

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6111 HOUSE STATE AFFAIRS

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In bringing the suit, which was filed on Wednesday in Superior Court, the state is asking for an injunction prohibiting the defendants from continuing their illegal practices and for an order requiring them to make refunds to injured consumers. The court is also being asked to assess civil penalties of \$5,000 for each violation.

Assistant Attorney General Robert E. Mintz, who heads the Consumer Protection Section, urged consumers who believe they have been "taken" in telephone solicitations to exercise their rights under Alaska's cooling-off law and the federal Fair Credit Billing Act. The section can provide forms and information to persons needing assistance. "The one consolation in most of these cases is that since the consumers used their credit cards, they have a good chance of getting their money back from the card issuer -- if they act promptly," he said.

Department of Law
OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Section
1031 West 4th Ave., Suite 110
Anchorage, Alaska 99501
Phone 279-0428

Item 9

STATE OF ALASKA THE LEGISLATURE



LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

P.O. Box Y
Juneau, AK 99811

September 26, 1989

MEMORANDUM

TO: Dennis Burns
Rep. Boucher's Office

FROM: Peggy Simons *PS*
Manager, Division of Public Services

RE: Fax procedures in the LIO's

In response to your inquiry regarding our fax policies and procedures, I would first like to point out that fax usage is increasing every year. In 1985, all LIO's sent and received 25,422 pages of materials as compared to 1988, when the total was 86,227. During the 1989 legislative session, the total sent and received was 42,591. I will have a year-end figure available in January of 1990.

We have only one written, in-house policy specifically addressing fax usage and that is regarding non-legislative usage: "LIO's may accept non-legislative telecopy for transmission on a time-available basis, if we have a charge-back number. The telecopy must conform to the policy on use of LAA equipment, space and staff." It has been our practice to send and receive fax for legislators and staff in order to facilitate their work and this comes out of our Division budget. We do not always know what materials a legislator has requested so we will generally forward any fax received to the appropriate recipient. We do sometimes receive lengthy documents with instructions to duplicate to all 60 legislators. We try to verify this type of transaction before duplicating and distributing, since this is costly in both time and materials.

Very little of the "unsolicited" fax that we receive is of a commercial nature. It is more likely to be letters or other types of messages to legislators, from business establishments and individuals. As you probably know, all the fax numbers for the LIO's are published in the Directory of State Officials and are given out readily upon request.

I would be happy to provide further information on our fax procedures. You can reach me at the Juneau LIO, ph. 465-4648. Thank you.

cc: Warren Endicott
Executive Director

MEMORANDUM

November 3, 1988

TO:
FROM: Legislative Council Staff
SUBJECT: Junk Fax

The number for fax machines installed since 1984 has increased almost tenfold -- from 89,000 in 1984 to an estimated 864,000 in 1988. 1/ The total number of machines in use could reach 2.5 million by the end of 1990. 2/ As the number of facsimile machines has grown, fax use as a method of transmitting advertisements, or junk fax, has also expanded. According to The Economist, junk fax is problematic because, "unlike mail, it ties up machines, blocks more important messages, and costs the recipient electricity and paper -- chemically coated thermal paper that costs almost 10 cents a sheet."

In response to your request, staff contacted the American Facsimile Association, the National Conference of State Legislatures, and the Colorado Public Utilities Commission to determine whether other states have taken any steps to regulate junk fax. None of these organizations was aware of any state initiatives in this area. However, it was suggested that similarities exist between junk fax and unwanted telephone solicitations, and states have acted to regulate certain types of telephone solicitations. For example, Arizona, Maryland, and Washington have banned the use of automatic dialing and announcing devices (ADADs). Laws in Michigan prohibit the use of prerecorded messages in telephone solicitations. Other states, such as Colorado and Wisconsin, require that the person called consent to listen to a prerecorded message. Colorado law also requires an existing business relationship be present. These statutes may provide some precedent and ideas for the regulation of certain fax transmissions. Although the Federal Communications Commission (FCC) decided in 1980 that it lacked jurisdiction to regulate telephone solicitations, it has been suggested that the FCC may eventually be forced to regulate fax machine usage. 2/

According to a spokesperson for a Denver fax dealership, fax owners can reduce the receipt of junk fax by being circumspect about distributing their numbers. For example, placing a fax number on stationery increases the circulation of the number. Some technological advances may also reduce junk fax. Fax manufacturers

1/ "Not just the fax -- its junk mail, to ," USA Today, Wednesday, October 26, Section B, p. 1.

2/ "Cold-fax and fouler," The Economist, October 8, 1988, p. 70.

are experimenting with methods of screening or blocking unwanted fax messages through unique fax compression algorithms and closed fax networks. 3/ A machine that blocks fax transmissions that do not have an access code is currently available. With these machines, senders must call to receive approval for a transmission. 4/

For further information, please contact
Deborah Godshall, 866-4782.

3/ USA Today, Ibid.

4/ Fax Focus, American Facsimile Association, Vol. I, Issue 9, October 17, 1988.

danger of serious physical injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

D. A person who violates this section is guilty of a class 1 misdemeanor.

Added by Laws 1986, Ch. 25, § 1.

1986 Reviser's Note:

Laws 1986, Ch. 359, § 1 added another new § 13-2918 which was renumbered as § 13-2919, pursuant to authority of § 41-1304.02.

* § 13-2919. Automated telephone solicitation; violation; classification

A. A person shall not use an automated system for the selection and dialing of telephone numbers and the playing of a recorded message for the purpose of soliciting persons to purchase goods or services or requesting survey information if the results are to be used directly for the purpose of soliciting persons to purchase goods or services.

B. A person who violates this section is guilty of a class 2 misdemeanor.

Added as § 13-2918 by Laws 1986, Ch. 359, § 1. Renumbered as § 13-2919.

1986 Reviser's Note:

Pursuant to authority of § 41-1304.02, this section, added by Laws 1986, Ch. 359, § 1 as § 13-2918, was renumbered as § 13-2919.

Library References

Telecommunications § 361 et seq.
C.J.S. Telegraphs, Telephones, Radio, and Television § 104 et seq.

CHAPTER 30.--EAVESDROPPING AND COMMUNICATIONS

§ 13-3001. Sending threatening or anonymous letter; classification

Library References

Extortion and Threats § 26.

C.J.S. Threats and Unlawful Communications § 12 et seq.

§ 13-3005. Wiretapping and eavesdropping; classification; exception

Notes of Decisions

1. In general

Because defendant had no reasonable expectation of privacy with respect to his conversation with girl friend in police interview room, tape

recording of the conversation by police officers using a listening device did not violate this section prohibiting the recording of conversations. State v. Hauss (App.1984) 142 Ariz. 159, 688 P.2d 1051.

§ 13-3007. Obtaining information by trick, false representation or impersonation from telegraph or telephone company, officer or employee; obtaining access to premises by trick, false representation or impersonation; classification

A person is guilty of a class 2 misdemeanor who:

1. By trick or false representation or impersonation, knowingly obtains from any telegraph or telephone company, or any officer or employee thereof, information concerning identification or location of any wires, cable lines, terminals or other apparatus used in furnishing telegraph or telephone service, or any information concerning any communication passing over telegraph or telephone lines of any such company, or the existence, content or meaning of any record thereof; or

2. By trick or false representation or impersonation, knowingly obtains access to any premises or to installations of any telegraph or telephone company upon such premises. Added as § 13-1054 by Laws 1968, Ch. 126, § 1. Renumbered as § 13-3007 by Laws 1977, Ch. 142, § 93, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 186, eff. Oct. 1, 1978.

§ 13-3010. Ex parte order for wiretapping and eavesdropping

A. An ex parte order for wiretapping or eavesdropping may be issued by any justice of the supreme court, judge of the court of appeals or judge of the superior court upon

Maryland

SENATE BILL No. 29
(81r0035)

Introduced by Senator Wiser 25

Read and Examined by Proofreader: 28

Proofreader. 30
31

Proofreader. 33
34

Sealed with the Great Seal and presented to the Acting 36

Governor, for his approval this _____ day of _____ 38

at _____ o'clock; _____ A. 40

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APPROVED
BY THE GOVERNOR 6

CHAPTER — 22

BY ACT concerning 50

Automated Dialing Systems 53

MAY 16 '78

FOR the purpose of prohibiting the utilization of an 57
automated dialing or push-button or tone-activated 58
address signaling system for the purpose of soliciting 59
customers or sales.

