolving "Failed" Elections to State Legislatures
- Item 4:** Comments by Division of Elections  
January 31, 1989
- Item 5:** Alaska Statute: Sec. 15.20.081
- Item 6:** Memorandum from Rep. Goll re: HB 192  
March 20, 1989

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 23, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee considered:

HB 192

HOUSE BILL NO. 192

[ABSENTEE BALLOTS/COURT ORDERED ELECTIONS]

"An Act relating to absentee ballots, to certain court orders regarding elections, and to the governor's power to appoint legislators; and providing for an effective date."

### RECOMMENDS:

- replacing with CS HB 192 (SA)  the same title
- the attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

### ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

### APPROVES PREVIOUS:

- fiscal note(s) published: \_\_\_\_\_
- zero fiscal notes(s) published: \_\_\_\_\_

### SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

[Signature] (No Rec)

[Signature] (No Rec)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Chairman's signature

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 HOUSE BILL NO. 192  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to absentee ballots, to certain  
7 court orders regarding elections, and to the gover-  
8 nor's power to appoint legislators; and providing for  
9 an effective date."

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

11 \* Section 1. AS 15.20.081(d) is amended to read:

12 (d) Upon receipt of an absentee ballot by mail, the voter, in  
13 the presence of a notary public, commissioned officer of the armed  
14 forces including the National Guard, district judge or magistrate,  
15 United States postal official, registration official, or other person  
16 qualified to administer oaths, may proceed to mark the ballot in  
17 secret, to place the ballot in the small envelope, to place the small  
18 envelope in the larger envelope, and to sign the voter's certificate  
19 on the back of the larger envelope in the presence of an official  
20 listed in this subsection who shall sign as attesting official and  
21 shall date the signature. If none of the officials listed in this  
22 subsection is reasonably accessible, an absentee voter shall sign and  
23 date the voter's certificate in the presence of [HAVE THE BALLOT  
24 WITNESSED BY] two persons over the age of 18 years, who shall sign as  
25 witnesses and attest to the date on which the voter signed the certif-  
26 icate in their presence, and, in addition, the voter shall provide the  
27 certification prescribed in AS 09.63.020.

28 \* Sec. 2. AS 15.20.510 is amended by adding a new subsection to read:

29 (b) If the court concludes that it is not possible to determine

1 whether certain ballots, parts of ballots, or marks for candidates on  
2 ballots are valid or to which candidate or division on the question or  
3 proposition the vote should be attributed, and that these ballots, if  
4 counted, could change the outcome of an election, the court shall  
5 enter judgment setting aside the action of the director on recount and  
6 ordering a new election. The director shall schedule a special elec-  
7 tion to be held not more than 90 days after the date of the court's  
8 order and the director shall supervise the election in the general  
9 manner prescribed by this title. If an order for a new election under  
10 this subsection results in the office of a legislator being unfilled,  
11 the governor shall appoint a person qualified to hold the office to  
serve in that office until the results of the new election are cer-  
tified and the successor takes office. >

14 \* Sec. 3. AS 15.20.560 is amended to read:

15 Sec. 15.20.560. JUDGMENT OF COURT. The judge shall pronounce  
16 judgment on which candidate was elected or nominated and whether the  
17 question or proposition was accepted or rejected. The director shall  
18 issue a new election certificate to correctly reflect the judgment of  
19 the court. If the court decides that the election resulted in a tie  
20 vote, the director shall immediately proceed to determine the election  
21 by lot as is provided by law. If the court decides that no candidate  
22 was duly elected or nominated, the judgment shall be that the con-  
23 tested election be set aside and that a new election be held. The  
24 director shall schedule a special election to be held not more than 90  
25 days after the date of the court's order and the director shall super-  
26 viser the election in the general manner prescribed by this title. If  
27 an order for a new election under this subsection results in the  
28 office of a legislator being unfilled, the governor shall appoint a  
29 person qualified to hold the office to serve in that office until the

Leg need to confirm?  
body to which the

1 results of the new election are certified and the successor takes  
2 office. The provisions of this section and AS 15.20.540 and 15.20.550  
3 are not intended to limit or interfere with the power of the legisla-  
4 ture to judge the election and qualifications of its members.  
5 \* Sec. 4 This Act takes effect January 1, 1990.

Amendment

leg body to which the previous is  
A part. must consider such appl.

Didn't want excessive summary  
to solely determine.

within purview of coast - 400  
sec.

How - since 50% of  
with qualifications -

VA904 - make of claim  
It is a CONFIRMATION  
PROCESSING

FISCAL NOTE

REQUEST:

Revision Date: 3/20/89  
Title: Absentee Ballots, certain court orders re: elections, and to the governor's  
Sponsor: power to appoint legislators  
Requestor: The Judiciary Committee  
SPONSOR: The Judiciary Committee

Agency Affected: Office of the Governor  
BRU: Elections  
Components: I - Elections  
II - Primary & General

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Division of Elections Date: \_\_\_\_\_  
Approved by Commissioner: [Signature] Date: 3/20/89  
Agency: Division of Elections

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



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Item 3  
RECEIVED

JAN 2 1989

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

January 24, 1989

MEMORANDUM

TO: Representative Peter Goll

FROM: Karen Oakley *ko*  
Legislative Analyst

RE: Procedures for Resolving "Failed" Elections to State Legislatures  
Research Request 89.137

You asked what constitutional and statutory provisions guided the procedures that were followed in resolving the extremely close race for House District 13, Seat A. In that election, the results of a recount were appealed to the Alaska Supreme Court, which set aside the results and ordered a new election. The temporary vacancy thereby created in the House was recently filled by appointment by the Governor. You asked why this case was handled as it was and how a similar case would be handled in other states.

This memo explains the constitutional and statutory provisions that guided the procedures followed in the most recent election for representative for House District 13, Seat A. A second memorandum to follow next week will describe how a similar situation would have been handled in other states.

THE 1988 ELECTION FOR THE REPRESENTATIVE FOR HOUSE DISTRICT 13, SEAT A

House District 13, which includes east Anchorage, is served by two representatives, both elected at large. In the 1988 General Election, Democrat David Finkelstein and Republican W.E. "Brad" Bradley vied for Seat 13-A in what turned out to be a very close election. A brief chronology of subsequent events follows:

- After the General Election, the Division of Elections certified Finkelstein as the winner based on counts of 3,549 votes for Finkelstein and 3,546 votes for Bradley, a three vote margin.
- At Bradley's request, a recount was conducted. The Division of Elections then certified Bradley as the winner based on counts of 3,563 votes for Bradley and 3,554 votes for Finkelstein, a nine vote margin.
- Upon certification of Bradley as the winner, Finkelstein filed an appeal with the Alaska Supreme Court.