BY adding to 61

Article 78 - Public Service Commission Law 64

Section 55C to be under the new subheading "Telephone 66
Companies"

Annotated Code of Maryland 68

(1975 Replacement Volume and 1977 Supplement) 69

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 73
MARYLAND, That section(s) of the Annotated Code of Maryland 74
be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law 77

TELEPHONE COMPANIES 79

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

55c.

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A PERSON MAY NOT UTILIZE AN AUTOMATED DIALING OR
PUSH-BUTTON OR TONE-ACTIVATED ADDRESS SIGNALING SYSTEM WITH
A PRERECORDED MESSAGE FOR THE SOLE PURPOSE OF SOLICITING
PERSONS TO PURCHASE GOODS OR SERVICES.

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SECTION 2. AND BE IT FURTHER ENACTED, That this Act
shall take effect July 1, 1978.

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Approved:

_____ Acting Governor.

_____ President of the Senate.

_____ Speaker of the House of Delegates.

80.36.380 Reports. Subject to RCW 40.07.040, the commission shall provide the legislature with a biennial report through 1991 on the status of the Washington telecommunications industry. The report shall describe the competitiveness of all markets as defined by the commission; the availability of diverse and affordable telecommunications services to all people of Washington, particularly to customers in rural or sparsely populated areas; and the level of rates for local exchange and interexchange telecommunications service. The report also shall address the quality and extent of the state's telecommunications infrastructure. The report also shall address the question of whether competition in certain markets has developed to such an extent that the commission recommends additional regulatory flexibility such as detariffing or total deregulation and the evidence therefor; and the need for further legislation to achieve the purposes of RCW 80.36.300 through 80.36.370 and 80.04.010. The commission shall also monitor cost of service methodologies and shall recommend to the legislature whether cost of service ratemaking shall become a standard for telecommunications services. [1987 c 505 § 78; 1987 c 293 § 6; 1985 c 450 § 41.]

Reviser's note: This section was amended by 1987 c 293 § 6 and by 1987 c 505 § 78, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

80.36.390 Telephone solicitation. (1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or non-profit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this section, an organization as defined in RCW 29.01.090 or 29.01.100 and organized pursuant to RCW 29.42.010 shall not be considered a commercial or non-profit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

(3) If, at any time during the telephone contact, the called party states or indicates that he or she does not wish to be called again by the company or organization or wants to have his or her name and individual telephone number removed from the telephone lists used by the company or organization making the telephone solicitation, then:

(a) The company or organization shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The company or organization shall not sell or give the called party's name and telephone number to another company or organization. *Provided*, That the company or organization may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(4) A violation of subsection (2) or (3) of this section is punishable by a fine of up to one thousand dollars for each violation.

(5) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated.

(6) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

(7) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories. [1987 c 229 § 13; 1986 c 277 § 2.]

Legislative finding—1986 c 277: "The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere with the legitimate privacy rights of the citizens of the state. A study conducted by the utilities and transportation commission, as directed by the forty-ninth legislature, has found that the level of telephone solicitation in this state is significant to warrant regulatory action to protect the privacy rights of the citizens of the state. It is the intent of the legislature to clarify and establish the rights of individuals to reject unwanted telephone solicitations." [1986 c 277 § 1.]

Charitable solicitations: Chapter 19.09 RCW

80.36.400 Automatic dialing and announcing devices—Commercial solicitation by. (1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices. [1986 c 281 § 2.]

Legislative finding—1986 c 281: "The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation." [1986 c 281 § 1.]

80.36.410 Lifeline service—Legislative finding. (Effective until June 30, 1990.) The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service. Therefore, the legislature finds that it is in the public interest to take steps to mitigate the effects of these changes on low-income persons. [1987 c 229 § 3.]

Expiration date—1987 c 229 §§ 3-10: "RCW 80.36.410 through 80.36.480 shall expire June 30, 1990, unless extended by the legislature." [1987 c 229 § 12.]

80.36.420 Lifeline service—Availability, components. (Effective until June 30, 1990.) Lifeline assistance shall be available to participants of department programs set forth in RCW 80.36.470. Lifeline assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate lifeline service rate for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single lifeline service rate for all local exchange companies operating in the state of Washington. The lifeline service rate shall include any federal end user access charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the lifeline service rate, consider all charges for local exchange service, including federal end user access charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The lifeline service rate shall only be available to eligible customers subscribing to the lowest available local exchange flat rate service, where the lowest local exchange flat rate, including any federal end user access charges and any other charges necessary to obtain local exchange service, is greater than the lifeline service rate.

(d) The cost of providing the lifeline service shall be paid, to the maximum extent possible, by a waiver of all or part of the federal end user access charge and, to the extent necessary, from the lifeline fund created by RCW 80.36.430. [1987 c 229 § 4.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.430 Lifeline service—Surcharge. (Effective until June 30, 1990.) Costs associated with lifeline telephone service shall be recovered through a lifeline surcharge on all other switched access lines. The lifeline surcharge shall be applied equally to all residential and business access lines not to exceed sixteen cents per month. The surcharge collected by the telecommunications companies shall not be construed as gross income or gross receipts for purposes of state, county or municipal public utility taxes. All money collected from the lifeline surcharge shall be transferred to a lifeline fund administered by the department. Local exchange companies shall bill the fund for their expenses incurred in offering lifeline telecommunications services, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department shall recover its administrative costs from the fund. [1987 c 229 § 5.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.440 Lifeline service—Rules. (Effective until June 30, 1990.) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.480. [1987 c 229 § 6.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.450 Lifeline service—Limitation. (Effective until June 30, 1990.) Lifeline service shall be limited to one residential access line per eligible household. [1987 c 229 § 7.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.460 Lifeline service—Deposit waivers, connection fee discounts. (Effective until June 30, 1990.) Local exchange companies shall file tariffs with the commission which waive deposits on local exchange service for eligible subscribers and which establish a fifty percent discount on service connection fees for eligible subscribers. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered

discrimin

REGULATION OF TRADE

REGULATION OF TRADE

134.75
Repealed

1989

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J. 1988] after publication.

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s. (2), (4) and (7) of the
n the first day (March 1,
n beginning after publica-

le or in part, of gold,
state, who obtains, by

marks . . .

urchase or exchange, any secondhand firearm, whether smooth bore, shotgun, rifle or
and gun or any secondhand article made in whole or in part, of gold, silver, precious
stones, copper, lead or brass, shall, within 24 hours after receiving the article, report to
the chief of police or the sheriff of the county the fact that it has been received, with the
time, address and description of the person from whom the article was received, together
with a description of the article and " " shall not destroy or alter the form of the article
until " " 24 hours after it was received " " .

(2) The dealer or manufacturer shall enter, in ink, in a book to be kept for that purpose
a correct description, in the English language, of all secondhand articles composed, in
whole or in part, of gold, silver, precious stones, copper, lead or brass so received " " .
And the name and residence and description of, the person from whom the articles were
received, and no entry made in the book shall be erased, obliterated or defaced.

(3) The book and entries as well as every such secondhand article received by the dealer
or manufacturer, shall, at all reasonable times, be open to the inspection of the sheriff or
the chief of police or any police officer designated by the chief for this purpose.

(4) The sheriff or chief of police may cause any article referred to in sub. (1) which he
or she has reason to believe was sold or exchanged by some person other than the owner,
to be held for the purpose of identification by its owner, for such reasonable length of
time as deemed necessary.

(5) Any person violating this section may be fined not more than \$100 nor less than \$10,
or imprisoned not to exceed 6 months, or both.

See =

- L.1901, c. 372.
- L.1909, c. 210.
- L.1911, c. 663, § 265.
- St.1911, § 1584cn.
- L.1923, c. 291, § 3.
- St.1923, § 129.18.
- L.1935, c. 550, § 387.
- L.1959, c. 145.

- St.1967, § 129.18.
- L.1969, c. 336, § 30, eff. Jan. 29, 1970.
- St.1975, § 440.95.
- L.1977, c. 29, § 1503, eff. July 1, 1977.
- 1985 Act 135, §§ 46 to 49, eff. March 20, 1986.

Library References

- Consumer Credit ☞16.
- C.J.S. Interest and Usury; Consumer Credit
§ 302.



134.72. Prohibition on the use of prerecorded messages in telephone solicitation

(1) Definition. As used in this section "telephone solicitation" means the unsolicited
initiation of a telephone conversation for the purpose of encouraging a person to purchase
property, goods or services.

(2) Prohibition. No person may use an electronically prerecorded message in tele-
phone solicitation without the consent of the person called.

(3) Territorial application. (a) *Intrastate*. This section applies to any intrastate
telephone solicitation.

(b) *Interstate*. This section applies to any interstate telephone solicitation received by
a customer in this state.

(4) Penalty. A person who violates this section may forfeit up to \$500.

Source:

- L.1977, c. 301, § 1, eff. May 12, 1978.

C.J.S. Trade-Marks, Trade-Names, and Unfair
Competition § 237.

Library References

- Trade Regulation ☞62.1.

WESTLAW Electronic Research
See WESTLAW Electronic Research Guide fol-
lowing the Preface.

134.75. Repealed by 1985 Act 120, § 199em, eff. July 1, 1986

The repealed section, relating to renewable
energy resource system dealers, was derived
from 1985 Act 29, § 1888g, etf. July 20, 1985.

Additions in text are indicated by underlining; deletions by asterisks * * *

18-9-311. Automated dialing systems prohibited. (1) No person shall utilize an automated dialing system with a prerecorded message for the purpose of soliciting another person to purchase goods or services unless there is an existing business relationship between such persons, and the person being called then consents to hear the prerecorded message.

(2) Any person who violates this section commits a class 1 petty offense.

Source: L. 79, p. 745, § 1.

18-9-312. Hostages in geographical area - cutting, rerouting, or diversion of telephone lines. (1) Notwithstanding the provisions of sections 18-9-302 to 18-9-311, any supervising representative of a law enforcement agency who has probable cause to believe that one or more hostages are being held in the geographical area in which he has jurisdiction shall have the authority to order a previously designated telephone company security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by the holder of such hostages with any person other than a peace officer or a person authorized by the peace officer.

(2) The serving telephone company within the geographical area of a law enforcement agency shall designate a telephone company security official and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section.

(3) Good faith reliance on an order by any supervising representative of a law enforcement agency shall constitute a complete defense to any action brought against a telephone company or any of its employees or agents in connection with actions taken under this section.

Source: L. 81, p. 976, § 17.

ARTICLE 10

Gambling

Cross references: For the power of municipalities to regulate gambling, see § 31-15-401 (1)(o).

18-10-101.	Legislative declaration - construction.	18-10-105.	Possession of a gambling device or record.
18-10-102.	Definitions.	18-10-106.	Gambling information.
18-10-103.	Gambling - professional gambling - offenses.	18-10-107.	Gambling premises.
18-10-104.	Gambling devices - gambling records - gambling proceeds.	18-10-108.	Exceptions.

18-10-101. Legislative declaration - construction. (1) It is declared to be the policy of the general assembly, recognizing the close relationship between professional gambling and other organized crime, to restrain all persons from seeking profit from gambling activities in this state; to restrain all persons from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses; and at the same time to preserve the freedom



Alaska State Legislature

House

Official Business

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

MEMORANDUM

TO: House State Affairs Committee Members

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

DATE: January 23, 1990

RE: HB 232

You will recall the House State Affairs Committee held two hearings on HB 232 last session. The following summarizes the testimony and comments from those hearings:

Testimony

1. Rick Lauber, Pacific Seafood Processors Association

Stated he received unsolicited Fax advertising which he opposes. His concern, however, related to situations where fish processors sell to brokers by Fax. Would they be violating the provisions in HB 232?

Commercial solicitation under HB-232 means unsolicited electronic or telephone transmission. The process used by Mr. Lauber was unsolicited, however, it seemed appropriate and legitimate.

Companies which have a business relationship with a customer could easily receive the customer's permission to, and in the future, use the customer's Fax for unsolicited advertisements. The real problem was unsolicited, unwanted transmissions and this included automatic dialing machines.

2. Julie Barney, staff New York Assembly

Similar legislation was pending before the New York Assembly. Ms Barney indicated that the costs and losses incurred to the recipient of "junk" Fax transmission was the impetus behind the legislation.

Ms Barney testified that she believed companies which had a business relationship with a customer could easily receive the customer's permission to use the customer's machine for unsolicited advertisements from the company.

3. Anne Darr, Direct Marketing Association (DMA)

Supported HB 232. She testified that DMA deleted any person from the national mailing lists who wished to be removed.

Ms Darr said the DMA had established a special task force look into unsolicited Fax transmissions. She testified that DMA was urging and supporting a regulatory approach to unsolicited Fax transmissions.

4. Luis Marquez, Direct Advertising

Testified against HB 232. Mr. Marquez indicated that his business sent Fax advertising to 2,000 Fax machines throughout Alaska.

Mr. Marquez discussed his policy for Fax transmissions. He stated he did not sell his database list and that he had only received complaints from 1 to 2 percent of his customers. Mr. Marquez indicated he did not believe Fax advertising had become a problem in Alaska.

Mr. Marquez testified he believed the industry should be self-policing.

5. Robert Mintz, Assistant Attorney General

Testified that national studies showed that people generally did not voice their objections to unsolicited transmissions. Those studies showed that only 1 out of 26 dissatisfied customers on average would actually take the time to communicate a complaint to a company.

Mr. Mintz testified that he believed it was better public policy to stop a problem before it became a widespread.

b. Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: Hanson State Affairs

TC DATE/DAY: Thursday April 6

Pub. Hear Work Ses. Inv. Hear

TIME: 8.30-10.00 AM

LEGISLATIVE REFERENCE: HB232/HJR34/HJR35

JUNEAU ROOM: Cap 102

SUBJECT: Prohibit Unsolicited Fax Trans

BRIDGE: _____

State Sovereignty

OF PORTS: _____

Coop w/ Foreign Nations

CONTACT: Dennis PH: 4963

DATE TAKEN/BY: Wendi per Dennis

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

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

- Homer
- Wrangell

See List on Reverse Side

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

↑ HB232
Julie Barney/ny
OFFNETS: 518-455-4881

HJR34/35 } Ed Mendic
Fairbanks

CHAIRING SITE: Juneau

CHAIRPERSON: Boucher

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

SPECIAL INSTRUCTIONS

*
 * DELIVER TO: LTCCJNU
 *
 * ORIGINAL
 * SENT: 04/03/89 TIME: 14:28
 * SUBJECT: TELECONFERENCE 89-04-009
 * PRINT DATE: 04/03/89 TIME: 14:31
 *

TELE# 89-04-009 LEGISLATIVE PUBLIC HEARING
 04/06/89 THURSDAY 8:30AM THRU 10:00AM

SPONSOR : (H) STATE AFFAIRS
 JNU ROOM: CAPITOL ROOM 102

BRIDGE: 562-2867
 PORTS : 5
 CHAIR : REP. ROUCHER
 SITE : JUNEAU

NOTES : OFFNET IS JULIE BARNEY IN NEW YORK AT 510-455-4801.
 CONTACT: DENNIS 465-4963
 TAKEN : LONDI SENT BY: BECKY 4-3-89

===== SUBJECT =====
 HJR 34: CONST. AMENDMENT: STATE SOVEREIGNTY
 HJR 35: COOPERATION WITH FOREIGN NATIONS
 HB 232: PROHIBIT UNSOLICITED FAX TRANSMISSIONS
 ***** TESTIMONY WILL BE TAKEN *****

SITES : *JNU, KOT OFFNET: JULIE BARNEY (N.Y.)

SOLDOTNA
 VALDEZ

CHAIRING SITE: Tunoon
 CHAIRPERSON: Rep. Roucher

[] CONFORMS TO LEGISLATIVE COUNCIL
 POLICY (4/85) AND PUBLIC HEARING LAWS

Dennis Burns 4/3/89
 SIGNATURE OF SPONSOR/CONTACT PERSON DATE

SPECIAL INSTRUCTIONS:

* SPONSOR OR DESIGNEE MUST BE IN ATTENDANCE DURING THE TELECONFERENCE.