- The Alaska Supreme Court referred the appeal to Superior Court Judge Joan Katz as a Special Master. Judge Katz concluded that because of various errors relating to the counting of ballots, the election should be set aside and a new election held.
- The Alaska Supreme Court reviewed the findings of Judge Katz. They remanded the case to the director of the Division of Elections with specific instructions regarding the counting of certain of the challenged ballots.<sup>1</sup> Nine absentee votes, which were found to be illegally cast and which had not been commingled, were to be deducted from the totals of the candidates for whom they were cast. After deducting these nine votes, a provisional winner was to be declared. The director was then to deduct, based on a proportionate formula, 51 illegally counted but commingled ballots from the totals of the candidates. If the provisional winner remained the winner after deduction of these 51 ballots, the director was to certify the provisional winner as the winner. If the provisional winner did not remain the winner, the director was ordered to promptly hold a new election.
- The director of the Division of Elections recounted the ballots as ordered by the court. After the first step in the recount process, Bradley was declared the provisional winner; after the second step, Finkelstein was the winner. Because the provisional result was overturned, a new election was ordered. Due to federal election requirements, a new election cannot be held any sooner than late March or early April.
- On January 17, 1989, Governor Steve Cowper appointed Democrat Ann Spohnholz to the House District 13-A seat until a new election can be held and a winner declared.
- On January 18, 1989, the House voted 27 to 12 that the Governor's appointee was qualified to be seated pending a new election.

#### CONSTITUTIONAL AND STATUTORY PROVISIONS

This section discusses the constitutional and statutory provisions which determined the procedures followed in the present case involving the House District 13-A seat. Two topics are of concern: What procedure is followed when the results of a recount in a legislative race are appealed? What procedure is followed when there is a vacancy in the legislature because the results of an election have been set aside by court order?

---

<sup>1</sup>A copy of the court order is attached.

### Appeal of a Recount of a Legislative Election

Because Finkelstein won the General Election by a margin of only three votes, Bradley was authorized, pursuant to AS 15.20.430, to request that the Division of Elections conduct a recount. When the results of that recount showed that Bradley was the winner, Finkelstein had two options for appealing certification of the recount result: Pursuant to AS 15.20.510, he could appeal to the Alaska Supreme Court, or, pursuant to AS 15.20.520, he could appeal to the Alaska House of Representatives.

The authority for appeal of a recount to the House is found in Article II, Section 12 of the Alaska Constitution, which states that the houses of each legislature are the judge of the election and qualification of its members. There is no similar constitutional right to appeal a recount of a legislative election to the courts; that right is found only in statute. Presumably, the 1960 legislature, which passed both AS 15.20.510 and AS 15.20.520, wished to provide two options for candidates and other citizens to appeal results of a recount.

Finkelstein chose to appeal to the Alaska Supreme Court. AS 15.20.510 specifies the duties and powers of the court in considering the appeal of a recount as follows:

. . . The inquiry in the appeal shall extend to the questions whether or not the director has properly determined what ballots, parts of ballots, or marks for candidates on ballots are valid, and to which candidate . . . the vote should be attributed. The court shall enter judgement either setting aside, modifying, or affirming the action of the director on the recount.

The court order of January 11, 1989, which remanded the case back to the Division of Elections with specific instructions, essentially "set aside" the prior certification of the recount by the director.

### Procedure for Filling Legislative Vacancies Due to a "Failed" Election

Article II, Section 4 of the Alaska Constitution addresses vacancies in the legislature. It provides:

A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

Representative Goll  
January 24, 1989  
Page 4

Alaska Statutes 15.40.320 - 15.40.470 set forth the procedures to be followed when filling certain types of legislative vacancies. For the purposes of the Election Code, "vacancy" is defined in AS 15.60.010(34). This statute provides that a

'vacancy' exists in an office when the person elected or appointed to the office resigns, retires, dies, is recalled, is rejected by majority vote on the question at an election, is convicted of a corrupt practice, is removed by impeachment, or is expelled.

The type of vacancy that was created in the House of Representatives when the court set aside the results of the recount for House District 13, Seat A does not appear to be covered by the Election Code. Since no provision is made in law for filling this type of legislative vacancy, the constitution provides that the governor shall fill the vacancy by appointment.

For the types of legislative vacancies specified in AS 15.60.010(34), confirmation by a majority of the members of the political party of the predecessor in the same house as the predecessor is required pursuant to AS 15.40.330(a). In the present case, confirmation by the full house was apparently not required by statute. Article II, Section 12 of the Alaska Constitution provides, however, that

. . . Each [house] is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. . .

Thus, the vote of the house "confirming" the Governor's appointment of Ann Spohnholz to fill the vacancy until another election can be held was within the prerogative of the house to be "judge of the election and qualifications of its members."

I hope you find this information useful. If you need additional information, please let me know.

Attachment

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

Item 4

DIVISION OF ELECTIONS  
P.O. BOX AF  
JUNEAU, ALASKA 99811-0105  
PHONE (907) 465-4611

January 31, 1989

The Honorable Peter Goll  
Alaska State Representative  
P. O. Box AV  
Juneau, Alaska 99811

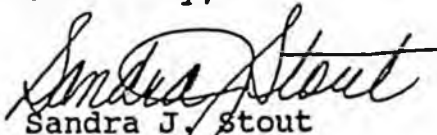
Dear Representative Goll:

The work draft of a bill related to absentee ballots, court ordered elections, and the governor's power to appoint legislators was presented to the Division of Elections for our review and recommendations, in order that they might be considered prior to the bill being introduced. I appreciate the opportunity afforded us to participate in this process.

The scope of our comments is limited to the provisions of the draft bill relating directly to our responsibilities for implementation and general administration of the election process. We offer no suggestions or comments relative to the power of the legislature to judge the election or qualifications of its members, actions taken by the courts, or authority of the Governor to fill vacancies by appointment, as these issues are beyond the scope of our authority or expertise.

I hope that the comments enclosed are helpful to you and your committee. Please feel free to contact me if I or a member of my staff can be of further assistance.

Sincerely,

  
Sandra J. Stout  
Director

Enclosures

COMMENTS ON WORK DRAFT  
6-0512A (COOK)  
BY GOLL

Division of Elections  
Sandra J. Stout  
Director

January 31, 1989

"An Act relating to absentee ballots, to certain court orders regarding elections, and to the governor's power to appoint legislators."

The draft bill attempts to address the issues that were raised during the suit brought before the Supreme Court relative to the 1988 General Election for House District 13, Seat A.