TESTIMONY TO BE TAKEN: YES NO INVITATION ONLY

*Will be doing
 other sites
 for HJR 34, 35
 for Dennis
 4/3/89*

*When calling
 Julie Barney in N.Y.
 pls ask if she
 received the material
 that was sent to
 her from [unclear]
 in Rep Edward's office
 via the FBI. Then
 call Dennis & let him know*

b. Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: House State Affairs
 (Pub. Hear) Work Ses. Inv. Hear
 LEGISLATIVE REFERENCE: HB 280
 SUBJECT: Admin Adjudication /
Claims Against State
 CONTACT: Ann PH: 4963

TC DATE/DAY: Tues, Apr 25
 TIME: 8:30-10:00
 JUNEAU ROOM: C-102
 BRIDGE: _____
 # OF PORTS: _____
 DATE TAKEN/BY: Roger 4/20/89

TELECONFERENCE SITES:

- | | | |
|------------------|--------------|--------------|
| <u>LIO'S</u> | <u>LTC'S</u> | <u>VTS'S</u> |
| Anchorage | Homer | See List on |
| Barrow * | Wrangell | Reverse Side |
| Bethel | | |
| Delta Junction * | | |
| Dillingham * | | |
| Fairbanks | | |
| Glennallen * | ALL LIO'S | |
| <u>Juneau</u> | | |
| Ketchikan | | |
| Kodiak | | |
| Kotzebue | | |
| Mat-Su | | |
| Nome | | |
| Petersburg * | | |
| Sitka | | |
| Soldotna | | |
| Valdez * | | |

OTHER SITES WELCOME WITH PRIOR NOTIFICATION



Juneau
Boucher

LEGISLATIVE COUNCIL POLICY 4/85

SPONSOR/CONTACT PERSON _____ DATE _____

907-345-4490
 FAX-345-2363
 BOX 93057
 ANCHORAGE
 9 9 5 0 9

SPECIAL INSTRUCTIONS

HB 280 Greg Edmiston
 OFFNETS: 274-1151 Arch
 1029 W. 3rd Ave, Suite 500
 Anchorage, 99501
HB 280 Luis Marquez
 245-4490
 Robert Mirtz
 276-3550 (DOL)
 Consumer Prot. Section
 1031 W. 4th Ave, Sitka 110
 A/A 99501
HB 280 Harry Blanas
 96 Veco 659-4604
 or Mrs. Blanas 561-8580

* SESSION ONLY

DeHART and DARR
TELECOPIER COVER MEMORANDUM

DATE 4-7-89

- (1) TO: Rep Boucher
(2) COMMENT: re AK HB 232
(3) ADDRESSEE: House State Affairs Committee
(4) ADDRESSEE CITY & STATE: _____
(5) ADDRESSEE FAX: 907 465 2186
(6) CONFIRMATION TELEPHONE: _____
(7) TOTAL NUMBER OF PAGES: 4 INCLUDING COVER MEMORANDUM
(8) FROM: Anne Darr

McLEAN OFFICE

1360 Beverly Road
Suite #201
McLean, VA 22101
Main Phone: 703/448-1000
FAX No.: 703/790-3460

as promised

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE AT THE CONFIRMATION TELEPHONE.

WE ARE TRANSMITTING FROM A SHARP

MODEL NO. FO-640

OPERATOR: _____ TIME: _____

TRANSMISSION CONFIRMED: [] TRANSMISSION CONFIRMED: [] TIME: _____

CF _____

ISS _____

S _____

JN _____

DeHart and Darr

Comments prepared by Anne Darr

DeHart and Darr Associates, Inc has represented the direct marketing industry in the state legislatures for twenty years.

On behalf of the Direct Marketing Association (DMA) we thank Chairman Boucher and each member of the State Affairs Committee for the opportunity to share our views with you regarding House Bill 232.

The members of DMA bring you goods and services, manufactured and offered by others, through direct mail advertising and telecommunications.

We have 3,000 companies nationwide and we employ millions of Americans.

We make it possible for any American, including the elderly and the handicapped, to live alone, in rural or metropolitan areas, and have access to goods and services by phone and by mail. Maybe in the future -- by fax.

As an industry, the DMA has been particularly responsive to consumer needs as well as to those of our member companies. DMA and its president, Jonah Gitlitz, believe in being responsible, ethical, and helpful business people.

For example,

1. DMA instituted the Mail Preference Service (MPS) in 1971. This means that any American can send his/her name and address to MPS and be deleted from national mailing lists. It is interesting to note that more people have asked to get ON lists than to get off.
2. DMA instituted the Telephone Preference Service (TPS) in 1978. This means that any person can send his/her telephone number to TPS and be deleted from national telephone calling lists.

We have not taken any steps regarding facsimile transmission as yet. That is because it is so new and such an exploding and innovative communication channel, that we have not been able to develop a responsible position as yet. We have been able to identify only a few examples of marketers using fax at this time.

DMA does plan to review the fax issue during 1989 -- so that we can report to you, our lawmakers, what we have learned and what we recommend.

In the meantime, we urge restraint in your approach -- in the approach of any state legislature.

FAX may turn out to be the best and the most efficient way to do business ---
or it may turn out to be the the worst!

Until we can determine together who is using fax and who might use fax, we urge
you to REGULATE, not ban.

DMA's proposal at this time is this:

1. prohibit fax UNLESS
 - a. it is between two persons or entities who have a previous relationship
 - OR
 - b. the fax connection occurs between the hours of 6 pm and 9 am, local time
- AND
- c. any faxor agrees, and indeed establishes an inhouse system and procedure, to delete the name of any faxee, upon request.

DMA believes this solves your problem to curb any runaway abuses and gives you a
vehicle to amend when more facts about FAX are available.

Finally, we would like to mention that the exploding technological aspects of
facsimile should not be ignored.

1. "regular" paper is now available
2. a new "gizmo" is on the market this month which enables anyone with a
fax to attach it and this means that any other person desiring to fax
to him or her will need an "access" number

Sometimes, 50% of a problem solves itself as the invention is perfected.

Thank you for the opportunity to communicate with the Alaska legislature!

If you have further questions, please contact Margaret Gottlieb
Director of State Legislative Affairs
Direct Marketing Association (DMA)
(in Washington)
at 202 347 1222

#



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

TO: Julie Barney
(518) 455-4380 FAX

FROM: Dennis J. Burns
(907) 465-2186 FAX

DATE: April 21, 1989

Attached FYI transcript APSC meeting in Cordova.

Regarding the FAX legislation, do you have statistics/data showing frequency of consumer complaints for both FAX and automatic dialing-announcing devices? If so, could you send that information?

Joint interim task force on Telecomm.
Environment and energy comm. (503) 378-8828

(503) 378-5183 Kathryn

Someone brought article about potential abuses.
Dead Bill in House.

Senate Cheri Cappelard 378-5781

Anticipated
Jam up lines / Business competition.

Frequency of complaints Basic telephone situation.
unsolicited tele + Fax.

Rob
Mintz St. Consumer 279-0428

or
Sally
Whitkins

Mike McCarty
Telemarketing Task Force - (202) 326-3303

Sarah Cooper (202) - 639-8140

AS. 45.50.472

Number 294

LUIS MARQUEZ, FAX Direct Advertising, ANCHORAGE, spoke against HB 232. He discussed his business venture, which sent fax advertising to a data base of 2,000 fax machines throughout Alaska. He discussed his policy for fax transmissions, the process he used when faxing advertising, and the positive aspects of this type of business. He said that he did not sell his data base list, and that he had only received complaints from 1-2% of his data base, which he then removed from his list. Mr. Marquez did not think that faxing advertising had become a problem in Alaska. He talked about the negative ramifications of HB 232 to his business.

Number 398

Rep. Finkelstein commented that he was concerned with the number of people who could begin operating this type of business in the future. He said he believed in preventative legislation before a problem got out of hand.

Number 410

Mr. Marquez remarked that only two companies from Alaska would be sending faxes to the Lower 48, and perhaps only on a once-a-month type basis. He said that his list received something from him once or twice a week, at the most. He commented this was important for his target marketing. Mr. Marquez stated that he believed the provisions in HB 232 should be a self-policing action by the industry, not a statute by the state.

Number 433

ROBERT MINTZ, Assistant Attorney General, Consumer Protection Agency, Department of Law, ANCHORAGE, spoke in support of HB 232. He said that national studies showed that for every complaint made to a company, 26 people were dissatisfied but did not voice their complaint. He said if this were applied to Mr. Marquez' testimony, it would mean more people were unhappy with the service than were coming forward to say so. Mr. Mintz said that some people used their fax machines at night, and there was a direct cost to the recipient of a junk fax. He discussed the use of fax versus the use of a telephone or mail system. Mr. Mintz discussed the legislation being proposed in other states.