Sections 1 and 2 deal with the Supreme Court's ruling in Finkelstein v. Stout, et. al., regarding ballots witnessed by two witnesses who each signed on a different date. The court ruled that these ballots should not have been counted. These sections are designed to clarify that the voter's certificate is to be signed in the presence of the witnesses, and that the witnesses sign their attestation at the same time and place. As indicated in testimony presented at the House Judiciary hearing on January 25, 1989, we believe that a statutory remedy is not necessary to satisfy the requirements of the court's ruling. We suggest that the remedy could be accomplished administratively through a re-design of the forms used for by mail voting, and through clarification of the instructions provided to voters and the witnesses as part of the by mail ballot packet. Attached are samples of the kinds of modifications which could be made which would satisfy the court's ruling.

Our major concern with the wording of Section 1 in the work draft, is that while the requirements are made very clear, they also create a potential "mine field" of opportunities for voters or their witnesses to err in completing their forms, resulting in the voters' ballots not being counted. Requiring that we provide three different places where different individuals must write in a date, may cause more confusion, rather than less, on the part of voters and their witnesses. As brought out in the Supreme Court testimony, by displaying three different lines on which dates can be written, it could be construed or interpreted by the voters

and their "civilian" witnesses that different dates are actually permissible.

If the legislature deems it advisable to provide clarification in statutes in addition to administrative remedies already contemplated, we would suggest simplification within the work draft wording of Section 1 as follows:

Section 1. AS 15.20.081(d) is amended to read:

(d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, registration official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall sign the voter's certificate in the presence of [HAVE THE BALLOT WITNESSED BY] two persons over the age of 18 years, who shall sign as witnesses and attest to the date on which the voter signed the certificate in their presence, and, in addition, the voter shall provide the certification prescribed in AS 09.63.020.

Based on this suggested wording, the Division, would also recommend that Section 2 relating to AS 15.20.203(b) be eliminated as subsection (2) sufficiently addresses the

issue of deficient witnessing as grounds for not counting a ballot cast by mail.

Sections 3 and 4 provide for the conduct of new elections should an election be set aside by the court. We note that the general wording of Section 3 relative to court action in recount appeals is carried forward in Section 4 to provide conformity relative to court ordered elections as a result of election contests.

The Division of Elections raises no objection to the general content of these sections except the stipulation that the new election be held within 30 days of the election order. In practical terms this time frame would be virtually impossible to implement. One of the major factors is the requirement that Alaska request preclearance from the United States Department of Justice prior to enforcing any change in election procedure under Section 5 of the Voting Rights Act of 1965, (42 U.S.C. 1973, et seq.). Special elections are considered changes in normal procedure, and are therefore subject to this preclearance requirement. The U. S. Department of Justice is allowed 60 days for their review. While expedited preclearance can be requested, granting of special handling is granted at the discretion of the Department. Therefore, every attempt should be made to accommodate the 60 day period. That means that the period of time between the order calling for a new election and election day is usually somewhat longer than 60 days because decisions regarding any special procedures which will be necessary in the conduct of the special election must also be addressed in the preclearance request.

The Division would recommend that the selection of the actual date remain somewhat discretionary in order that the Director can adequately review the scope of the court's order, seek legal counsel regarding any special procedures which may be necessary, and to determine the time necessary to provide adequate public notice, prepare and distribute election materials, and to appoint and train election personnel.

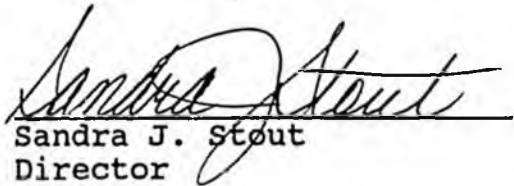
The Division would recommend the following relative to the scheduling of the new election:

The director shall promptly schedule a special election to be held not more than 90 days after the date of the court's order, and the director shall supervise the election in the general manner prescribed by this title.

Finally, with regard to an effective date for this bill if it is introduced, we note that the Division anticipates that many of our forms will have to be revised. Our current stock of supplies and forms were ordered prior to the 1988 statewide elections in quantities expected to last through December of 1989, at which time we would begin design and ordering for the next major election cycle. Because no statewide elections are anticipated for this year, and in order to avoid the expense of total replacement of current stock at this time, consideration might be given to postponing the effective date for Section 1 until January 1, 1990.

DATE:

January 31 1989

  
Sandra J. Stout  
Director

denied, 441 U.S.  
60 L. Ed. 2d 376

nt. [Repealed, §  
.061, 15.20.071,

representative.  
ay apply for an  
to the following

istrict in which the  
election up to and

AS 15.20.048(b);

to and including

oting station des-  
absentee voting

an's designee on  
s entitled to vote  
oard chairman in  
een designated.  
sonal representa-  
entee ballot shall  
al to the personal  
by the applicant  
vsician or a state-  
e applicant will be  
sical disability.  
absentee ballot to  
an absentee ballot  
roceed to mark the  
velope, to place the  
the voter's certifi-  
nal representative  
er. The voter must  
ot later than elec-  
e ballot to the per-  
the election official

who provided the ballot. The absentee ballot must be returned to the election official not later than 8:00 p.m. on election day.

(d) Each election official shall keep a record of the name and signature of each personal representative requesting an absentee ballot and the name of the person on whose behalf the ballot is requested. The election official shall record the date and time the absentee ballot is provided and the time the ballot is returned to the election official.

(e) A candidate for office at that election may not act as a personal representative. (§ 87 ch 100 SLA 1980; am § 8 ch 85 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (c) in the second sentence deleted "the back of" preceding "the envelope" and substituted "witness and date the signature of the voter" for "sign as attesting witness and date his signature," added the third sentence, in the fourth sentence substituted "the" for

"his" preceding "personal representative," in the present last sentence deleted "within three days from the date it is obtained but" following "election official," and deleted the former last sentence, concerning the untimely return of an absentee ballot.

NOTES TO DECISIONS

Former sections governing absentee ballot voting construed. — See Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588

P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.20.080. Date for application in person. [Repealed, § 231 ch 100 SLA 1980. For current law, see AS 15.20.061.]

Sec. 15.20.081. Absentee voting by mail. (a) A qualified voter may apply by mail to the director for an absentee ballot. The application shall include the address to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature. Persons residing outside the United States and applying to vote absentee in federal elections in accordance with AS 15.05.011 need not include an Alaska residence address in the application.

(b) An application for an absentee ballot by mail must be post-marked not less than ten days before the election for which the absentee ballot is sought. The absentee ballot application shall permit the person to register to vote under AS 15.07.070 and to request an absentee ballot for each state election held within that calendar year for which the voter is eligible to vote.

(c) After receipt of an application by mail, the director shall send the absentee ballot and other absentee voting material to the applicant by the most expeditious mail service. The material shall be sent as soon as they are ready for distribution. The return envelope sent with the materials shall be addressed to the election supervisor in the district in which the voter is a resident.

(d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall have the ballot witnessed by two persons over the age of 18 years and, in addition, shall provide the certification prescribed in AS 09.63.020.

(e) An absentee ballot must be marked on or before the date of the election. Except as provided in (h) of this section, a voter who returns the ballot by mail shall use a mail service at least equal to first class and mail the ballot not later than the day of the election to the election supervisor for the election district in which the voter seeks to vote. The ballot may not be counted unless it is received by the close of business on the 10th day after the election. If the ballot is postmarked, it must be postmarked on or before election day. After the day of the election, no ballots shall be accepted unless received by mail.

(f) The director may require a voter casting an absentee ballot by mail to provide proof of identification or other information to aid in the establishment of the voter's identity as prescribed by regulations adopted under the Administrative Procedure Act (AS 44.62).

(g) The director shall maintain a record of the name of each voter to whom an absentee ballot is sent by mail. The record must list the date on which the ballot is mailed and the date on which the ballot is received by the election supervisor and the dates on which the ballot was executed and postmarked.

(h) An absentee ballot returned by mail from outside the United States or from a military APO or FPO address that has been marked and mailed not later than election day may not be counted unless the ballot is received by the election supervisor not later than the close of business on the 15th day following the election. (§ 87 ch 100 SLA 1980; am § 63 ch 6 SLA 1984; am §§ 9 — 11 ch 85 SLA 1986)

**Effect of amendments** — The 1984 amendment made a series of technical and internal reference changes in subsection (d).

The 1986 amendment in subsection (b) in the first sentence deleted "more than six months nor" following "postmarked not" and substituted "ten" for "seven" and added the second sentence; in subsection (e) deleted "and attested" following "marked" in the first sentence, in the sec-

ond sentence substituted "Except as provided in (h) of this section, a" for "If the" and "a mail service at least equal to first class" for "the most expeditious mail service" and "for the" for "in his," inserted "who" preceding "returns," deleted "he" following "ballot by mail" and added "in which the voter seeks to vote" at the end of the sentence, and added the third and last sentences of the subsection; and added subsection (h).

resident  
ides out of  
d attorney  
quired by  
after the  
required,  
dertaking  
ourt to the  
e awarded  
additional  
e original  
101 SLA

- (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;
- (3) a notary public;
- (4) a United States postmaster; or
- (5) a commissioned officer under AS 09.63.050(4). (§ 1 ch 37 SLA 1981)

Collateral references. — 58 Am. Jur. 2d, Oath and Affirmation, §§ 6 — 10. 67 C.J.S., Oaths and Affirmations, §§ 5 — 7. Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 ALR3d 483.

Y which are  
d go beyond,  
nd assessing  
re v. City of  
477 (File No.

**Sec. 09.63.020. Certification of documents.** (a) A matter required or authorized to be supported, evidenced, established, or proven by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making it (other than a deposition, an acknowledgment, an oath of office, or an oath required to be taken before a specified official other than a notary public) may be supported, evidenced, established or proven by the person certifying in writing "under penalty of perjury" that the matter is true. The certification shall state the date and place of execution, the fact that a notary public or other official empowered to administer oaths is unavailable, and the following:

"I certify under penalty of perjury that the foregoing is true."

(b) A person who makes a false sworn certification which the person does not believe to be true under penalty of perjury is guilty of perjury. (§ 1 ch 37 SLA 1981)

Collateral references. — 1 Am. Jur. 2d, Acknowledgments, §§ 32 — 79. 1 C.J.S., Acknowledgments, §§ 83 — 145.

exercise of  
ish security  
r or addition

**Sec. 09.63.030. Notarization.** (a) When a document is required by law to be notarized, the person who executes the document shall sign and swear to or affirm it before an officer authorized by law to take the person's oath or affirmation and the officer shall certify on the document that it was signed and sworn to or affirmed before the officer.

(b) The certificate required by this section may be in substantially the following form:

Subscribed and sworn to or affirmed before me at \_\_\_\_\_  
on \_\_\_\_\_.

(date)

tificate of  
gment  
ent  
ation

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Title of Officer

ent in the  
nation, or

f Alaska or



STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

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

FROM: Representative Peter Goll

RE: HB 192, relating to absentee ballots, court  
ordered elections, and the governor's power to  
appoint legislators.

DATE: March 20, 1989

I requested that this bill be drafted in the aftermath of the Supreme Court's ruling in Finkelstein v. Stout, et. al.. One of the issues decided by the court was that ballots witnessed by two witnesses who signed on different dates should not have been counted.

Section 1 clarifies the procedure required for the witnessing of absentee ballots by two witnesses when a person qualified to administer oaths is not available. The new language requires that the voter's certificate be signed in the presence of two witnesses, and that the witnesses sign their attestation at the same time and place.

Section 2 of the bill adds a new subsection to existing law dealing with appeal from the decision of the Director of the Division of Elections after a recount. Present law provides that the "court shall enter judgment either setting aside, modifying, or affirming the action of the director on recount." The new section provides that if the court finds that it is not possible to ascertain whether certain ballots are valid or to which candidate or proposition the vote should be attributed, and the ballots, if counted, could change the outcome of the election, the court shall set aside the recount results and order a new election.

The court has had implied authority to order a new election when it "sets aside" an election. This bill merely provides statutory authority for such an action in both sections 2 and 3. Those sections also require that the election be held within 90 days from the date of the court's order.

Representative H.A. "Red" Boucher  
Page 2  
March 20, 1989

Finally, sections 2 and 3 effectuate Art. II, Sec. 4 of the Alaska Constitution which provides:

"A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment."

AS 15.40.320 - 15.40.470 set out the procedures to be followed when filling certain types of legislative vacancies. The type of vacancy which occurred when the Bradley - Finkelstein election was vacated is not presently covered by statute and this bill merely addresses that type of vacancy by providing that the governor shall appoint a qualified person to serve until the results of a new election are certified and the successor takes office.