Number 481

Mr. Marquez restated that a fax transmittal was a phone call, and a fax transmission via phone line and a phone call were one and the same. He talked about the negative

aspects of banning the use of fax machines. He proposed a that there be a study of this issue in Alaska for at least a year.

Number 495

Mr. Mintz added that he agreed there appeared to be a wide use of fax advertising. He said that he believed it was better public policy to stop a problem before it became a widespread problem. He talked about the negative perception of unsolicited ads, either by mail, telephone or fax machine.

Number 513

Mr. Marquez said that he did not believe his business was tying up a person's time, because a machine was being used after hours.

Number 526

Rep. Finkelstein asked Mr. Mintz to explain the perception of the number of complaints and how it was interpreted by some to be a larger group.

Number 531

Mr. Mintz restated that, in a number of studies done in the past, it was the perception that consumer behavior showed that only 1 out of 26 dissatisfied customers on average would actually take the time to communicate a complaint to a company.

Number 542

Rep. Finkelstein asked Mr. Mintz what the level of funding was in the proposed House budget for consumer protection.

Number 547

Mr. Mintz said that he believed it was essentially the same as the current fiscal year, which was \$324,000.

Number 549

Rep. Finkelstein asked Mr. Mintz, in the area of unsolicited advertising, did Mr. Mintz feel that his division was able to follow up on complaints in that area, or would those complaints have to be dropped because of lack of staff.

Number 554

Mr. Mintz said that the area of complaint mediation had

been cut by over 80% the last few years because of elimination of those offices in Anchorage and Juneau. He said that the division was more directed towards law enforcement action in selected cases.

Number 569

Chairperson Boucher noted that HB 232 would be held over for further discussion at a time unspecified.

Chairperson Boucher recessed the meeting at 10:02 a.m. until a call of the chair. The meeting was called back to order at 12:03 p.m. by Chairperson Boucher.

Number 584

Chairperson Boucher read SB 144.

Number 591

MILTON LENTZ, Chief Right-of-Way of Land Acquisitions for the Department of Transportation/Public Facilities (DOT/PF), JUNEAU, spoke in support of SB 144. He explained that SB 144 would change Title 34, Chapter 60, of the relocation assistance act to conform with the 1987 amendments of the Service Transportation Uniform Relocation Act. He discussed the technical changes made by Congress in 1987. Mr. Lentz talked about the zero fiscal note, but noted that the program would cost the federal government about \$50,000 per year to meet these new requirements. He said that the cost would be spread over \$180 million and would be nominal. He noted that the changes in the statute included the minimums changing to maximums and the benefit amounts. He gave examples of these changes.

Rep. Hanley asked if SB 144 included changes for businesses.

Number 641

Mr. Lentz talked about the payments that would apply to businesses going out of business that could not be relocated, or businesses held in lieu. Mr. Lentz said that the DOT/PF already used the particular process as set out in SB 144 on federal aid projects by statutory authority of federal requirements.

Rep. MacLean moved that SB 144 pass out of committee with individual recommendations. There being no objection, SB 144 passed: 3 DO PASS, 1 NO RECOMMENDATION.

There being no further business, the meeting was adjourned at 12:09 p.m.

Number 423

Rep. Boucher indicated that he would be pleased to have additional co-sponsors for both resolutions.

Number 445

Rep. Boucher read HB 232.

Number 455

BOB HERRON, Legislative Aide to Rep. Hoffman, JUNEAU, spoke as the sponsor of HB 232. He explained HB 232, and noted that there were currently no laws in any state that dealt with this issue. He added that there were five states that were considering legislation at this time.

Number 474

Rep. Hanley said that she had reviewed this issue and that she appreciated the foresight of Rep. Hoffman for introducing HB 232.

Number 479

Rep. MacLean asked if HB 232 provided for solicitation only, that it did not include ordering or purchase of goods via facsimile.

Number 483

Mr. Herron said that HB 232 was intended to limit unsolicited "junk" Fax transmissions; it was not intended to preclude businesses from conducting affairs necessary to operate with their clients and customers. He noted that this issue was very new. Mr. Herron said HB 232 was a right to privacy versus freedom of speech issue.

Number 516

RICK LAUBER, Pacific Seafood Processors Association, (PSPA) JUNEAU, was neutral regarding HB 232. He said that he received unsolicited Fax advertising, which he opposed. He discussed the difference between unsolicited mail and unsolicited Fax transmissions. Mr. Lauber noted that PSPA used the facsimile machine for several purposes, from signing orders to communicating with their operations throughout Alaska, as well as offering product to their customers. Mr. Lauber was concerned that a fish processor selling to brokers via Fax machine would be harassed under the provisions of HB 232. He said that if this concern could not be addressed in HB 232, he would rather have HB 232 pass as it was and they (the processors) would run the risk of complaints being filed against PSPA's members.

Number 542

Rep. Hanley asked if PSPA used the Fax transmissions for their orders or for product sales.

Number 545

Mr. Lauber clarified that they used the Fax to solicit orders and sales. He explained the process they used with sales, orders, final contracts, and the Fax machine.

Number 559

Rep. Hanley clarified that commercial solicitation meant unsolicited electronic or telephone transmission. She concurred that the process used by Mr. Lauber was unsolicited, yet that it seemed appropriate and legitimate. She was concerned if this activity was covered or if it was prohibited under HB 232.

Number 564

Mr. Lauber said that it was almost as though one who was in the business of brokering, there could be an implication that there was consent to be solicited. He noted several different arguments related to this issue and other industries.

Number 599

JULIE BARNEY, NEW YORK, spoke in support of HB 232. She noted that the New York assembly had drafted similar legislation to HB 232. She discussed the reasons this issue was addressed in New York, and the costs and losses that could be incurred to the recipient of "junk" Fax transmissions. She noted the potential problems of companies which provided private Fax numbers to businesses for unsolicited transmissions.

Number 626

Mr. Herron concurred with Ms. Barney's remarks that this problem had not hit Alaska yet, but that the industry needed to be aware of the possible abuse and consequences of abuse of the Fax transmission system.

Number 632

Rep. Boucher discussed his experience with computer networking and the growth of the telecommunications industry. He noted that there needed to be a balance with electronic media and the right to privacy.

TAPE 50, SIDE B
Number 005

Ms. Barney commented that she believed HB 232 was heading in the right direction, because it prohibited the unsolicited transmission of facsimiles. She said she believed that companies which had a business relationship with a customer could easily receive the customer's permission to, in the future, use the customer's machine for unsolicited advertisements from the company. She noted that the real problem was unsolicited, unwanted transmissions. She commented on automatic dialing machines and about the legislation that was enacted in New York last year.

Number -043

Rep. Boucher said he would like to see the New York legislation that dealt with automatic dialing machines.

Number 053

ANNE DARR, Direct Marketing Association (DMA), VIRGINIA, spoke in support of HB 232. She explained the purpose and membership of DMA, and the Mail Preference Service (MPS) began by DMA. She said MPS deleted any person in America from the national mailing lists. She noted that the Telephone Preference Service (TPS) was instituted in 1978 which did the same service as MPS, only with telephone numbers. She said that DMA had not taken any steps regarding facsimile transmissions. Ms. Darr said DMA had established a special task force to look into Fax transmission abuses, and said they hoped to have a report available at the end of 1989. She said DMA was urging and supporting a regulatory approach to unsolicited facsimile transmissions. She discussed the regulatory proposal. She also discussed the rapid changes occurring in the Fax industry.

Number 143

Rep. Boucher asked Ms. Darr about "Mr. Fax" from California.

Number 150

Ms. Darr said that Mr. Fax was a member of DMA. She said that Mr. Fax faxed during nighttime hours a one-page solicitation about a special purchase of facsimile paper.

Number 158

Rep. Boucher exchanged Fax numbers with Ms. Barney and Ms. Darr. He asked for their numbers so they could transmit information about this issue.

Number 269

Rep. Boucher noted that there would be amendments offered for HB 232, and he assigned HB 232 to a subcommittee. He assigned Rep. MacLean to chair the subcommittee. He will assign others in the future.