***HB***

***218***

**HOUSE COMMITTEE ON STATE AFFAIRS**

**RECAP OF  
SSHB 218**

**AHFC Loans for Senior Citizen Housing**

Received January 10, 1990  
by Reps. Ulmer and Hudson

Heard October 19, 1989 (Joint House/Senate State Affairs)  
Heard January 16, 1990

Committee Substitute adopted January 16, 1990

Passed Out of Committee January 16, 1990  
3 Do Pass  
1 No Recommendation

## TABLE OF CONTENTS

### SSHB 218: AHFC Loans for Senior Citizen Housing

- Item 1:** SSHB 218 by Ulmer and Hudson  
CS SSHB 218 (SA)
- Item 2:** Fiscal Note and Analysis by Department of Revenue
- Item 3:** Memorandum from Rep. Ulmer, May 1, 1989
- Item 4:** Memorandum from Rep. Ulmer, October 19, 1989 regarding the Sponsor Substitute
- Item 5:** Memorandum from Rep. Ulmer, January 15, 1990 relating to Congregate Housing

# HOUSE COMMITTEE REPORT

*Date*

*1/17*

(7)

Date Referred: January 10, 1990

FURTHER REFERRALS: FINANCE

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee considered:

SSHB 218

SS HOUSE BILL NO. 218

AHFC LOANS FOR SENIOR CITIZEN HOUSING

"An Act extending the authority of the Alaska Housing Finance Corporation to assist in the development of senior citizens' housing; and providing for an effective date."

*wrong title*

RECOMMENDATIONS:

- be replaced with CS SS HB 218 (SA)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis AHFC
- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

|                          |             |                     |        |                                     |                          |                          |
|--------------------------|-------------|---------------------|--------|-------------------------------------|--------------------------|--------------------------|
| <i>W.C. Boucher</i>      | BOUCHER     | <i>Allyn Hanley</i> | HANLEY | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <i>Scott Menard</i>      | MENARD      |                     |        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| <i>David Finkelstein</i> | FINKELSTEIN |                     |        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| _____                    |             |                     |        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| _____                    |             |                     |        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| _____                    |             |                     |        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| _____                    |             |                     |        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| _____                    |             |                     |        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| _____                    |             |                     |        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |

*W.C. Boucher*  
Chairman's Signature

Introduced: 1/10/90  
Referred: State Affairs, and Finance

BY REP. ULMER, Hudson

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 218

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act extending the authority of the Alaska Housing  
7 Finance Corporation to assist in the development of  
8 congregate housing; and providing for an effective  
9 date."

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

11 \* Section 1. AS 18.56.100(b) is amended to read:

12 (b) Consistent with AS 18.56.090, the corporation may make  
13 temporary and permanent loans from the housing development fund, at an  
14 interest rate or rates determined by the corporation, and with the  
15 security for repayment that is necessary and practicable, to purchase,  
16 make, or participate in the making of mortgage loans

17 (1) to borrowers who are individuals, nonprofit corpora-  
18 tions, or agencies of the state or a municipal government, for loans  
19 to develop, build, repair, remodel, or rehabilitate residential hous-  
20 ing that is to be used and occupied as congregate housing; or

21 (2) that are not federally insured or guaranteed for res-  
22 idential housing, if the corporation determines that the loans are not  
23 otherwise available, wholly or in part, from private lenders upon  
24 reasonably equivalent terms and conditions.

25 \* Sec. 2. AS 18.56.100 is amended by adding new subsections to read:

26 (1) The corporation shall use money in the housing development  
27 fund to reduce the interest payable by borrowers who develop housing  
28 under (b)(1) of this section. The corporation may reduce the interest  
29 rate on a loan entered into under (b)(1) of this section and this

1 subsection to one percent less than the interest rate payable on the  
2 corporation's bonds issued under AS 18.56.110 - 18.56.170 for develop-  
3 ment of the project. If a project developed by a borrower with a  
4 reduced interest subsidy made under this subsection ceases to be used  
5 for congregate housing, the corporation shall adjust the interest rate  
6 payable on the unpaid balance of the loan to the prevailing rate of  
7 interest charged by the corporation on loans made for other residen-  
8 tial purposes, but may not reduce the interest rate payable below the  
9 subsidized rate.

10 (m) The corporation shall adopt regulations to implement (b)(1)  
11 and (1) of this section that

12 (1) determine borrower eligibility;

13 (2) define procedures for the application, review, and  
14 approval of authorized loans;

15 (3) establish loan guidelines, loan terms, and acceptable  
16 security for loans; and

17 (4) identify characteristics of housing projects eligible  
18 for loans.

19 (n) In (b)(1), (1), and (m) of this section "congregate housing"  
20 means a multi-family group-living building [that contains individual  
21 residence areas and common facilities for congregate living.]

22 \* Sec. 3. This Act takes effect July 1, 1990.

1 IN THE HOUSE

BY ULMER AND HUDSON

2

HOUSE BILL NO. 218

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act extending the authority of the Alaska Housing  
Finance Corporation to assist in the development of  
senior citizens' housing; and providing for an effective date."

7

8

9

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

11

\* Section 1. AS 18.56.100(b) is amended to read:

12

(b) Consistent with AS 18.56.090, the corporation may make  
temporary and permanent loans from the housing development fund, at an  
interest rate or rates determined by the corporation, and with the  
security for repayment that is necessary and practicable, to purchase,  
make, or participate in the making of mortgage loans

13

14

15

16

17

(1) to borrowers for loans to develop, build, repair,  
remodel, or rehabilitate residential housing for senior citizens and  
their spouses that is used and occupied as congregate housing; or

18

19

20

(2) that are not federally insured or guaranteed for residential housing, if the corporation determines that the loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions.

21

22

23

24

\* Sec. 2. AS 18.56.100 is amended by adding new subsections to read:

25

(1) The corporation shall use money in the housing development fund to reduce the interest payable by borrowers who develop housing for senior citizens and their spouses under (b)(1) of this section. The corporation may reduce the interest rate on a loan entered into under (b)(1) of this section and this subsection to one percent less

26

27

28

29

1 than the interest rate payable on the corporation's bonds issued under  
2 AS 18.56.110 - 18.56.170 for development of the project. If a project  
3 developed by a borrower with a reduced interest subsidy made under  
4 this subsection ceases to be used for senior citizen congregate hous-  
5 ing, the corporation shall adjust the interest rate payable on the  
6 unpaid balance of the loan to the prevailing rate of interest charged  
7 by the corporation on loans made for other residential purposes; but  
8 may not reduce the interest rate payable below the subsidized rate.

9 (m) The corporation shall adopt regulations to implement (b)(1)  
10 and (1) of this section that

11 (1) determine borrower eligibility;

12 (2) define procedures for the application, review, and  
13 approval of authorized loans;

14 (3) establish loan guidelines, loan terms, and acceptable  
15 security for loans; and

16 (4) identify characteristics of housing projects eligible  
17 for loans.