#HB 45

Number 298

Rep. Boucher read SSHB 45.

Number 304

LISA MCLAREN, Legislative Aide for Rep. Koponen, JUNEAU, spoke as the sponsor of SSHB 45. She read the sponsor's statement from Rep. Koponen (Item 3 in committee bill packets).

Number 328

SALLY SMITH, Division of Retirement and Benefits, JUNEAU, spoke to SSHB 45. She noted that there would be a small fiscal impact because there were only two people who qualified for the provisions of SSHB 45. She noted that the only thing that would be out of sync would be the two people in the system that were vested with only three years.

Number 338

Rep. Spohnholz asked how many years state employees needed to vest.

Number 341

Ms. Smith said that state employees eligible for Public Employees Retirement System (PERS) needed five years to vest. Ms. Smith clarified that if SSHB 45 said "five years" instead of "three," the two people would not be allowed benefits as they would not be vested in the program. She noted that the two people each had a total aggregate of three year's service.

Number 346

Ms. McLaren said that Rep. Koponen would not have a problem with a provision that allowed the provision of SSHB 45 to be taken off the books after a particular date.

Item 7

§ 45.50.460

§ 45.50.470

TRADE AND COMMERCE

§ 45.50.471

Sec. 45.50.470. [Repealed, § 1 ch 246 SLA 1970.]

ight law. [Re-

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the Unfair Trade
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Nos. 4109, 4165),

le to sale of real
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property; rather,
article is directed
of relating to
consumer goods
irst Nat'l Bank,
(File Nos. 5006,
82).

p. v. Reichhold
o. No. 2730 (File
1273 (1983);
is E. Wagner,
o. No. 2747 (File
2d 455 (1983).

ction acts. 18

Sec. 45.50.471. Unlawful acts and practices. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting

out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 — 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of that person's estate; upon demand by the person on whose

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behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 — 45.50.850);

(26) failing to comply with AS 45.30 relating to mobile home warranties and mobile home parks;

(27) failing to comply with AS 14.48.060(b)(13);

(28) dealing in hearing aids and failing to comply with AS 08.55.

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) [Repealed, § 21 ch 166 SLA 1978.] (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978; am § 5 ch 15 SLA 1986; am § 5 ch 64 SLA 1986; am § 12 ch 131 SLA 1986)

Revisor's notes. — Paragraph (b)(24) was enacted as (b)(23) and paragraph (b)(25) was enacted as (b)(22). Renumbered in 1976.

Paragraph (b)(28) was enacted as (b)(27). Renumbered in 1986.

Effect of amendments. — The first 1986 amendment added paragraph (26) of subsection (b).

The second 1986 amendment added paragraph (27) of subsection (b).

The third 1986 amendment added paragraph (28) of subsection (b).

Legislative history reports. — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 252), see 1970 House Journal Supplement 10, following p. 743 of the 1970 House Journal; for report of the conference committee, see either 1970 House Journal, p. 1546, or 1970 Senate Journal, p. 1296.

NOTES TO DECISIONS

This statute did not chill constitutionally protected speech, where the speech in question involved communications regarding alleged debts and thus fell within the rubric of commercial speech, which enjoys a lesser first amendment protection than noncommercial speech. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Subsection (a) not vague. — The words of subsection (a) of this section have a "well-defined" meaning in the area of trade regulation and are therefore not vague. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Two elements must be proved to establish a prima facie case of unfair or deceptive acts or practices under the act: (1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

When act or practice is deceptive or unfair. — An act or practice is deceptive or unfair if it has the capacity or tendency to deceive. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Actual injury as a result of the deception is not required. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Intent to deceive need not be proved. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Testimony of consumers that they were misled is sufficient to sustain a prima facie case of unfair and deceptive practices. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Prima facie case. — In a consumer protection action, a prima facie case is presented when the plaintiff establishes that the defendant engaged in trade or commerce and in the course of that business committed an unfair act or practice. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

An act or practice need not be deceptive to be unfair. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Unfairness will be determined by a variety of factors, including: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers or competitors or other businessmen. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Similarity to federal law. — The prohibition in this section against "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce" is substantially similar to that contained in section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Vandalizing a customer's property is an unfair trade act within the meaning of this section. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Deceptive and unfair acts by collec-

tion agencies. — Threats by debt collection agencies of imminent legal action when no such action is actually contemplated is a deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Harassment of debtors by telephone calls to them, their relatives or their employers constitutes an unfair act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

A misrepresentation by a debt collection agency that failure to pay an alleged debt will result in impairment of one's credit rating has been held to be an unfair and deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

The use by collection agencies of simulated legal documents or collection forms labelled "Final Demand Before Legal Action" when no legal action is in fact taken constitutes a deceptive act. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Investigation of acts violating both this article and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561 would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to AS 45.50.495 would be appropriate. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is Alaska's equivalent of the Sherman Act, 15 U.S.C. § 1 et seq., it was appropriate for the state to investigate as well the possible violation of this section which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

§ 45.50.471

§ 45.50.472

TRADE AND COMMERCE

§ 45.50.481

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Quoted in Swenson Trucking & Exca-
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1113 (1980).

Cited in O'Neill Investigations, Inc. v.
Illinois Employers Ins., Sup. Ct. Op. No.
2444 (File No. 4429), 636 P.2d 1170
(1981).

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File Nos. 4162,
980).

Collateral references. — 32 Am. Jur.
2d, False Pretenses, § 1 et seq.; 37 Am.
Jur. 2d, Fraud and Deceit, § 41 et seq. 35
C.J.S. False Pretenses § 14; 37 C.J.S.
Fraud § 154; 37 C.J.S. Fraudulent Con-
veyances § 469.

vertising or sales practices. 50 ALR3d
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practice. State v.
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9, 4165), 609 P.2d

Validity, construction, and effect of
state legislation regulating or controlling
"bait-and-switch" or "disparagement" ad-

Scope and exemptions of state deceptive
trade practice and consumer protection
acts. 89 ALR3d 399.

Practices forbidden by state deceptive
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acts. 89 ALR3d 449.

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Sec. 45.50.472. Junk telephone calls. (a) Making a junk tele-
phone call without the prior written consent of the person called is
unlawful.

(b) In this section "junk telephone call" means a telephone call
made for the purpose of advertising through the use of a recorded
advertisement.

(c) The provisions of AS 45.50.481 — 45.50.561 apply to this sec-
tion. (§ 1 ch 17 SLA 1978)

Sec. 45.50.480. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.481. Exemptions. Nothing in AS 45.50.471 —
45.50.561 applies to

(1) an act or transaction regulated under laws administered by the
state, by a regulatory board or commission except as provided by AS
45.50.471(b)(27), or officer acting under statutory authority of the
state or of the United States, unless the law regulating the act or
transaction does not prohibit the practices declared unlawful in AS
45.50.471;

(2) an act done by the publisher, owner, agent, or employee of a
newspaper, periodical or radio or television station in the publication
or dissemination of an advertisement, when the owner, agent or em-
ployee did not have knowledge of the false, misleading or deceptive
character of the advertisement or did not have a direct financial inter-
est in the sale or distribution of the advertised product or service;

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or a
regulation adopted under the authority of those chapters. (§ 2 ch 246
SLA 1970; am §§ 2, 3 ch 53 SLA 1974; am § 6 ch 64 SLA 1986)

Effect of amendments. — The 1986
amendment in paragraph (1) substituted
"a" for "any" preceding "regulatory board"
and inserted "except as provided by AS

45.50.471(b)(27)" and in paragraph (3)
substituted "a regulation adopted" for
"any regulations promulgated" and in-
serted "the" preceding "authority"

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4640, 4641), 620

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C. 41 et seq.
State, Sup. Ct.
4640, 4641), 620

NOTES TO DECISIONS

Applicability of paragraph (1) exemption. — Paragraph (1) of this section exempts only those acts or transactions which are the subject of ongoing, careful regulation. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Unfair acts or practices are exempt under paragraph (1) of this section only where the business is both regulated and unfair acts and practices are prohibited. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

The exemption contained in paragraph (1) of this section was not intended to apply to acts proscribed by the Alaska Restraint of Trade Act, AS 45.50.562 — 45.50.596. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the Restraint of Trade Act, AS 45.50.562 — 45.50.596, does not regulate the dairy industry within the meaning of paragraph (1) of this section, the exemp-

tion does not apply. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Mere regulation under a separate and distinct statutory scheme satisfies only one prong of paragraph (1) of this section; unfair acts and practices are exempt from the purview of the act only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

This article embraces independent debt collection practices. — See note under this catchline following the article analysis.