18 (n) In (b)(1), (1), and (m) of this section

19 (1) "congregate housing" means a multi-family group-living  
20 building that contains individual residence areas and common facil-  
21 ities for congregate living;

22 (2) "senior citizen" means a resident of the state who is  
23 65 years of age or older.

24 \* Sec. 3. This Act takes effect July 1, 1989.

YOU ARE →  
MULTI-FAMILY  
\$ STAFF

HB 218

HB0218A

→ GET FOR WSCU

5/3

→ DEMAND

FISCAL NOTE

REQUEST: \_\_\_\_\_  
 Revision Date: \_\_\_\_\_ Agency Affected: \_\_\_\_\_  
 Title: Extending authority of AHFC to  
assist in development of congregate housing BRU: Alaska Housing Finance Corporation  
 Sponsor: \_\_\_\_\_ Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

|               |   |   |   |   |   |   |
|---------------|---|---|---|---|---|---|
| GENERAL FUND  | - | - | - | - | - | - |
| FEDERAL FUNDS | - | - | - | - | - | - |
| OTHER         | - | - | - | - | - | - |
| TOTAL         | - | - | - | - | - | - |

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Thomas Behan Phone: 561-1900  
 Division: Alaska Housing Finance Corporation Date: January 11, 1990

Approved by Commissioner: Hugh Malone Date: \_\_\_\_\_  
 Agency: Department of Revenue

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

Fiscal Analysis  
SS HB 218

The fiscal impact of implementing this legislation is undeterminable at this time since the projected demand for congregate housing is unknown. Currently, AHFC finances residential mortgage loans through the issuance of taxable and tax-exempt bonds. (A separate fund initially created and funded by the Legislature finances mobile home loans.) Current AHFC staff does not have the expertise to finance/underwrite multi-family housing loans or work within federal government multi-family loan programs. To implement this legislation, additional staff would be needed with the required expertise. The expertise of financing multi-family congregate housing may already be available elsewhere in other state agencies.

Item 2

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: HB 218

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Revenue  
Title: An Act extending the authority of AHFC to assist in development of Senior Citizen's Housing  
Sponsor: Ulmer/Hudson BRU: AHFC  
Requestor: \_\_\_\_\_ Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| CAPITAL | - | - | - | - | - | - |
|---------|---|---|---|---|---|---|

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| REVENUE | - | - | - | - | - | - |
|---------|---|---|---|---|---|---|

FUNDING: (Thousands of Dollars)

|               |   |   |   |   |   |   |
|---------------|---|---|---|---|---|---|
| GENERAL FUND  | - | - | - | - | - | - |
| FEDERAL FUNDS | - | - | - | - | - | - |
| OTHER         | - | - | - | - | - | - |
| TOTAL         | - | - | - | - | - | - |

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: Thomas Behan  
Division: AHFC

Phone: 561-1900  
Date: March 16, 1989

Approved by Commissioner: \_\_\_\_\_  
Agency: \_\_\_\_\_

Date: 3/20/89

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

RECEIVED

MAR 29 1989

page \_\_\_\_\_ of \_\_\_\_\_

## Attachment

### Fiscal Note HB 218

The fiscal impact of implementing this legislation is undeterminable at this time since the projected demand for congregate senior citizen housing is unknown. Currently, AHFC finances residential mortgage loans through the issuance of taxable and tax-exempt bonds. (A separate fund initially created and funded by the Legislature finances mobile home loans.) Current AHFC staff does not have the expertise to finance/underwrite multi-family housing loans or work within federal government multi-family loan programs. To implement this legislation, additional staff would be needed with the required expertise. The expertise of financing multi-family senior citizen's housing may already be available elsewhere in other state agencies.

# Alaska State Legislature

Representative Fran Ulmer



P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4947

## HOUSE OF REPRESENTATIVES

### MEMORANDUM

May 1, 1989

TO: Rep. Red Boucher, Chair  
House State Affairs Committee

FROM: Rep. Fran Ulmer

RE: HB 218, relating to senior citizens' housing

-----

HB 218 extends the authority of the Alaska Housing Finance Corporation to make mortgage loans to borrowers for the construction, repair, remodel or rehabilitation of residential housing for use as congregate housing for senior citizens. The purpose of this legislation is to address a growing problem within Alaska: the need for housing which combines both privacy and independence with the provision of some services for the elderly. This is a problem for all seniors, regardless of income; the solution must be available to all seniors.

Senior congregate housing is apartment-style living with various services, including one to three meals per day, weekly housekeeping and laundry, transportation, and social/recreational activities. It is intermediate between the fully independent lifestyle of a single family home or apartment and the dependent or skilled-care attention provided in a nursing home. Congregate housing allows ambulatory persons to live independently of their families. Seniors typically emphasize their desire for the degree of privacy which congregate housing provides, as opposed to other types of housing for seniors.

Residents are typically 75 to 85 years old, between the "young retirees" (65 - 74 years old) and the "frail elderly" (85+ years old). Based on detailed 1985 Department of Labor population figures, this age group represents about 24 percent of Alaska seniors statewide. The potential market today in various census areas may be as follows:

| <u>Census Area</u>      | <u>Est. Seniors 75-85 yrs old</u> |
|-------------------------|-----------------------------------|
| Anchorage -----         | 1,630 seniors                     |
| Fairbanks -----         | 530                               |
| Kenai Peninsula -----   | 400                               |
| Matanuska-Susitna ----- | 360                               |
| Juneau -----            | 300                               |
| Ketchikan -----         | 190                               |

House Bill 218

5/1/89

Page 2

The primary sponsors of congregate housing have traditionally been nonprofit organizations, especially churches which have targeted the low-to-moderate-income elderly. With the growth in the size and wealth of the nation's elderly population, private developers have entered the market in the 1980's. However, market conditions appear to work against project feasibility in Alaska without some form of public support and without available financing. The relatively small pool of potential senior residents, higher labor and material costs, the absence of affordable financing, and the lack of economies of scale in smaller-sized housing projects make it difficult to create congregate housing which will fall within the financial constraints of even middle income seniors.

It is appropriate for the state to participate in these types of housing projects through a reduced interest rate from the Alaska Housing Finance Corporation. At this time, AHFC is uncertain whether it has the statutory authority in its market stabilization program [AS 18.56.210(a)(5); 2 ch 147 SLA 1988] to provide developer financing for these projects. HB 218 clearly establishes that authority. It is possible that some of the vacated condominium projects in the state would be appropriate for conversion into senior congregate housing by a private developer. This bill provides an incentive for the private developer to take primary responsibility for the creation of this type of housing.