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Collateral references. — Scope and exemptions of state deceptive trade prac-

tice and consumer protection acts. 89 ALR3d 399.

Sec. 45.50.490. [Repealed, § 1 ch 245 SLA 1970.]

Sec. 45.50.491. Regulations. The attorney general, in accordance with the Administrative Procedure Act (AS 44.62), may adopt regulations interpreting and forms necessary for administering the provisions of AS 45.50.471 — 45.50.561. (§ 2 ch 246 SLA 1970; am § 4 ch 53 SLA 1974)

Sec. 45.50.495. Investigative power of attorney general. (a) If the attorney general has cause to believe that a person has engaged in, is engaging in or is about to engage in, a deceptive trade practice under AS 45.50.471, the attorney general may

(1) request the person to file a statement or report in writing, under oath, on forms prescribed by the attorney general, setting out all facts and circumstances concerning the sale or advertisement of property by the person, and other information considered necessary;

(2) examine under oath any person in connection with the sale or advertisement of property;

(3) examine property or sample of the property, record, book, document, account or paper that the attorney general considers necessary;

Matanuska Maid, Inc. 2223 (File Nos. 4640, 4641) (1980).
 See also a separate scheme satisfies paragraph (1) of this section. Practices are excluded from the act only if regulated elsewhere and practices are not in violation of the act. See *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2053 (1980), 609 P.2d 520.

See also independent acts. — See note regarding the article.

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See also following *State v. First Nat'l Bank*, 1591 (File Nos. 4640, 4641) (1982).

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See also general. (a) If a person has engaged in a trade practice

See also relating, under the act, to all facts of property interest; the sale or

See also book, documents necessary;

(4) make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection which may be offered in evidence in place of the originals in actions brought under AS 45.50.471 — 45.50.561; and

(5) under an order of the superior court, impound samples of property which are material to the investigation and retain the sample until proceedings undertaken under AS 45.50.471 — 45.50.561 are completed.

(b) The attorney general, in addition to other powers conferred by this section, may issue subpoenas to require the attendance of witnesses or the production of documents or other physical evidence, administer oaths, and conduct hearings to aid an investigation or inquiry. Service of an order or subpoena shall be made in the same manner as a summons in a civil action in the superior court. (§ 5 ch 53 SLA 1974)

NOTES TO DECISIONS

Investigation of acts violating both article 3 and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561, would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to this section would be appropriate. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is

Alaska's equivalent of the Sherman Act, it was appropriate for the state to investigate as well the possible violation of AS 45.50.471, which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

The state cannot be expected to know with certainty the exact nature of a suspected violation. This uncertainty is the very reason for conferring precomplaint investigatory authority on the attorney general. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Sec. 45.50.500. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.501. Restraining prohibited acts. (a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in AS 45.50.471, and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has the person's principal place of business in Alaska, or, with the consent of the parties, in any other judicial district in the state.

(b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property.

real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471. (§ 2 ch 246 SLA 1970)

NOTES TO DECISIONS

Article not applicable to sales of real property. — The scope of the consumer protection act does not enlarge to include sales of real property when suit is instituted by the state even though this section contains no limitation to "goods or services" comparable to that in such sections as AS 45.50.561(6) or AS 45.50.-

531(a). *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982). See note from this case following article analysis.

Cited in *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Collateral references. — Validity of express statutory grant of power to state

to seek, or to court to grant, restitution of fruits of consumer fraud. 59 ALR3d 1222.

Sec. 45.50.510. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.511. Assurances of voluntary compliance. In the administration of AS 45.50.471 — 45.50.561, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of AS 45.50.471 — 45.50.561 from a person who has engaged or was about to engage in such an act or practice. The assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has the principal place of business in Alaska. The assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under AS 45.50.501. (§ 2 ch 246 SLA 1970)

Sec. 45.50.521. When information and evidence confidential and nonadmissible. (a) *[Repealed, § 6 ch 53 SLA 1974.]*

(b) Subject to the provisions of AS 45.50.501(a), the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in AS 45.50.471 during an investigation conducted by the attorney general under AS 45.50.471 — 45.50.561, nor are the records of investigation or intelligence information of the attorney general obtained under AS 45.50.471 — 45.50.561 considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy which constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis. (§ 2 ch 246 SLA 1970; am § 6 ch 53 SLA 1974)

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Sec. 45.50.531. Private and class actions. (a) A person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of another person's act or practice declared unlawful by AS 45.50.471, may bring a civil action in the judicial district in which the seller or lessor resides or has the principal place of business or is doing business, to recover actual damages or \$200, whichever is greater. The jury or, if the action is tried without a jury, the judge may, in cases of wilful violation, award up to three times the actual damages sustained, and in all cases the court may provide equitable relief it considers necessary or proper.

(b) A person entitled to bring an action under this section may, after investigation by and approval of the attorney general, if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and if the person adequately represents the similarly situated persons, bring an action on behalf of the person and other similarly injured and situated persons to recover actual damages. A person planning to bring an action under this subsection shall first submit to the attorney general a copy of the proposed complaint, and the person may not file the complaint in court without the attorney general's approval. In an action brought under this subsection, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(c) Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the attorney general.

(d) In an action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney fees and costs.

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471.

(f) A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471.

(g) If the court finds for the defendant in an action brought under this section, it may award the defendant an amount equal to the actual costs and attorney fees the defendant incurred in the defense.

(h) Manufacturers or suppliers of merchandise, the fault of which is the basis for the action under this chapter, are liable for the damages assessed to or suffered by retailers charged under this chapter. (S 2 ch 246 SLA 1970; am s 1 ch 225 SLA 1976)

NOTES TO DECISIONS

Opportunity to cure technical pleading deficiency. — Although defendant is a New Jersey corporation with its principal place of business in Ohio and plaintiffs failed to set forth in their amended complaint the essential allegation that defendant was "doing business" in Alaska within the meaning of subsection (a) of this section, dismissing the claim on the basis of this technicality was inappropriate; leave to amend the complaint should have been granted in order to afford the

plaintiffs the opportunity to cure their technical pleading deficiency. *Shooshanian v. Dennis E. Wagner, Borden, Inc.*, Sup. Ct. Op. No. 2747 (File Nos. 6841, 6874), 672 P.2d 455 (1983).

Applied in *Swenson Trucking & Excavating, Inc. v. Truckweld Equip. Co.*, Sup. Ct. Op. No. 2008 (File No. 4288), 604 P.2d 1113 (1980); *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 66C P.2d 406 (1982).

Collateral references. — Consumer class action based on fraud or misrepresentations. 53 ALR3d 534.

Right to private action under state consumer protection act. 62 ALR3d 169.

Reasonableness of offer of settlement under state deceptive trade practice and consumer protection acts. 90 ALR3d 1350.

Sec. 45.50.541. Nonnegotiability of consumer paper. (a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument or evidence of indebtedness shall have printed on its face the words "consumer paper," and the note, instrument or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument within the meaning of the Uniform Commercial Code (AS 45.01 — AS 45.09).

(b) Notwithstanding the absence of such a notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. An agreement to the contrary has no effect in limiting the rights of a consumer.

(c) The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. (§ 2 ch 246 SLA 1970)

NOTES TO DECISIONS

Stated in *Bendix Home Systems v. Jessop*, Sup. Ct. Op. No. 2503 (File Nos. 6087, 6110), 644 P.2d 843 (1982).

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Sec. 45.50.542. Waiver. A waiver by a consumer of the provisions of AS 45.50.471 — 45.50.561 is contrary to public policy and is unenforceable and void. (§ 7 ch 53 SLA 1974)

Sec. 45.50.545. Interpretation. In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of 15 U.S.C. 45(a)(1) (§ 5(a)(1) of the Federal Trade Commission Act). (§ 8 ch 53 SLA 1974)

NOTES TO DECISIONS

The Federal Fair Debt Practices Act, 15 U.S.C. § 1692 (Supp. 1977), expands already existing Federal Trade Commission jurisdiction over unfair or deceptive acts and practices of collection agencies: it is not written on a clean slate. The Federal Trade Commission's prior exercise of jurisdiction in this area is enti-

led to great weight, and leads to the conclusion that the new act merely supplements the old. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Quoted in *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Sec. 45.50.551. Penalties. (a) A person who violates the terms of an injunction or restraining order issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and the cause shall be continued, and in these cases the attorney general acting in the name of the state may petition for recovery of the penalties.