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

October 19, 1989

TO: All members  
Senate State Affairs Committee  
House State Affairs Committee

FROM: Rep. Fran Ulmer *[Signature]*

RE: Sponsor Substitute for HB 218, relating to congregate housing

-----

Attached you will find a draft of my Sponsor Substitute for HB 218, relating to the authority of the Alaska Housing Finance Corporation to assist in the development of congregate housing. Because the primary sponsors of congregate housing have traditionally been non-profit organizations, the definition of borrower has been expended to include non-profit corporations and agencies of the state or municipal governments.

In addition, the purpose of such loans has been simplified to "congregate housing" rather than "senior congregate housing"; congregate housing is no longer restricted to occupancy by senior citizens. Other possible uses of congregate housing include transitional housing for victims of domestic violence, the developmentally disabled, and others.

Both of these proposed changes will increase flexibility in project development and will increase project feasibility.

Item 5

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

January 15, 1990

TO: Chairman Boucher and Members  
House State Affairs Committee

FROM: Rep. Fran Ulmer

RE: SSHB 218, relating to congregate housing

Attached you will find a letter from the Alaska Housing Finance Corporation regarding the difficulties the agency believes it might encounter in financing congregate housing projects under HB 218. The purpose of my memo is to offer for your consideration two amendments to HB 218 which address the agency's concerns.

AHFC feels that it lacks the expertise to evaluate or finance such projects. It is understandable that the agency lacks expertise in this area because this area has not, to date, been part of the mandate of AHFC. However, this expertise can easily be obtained from other states. Financing housing projects for target populations such as senior citizens is standard fare for housing agencies in every state in the nation. There is no lack of precedent, in evaluation standards or in financing regulations, to guide AHFC into its new role.

This responsibility would constitute a shift in AHFC's purpose. Serving special needs populations and financing projects for non-profit organizations and local governments alters the agency's direction. It is a direction we must pursue, however, in order to meet the needs of Alaska's citizens. Congregate housing has emerged as an important service which the state must assist.

I would like to suggest that the committee consider two amendments (attached). The first clarifies that AHFC shall be the secondary mortgage market for congregate housing loans, providing permanent financing for those projects. Temporary loans for construction or rehabilitation of congregate housing would be made by ASHA, by the private lending community, or other sources. AHFC feels more comfortable in a role as secondary lender, and supports this amendment.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

House State Affairs Committee  
January 15, 1990  
Page 2

The second amendment modifies the definition of congregate housing in order to better meet the needs of other special needs groups such as handicapped persons and battered women seeking transitional housing. This amendment will allow for increased flexibility in housing arrangements for special populations and will encourage creative use of existing properties on the market.

Several other issues related to financing mechanisms have been raised by AHFC and need to be addressed. They are:

- Methods of funding congregate loans through AHFC;
- The effect of financing congregate housing projects on AHFC's bond rating.

Each of these items concerns technical financing issues which may be addressed more appropriately by the House Finance Committee, the next committee of referral. I urge you to consider preparation of a committee substitute for SSHB 218 to incorporate the two amendments proposed, and pass it on to House Finance to resolve the financial questions.

FU/dl



520 East 34th St.  
Anchorage, AK 99503  
(907) 561-1900

P.O. Box 101020  
Anchorage, AK 99510

January 5, 1990

The Honorable Fran Ulmer  
Alaska State Legislature  
House of Representatives  
P.O. Box V  
Juneau, AK 99811-3100

Dear Representative Ulmer:

Thank you for the opportunity to comment on your sponsor substitute for HB 218, relating to the role of the Alaska Housing Finance Corporation in assisting the development of congregate housing.

I appreciate your interest in facilitating residential development and rehabilitation activities to address the requirements of Alaskans with special housing needs, such as senior citizens and persons who experience disabilities. In examining your bill, however, we have identified several issues which are problematic from the perspective of the Corporation as a secondary lender.

1. Alaska Housing Finance Corporation is not familiar with underwriting congregate housing, and lacks the expertise necessary to evaluate such projects. The Corporation is also not experienced in temporary or construction lending. To develop such a function in the Corporation would dilute our ability to continue the functions we are most expert at; that is, to attract much-needed mortgage capital to the state and to make it available through the mechanism of the secondary mortgage market. We are interested in working with the Alaska State Housing Authority (ASHA) to explore cooperative approaches to facilitate the flow of this capital to sponsors of housing for special needs populations.

2. The definition of "congregate housing" is too broad to represent a specific housing product which would be offered to investors through the bond market, or to provide a sound and impartial basis for project evaluation.

3. The Housing Development Fund mentioned in Section 2 exists in name only--there are currently no monies available to the Fund. Were the Fund

3TB122

The Honorable Fran Ulmer  
January 5, 1990  
Page 2

to be capitalized through a transfer of funds from the Corporation's unrestricted assets, the Corporation's bond rating would be adversely impacted, resulting in diminished capacity to continue to attract mortgage capital to the state. Further, these assets have reserved for other purposes and legislative mandates. Such a move would also result in serious creditor questions of liability.

The Housing Development Fund could be recapitalized through an appropriation from the legislature or, alternatively, through federal funding. Upon passage of the National Affordable Housing Act currently before Congress (S566), federal Housing Opportunity Partnership funds will flow to states, and could (at legislative option) be used to capitalize the Housing Development Fund. Such a use would effectively leverage private dollars, thereby multiplying the number of projects which could be undertaken.

4. We question the propriety of AHFC making loans to units of local government. This type of lending activity would exert undue pressure on loan underwriting inasmuch as scrutiny of the credit capacity of the borrower may not satisfy AHFC guidelines, and could cause loans to be made or approved for reasons that might not qualify as prudent lending practices.


While specific authority for AHFC to make or participate in loans to units of local government is not contained in existing statute, lending to non-profit organizations is not currently restricted by statute or regulation. However, such sponsors must meet the same underwriting standards as any other borrower.

In conclusion, we would support legislation that would cast the Corporation into the role of providing permanent financing to projects, with the projects defined by a temporary lender who would also provide construction or rehabilitation management services. Temporary loans may be made by ASHA, by the private lending community, or other sources; AHFC would commit to purchase the paper after completion of construction. Cost of permanent financing could be subsidized through the Housing Development Fund, capitalized through state or federal appropriation.

The Honorable Fran Ulmer  
January 5, 1990  
Page 3

Once again, I appreciate the opportunity to provide constructive comment on your proposed legislation. If I can provide further information or technical assistance in this matter, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to be 'T. Behan', written in a cursive style.

Thomas C. Behan  
Chief Executive Officer/Executive Director

MB/lb

3TB122

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. ULMER

TO: SSHB 218

Page 2, lines 20 - 21:

Delete "that contains individual residence areas and common facilities  
for congregate living"

*Need to be do a better job of CONSEQUENCE  
(LUCAS)*

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. ULMER

TO: SSHB 218

Page 1, following line 10:

Insert a new bill section to read:

"\* Section 1. AS 18.56.090 is amended to read:

Sec. 18.56.090. GENERAL POWERS. In addition to other powers granted in this chapter, the corporation may, for the purpose of providing housing for persons of lower and moderate income or persons located in remote, underdeveloped, or blighted areas of the state and for its other corporate purposes,

(1) [REPEALED

(2)] make or participate in the making of mortgage loans to sponsors, developers, builders, and purchasers of residential housing, if the corporation determines that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(2) [(3)] purchase or participate in the purchase of mortgage loans made to sponsors, developers, builders, owners, and purchasers of residential housing, if the corporation

(A) has given approval before the initial making of the loan and has determined that mortgage loans were, at the time the approval was given, not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and

conditions; [,] or

(B) has determined that the purchase or participation will result in additional residential housing, taking into account without limitation such factors as reinvestment of the proceeds of the sale in additional mortgage loans, increased availability of mortgage loans insured by the federal government, its agencies, or departments, the reduction, if any, of interest payments to be made with respect to mortgage loans, or such other factors as will tend to increase or improve the supply of residential housing within the state;

(3) [(4)] make partial rental payments and mortgage interest payments under a contract with any housing owner if the payments will be applied to decrease rental or mortgage interest charges of persons of lower and moderate income or owners or purchasers of residential housing in remote, underdeveloped or blighted areas of the state;

(4) [(5)] make loans from the housing development fund;

(5) [(6)] collect and pay reasonable fees and charges in connection with making, purchasing, and servicing its mortgages, loans, notes, bonds, certificates, commitments, and other evidences of indebtedness;

(6) [(7)] acquire real property, or any interest in real property, in its own name, by purchase, transfer, or foreclosure, when the acquisition is necessary or appropriate to protect any loan in which the corporation has an interest; sell, transfer, and convey the property to a buyer; and, if the sale, transfer, or conveyance cannot

be effected with reasonable promptness or at a reasonable price, rent or lease the property to a tenant pending the sale, transfer, or conveyance;

(7) [(8)] sell, at public or private sale, to any purchaser, including the Federal National Mortgage Association, all or any part of a mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this chapter;

(8) [(9)] purchase, in order to meet the requirements of the sale of its mortgages to the Federal National Mortgage Association, stock of the Federal National Mortgage Association;

(9) [(10)] procure insurance against any loss in connection with its operation;

(10) [(11)] consent to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of the mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the corporation is a party;

(11) [(12)] borrow money as provided in this chapter to carry out and effectuate its corporate purposes; and issue its obligations as evidence of borrowing;

(12) [(13)] include in any borrowing the amounts necessary to pay financing charges, interest on the obligations for a period not exceeding one year after the date on which the corporation estimates funds will otherwise be available to pay the interest, consultant, advisory, and legal fees, and other expenses that are necessary or

incident to this borrowing;

(13) [(14)] under AS 18.56.088, adopt and publish regulations respecting its lending programs and other regulations that are necessary to effectuate its purposes;

(14) [(15)] provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents of it;

(15) [(16)] promote research and development in scientific methods of constructing low-cost and energy-efficient residential housing of high durability;

(16) [(17)] make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the corporation under this chapter, including contracts with any person, firm, corporation, governmental agency, or other entity;

(17) [(18)] receive, administer, and comply with the conditions and requirements respecting any appropriation or gift, grant, or donation of property or money;

(18) [(19)] sue and be sued in its own name;

(19) [(20)] adopt an official seal;

(20) [(21)] adopt bylaws for the regulation of its affairs and the conduct of its business, and adopt regulations and policies in connection with the performance of its functions and duties;

(21) [(22)] employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and other consultants and employees that may be required in the judgment of the corporation, and

fix and pay their compensation from funds available to the corporation;

(22) [(23)] do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter;

(23) [(24)] invest or reinvest, subject to its contracts with noteholders and bondholders, any money or funds held by the corporation in any obligations or other securities or investments in which banks or trust companies in the state may legally invest funds held in reserves or sinking funds or any funds not required for immediate disbursement, and in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the state or the United States;

(24) [(25)] REPEALED

(26) REPEALED

(27) REPEALED

(28)] purchase a mortgage loan made to refinance an existing mortgage loan, without regard to whether the corporation holds the existing mortgage loan, as long as the interest rate and fees charged to the borrower are sufficient to fully reimburse the corporation for all costs incurred by the corporation in purchasing the mortgage loan and as long as the borrower will be in compliance with AS 18.56.096(a)(6) after purchase of the mortgage loan by the corporation;

(25) participate in the making of mortgage loans to borrowers for congregate housing under AS 18.56.100(b)(1) as the purchaser of those loans."

*put a congregate borrower in same state.*

*or you can put - go to*

*-5-*

*BANK -> AMEC*

*1/15/90*

*SECURITY LEADER.*

Renumber the following bill sections accordingly.

Page 2, following line 21:

Insert new bill sections to read:

"\* Sec. 4. AS 18.56.105 is amended to read:

Sec. 18.56.105. ALLOCATION OF LENDING ACTIVITIES. The corporation shall designate regions within the state that, [WHICH] in the aggregate, encompass the entire state. In participating in the making or purchasing of loans under AS 18.56.090(1) and (2) [AS 18.56.090(2) AND (3)] or under AS 18.56.100, the corporation shall make its money available through the private financial institutions in the state within each region designated by the corporation under this section. The corporation shall allocate its money among the regions on the basis of recent and future anticipated lending activity as well as the potential need for the loans in each region and may reallocate its money among the regions as it considers appropriate to reflect changes in lending activity or need in the regions.

\* Sec. 5. AS 18.56.110(g) is amended to read:

(g) Notwithstanding AS 18.56.090(11) [AS 18.56.090(12)] and (a) of this section, the corporation may not issue bonds in any 12-month period beginning after June 30, 1983, in an amount that exceeds the amount of bonds authorized to be issued during the preceding period, unless a different amount is authorized by the legislature. This subsection does not apply to the issuance by the corporation of re-funding bonds or to the issuance by the corporation of bonds the proceeds of which are intended to be used to refinance mortgage loans

held by the corporation."

Renumber the following bill section accordingly.