(b) In an action brought under AS 45.50.501, if the court finds that a person is using or has used an act or practice declared unlawful by AS 45.50.471, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than \$5,000 per violation.

(c) *[Repealed, § 21 ch 166 SLA 1978.]* (§ 2 ch 246 SLA 1970; am § 9 ch 53 SLA 1974; am § 21 ch 166 SLA 1978)

Sec. 45.50.561. Definitions. In AS 45.50.471 — 45.50.561

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault or columbarium, used or intended to be used for the interment of human remains;

(3) "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(4) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(6) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(7) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(8) "fresh" means a condition of food which has never been frozen;

(9) "hearing aid" has the meaning given in AS 08.55.200;

(10) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(11) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard. (§ 2 ch 246 SLA 1970; am § 10 ch 53 SLA 1974; am § 2 ch 138 SLA 1974; am § 13 ch 107 SLA 1984; am § 13 ch 131 SLA 1986)

Revisor's notes. — Reorganized in 1984 and 1986 to alphabetize the defined terms.

amendment added the definition of "cemetery lot."

Effect of amendments. — The 1984

The 1986 amendment added paragraphs (5) and (9).

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BY THE FINANCE COMMITTEE

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HOUSE BILL NO. 249

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 income from the permanent fund."

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

8 * Section 1. AS 37.13.140 is amended to read:

9 Sec. 37.13.140. INCOME. (a) Real [NET] income of the corpora-
10 tion shall be computed annually as of the last day of the fiscal year
11 in accordance with generally accepted accounting principles, excluding
12 ✓ (1) any unrealized gains or losses; and
13 ✓ (2) an amount determined by the corporation to be suffi-
14 cient to offset the effect of inflation on principal of the Alaska
15 permanent fund during that year, as measured by the change in the
16 calendar year average United States consumer price index for all urban
17 consumers, multiplied by the average principal balance of the fund
18 during that year.

19 (b) The amount calculated under (a)(2) of this section shall be
20 treated as a return of capital to the principal of the permanent fund
21 and shall be transferred by the corporation to the principal of the
22 permanent fund.

23 (c) Income available for distribution equals 21 percent of the
24 real [NET] income of the corporation for the last five fiscal years,
25 including the fiscal year just ended, but may not exceed real [NET]
26 income of the corporation for the fiscal year just ended plus the
27 balance in the earnings reserve account described in AS 37.13.145.
28 For years in which real income was not calculated, net income shall be
29 used for purposes of determining the income available for

Dist of
10/20/84
below
10/20/84

?

1 distribution.

2 * Sec. 2. AS 37.13.145 is amended to read:

3 Sec. 37.13.145. DISPOSITION OF INCOME. At the end of each
4 fiscal year, [AN AMOUNT SUFFICIENT TO OFFSET THE EFFECT OF INFLATION
5 ON PRINCIPAL OF THE ALASKA PERMANENT FUND DURING THAT YEAR, AS
6 MEASURED BY THE CHANGE IN THE CALENDAR YEAR AVERAGE UNITED STATES
7 CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS SHALL BE TRANSFERRED FROM
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13 Alaska permanent fund. Money in the earnings reserve account shall be
14 invested in investments authorized under AS 37.13.120. Income from
15 the investment of the earnings reserve account shall be treated as an
16 addition to that account.

17 * Sec. 3. AS 43.23.045(b) is amended to read:

18 (b) Notwithstanding any contrary provision of law, each year the
19 commissioner shall transfer to the dividend fund 50 percent of the
20 income of the Alaska permanent fund earned during the fiscal year
21 ending on June 30 of the current year and available for distribution
22 under AS 37.13.140(c).

23 * Sec. 4. MINIMUM AMOUNT OF DIVIDENDS. If the commissioner of revenue
24 determines that the amount of a permanent fund dividend for a year before
25 1995 will be less than \$750, the commissioner shall notify the Alaska
26 Permanent Fund Corporation. Notwithstanding AS 37.13.145, the corporation
27 shall transfer from the real income calculated under AS 37.13.140 to the
28 dividend fund the amount needed to ensure that the dividend for that year
29 equals \$750. If the amount of real income is insufficient for this pur-

1 pose, the corporation shall transfer from the earnings reserve account the
2 additional amount needed to ensure that the dividend equals \$750, or the
3 balance in the account, whichever is less.

CORRECTION

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

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1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

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1 pose, the corporation shall transfer from the earnings reserve account the
2 additional amount needed to ensure that the dividend equals \$750, or the
3 balance in the account, whichever is less.

PERMANENT FUND EARNINGS AND BALANCE
(Millions of Nominal \$)

FY	PRINCIPAL					PFD FLOOR @ \$750 PER CAP INCOME				Reserves				
	FY Begin Balance	Appro- priations	Dedicated		FY End Balance	NET INCOME MINUS PFD	Net Income	Distributions		Inflation Proofing	Add (Delete)	FY End Balance		
			State Revenues*	Inflation Proofing				Dividends	Per Capita Dividends**					
78			\$54.40	.00	\$54.40		\$1.80							
79	\$54.40		\$84.10	.00	\$138.50		\$8.00							
80	\$138.50		\$344.40	.30	\$483.20		\$32.40	\$11.80		\$.30				
81	\$483.20	\$900.00	\$385.10	.20	\$1,768.50		\$149.90	\$27.50		\$.20	\$58.70	\$58.70		
82	\$1,768.50	\$800.00	\$400.50	.00	\$2,969.00		\$368.40	\$71.10	\$1,000.00		\$185.10	\$243.80		
83	\$2,969.00	\$400.00	\$421.00	231.20	\$4,021.20		\$471.10	\$107.90	\$386.15	\$231.20	\$110.00	\$353.80		
84	\$4,021.20	\$300.00	\$366.20	150.90	\$4,838.30		\$529.50	\$175.00	\$331.29	\$150.90	\$203.00	\$556.80		
85	\$4,838.30	\$300.00	\$368.00	234.60	\$5,740.90		\$657.80	\$217.30	\$404.00	\$234.60	\$205.90	\$762.70		
86	\$5,740.90		\$323.40	216.40	\$6,260.80		\$1,020.90	\$303.40	\$556.26	\$216.40	\$501.10	\$1,264.40		
87	\$6,281.00	\$1,264.00	\$170.60	148.14	\$7,863.86		\$1,068.54	\$390.98	\$708.19	\$148.14	\$529.42	\$529.00		
88	\$7,863.86		\$417.93	302.86	\$8,584.65		\$789.15	\$424.38	\$826.93	\$302.86	\$61.91	\$590.91		
89	\$8,584.65		\$184.00	350.70	\$9,119.35		\$818.26	\$457.20	\$800.60	\$350.70	\$10.36	\$601.28		
90	\$9,119.35		\$190.00		\$9,309.35	\$9.90	\$445.20	\$438.79	\$750.00		\$6.42	\$607.69		
91	\$9,309.35		\$160.90		\$10,038.45	\$68.40	\$454.30	\$447.46	\$750.00		\$6.85	\$614.54		
92	\$10,038.45		\$168.60		\$10,819.45	\$168.80	\$485.60	\$456.34	\$750.00		\$29.26	\$643.80		
93	\$10,819.45		\$171.70		\$11,648.55	\$286.30	\$523.70	\$465.42	\$750.00		\$58.28	\$702.08		
94	\$11,648.55		\$169.80		\$12,521.25	\$260.20	\$569.10	\$474.74	\$750.00		\$94.37	\$796.45		
95	\$12,521.25		\$164.10		\$13,434.05	\$278.80	\$622.40	\$484.28	\$750.00		\$138.12	\$934.56		
96	\$13,434.05		\$161.70		\$14,390.65	\$302.90	\$684.30	\$494.12	\$750.00		\$190.19	\$1,124.75		
97	\$14,390.65		\$160.50		\$15,392.85	\$331.30	\$755.60	\$504.18	\$750.00		\$251.42	\$1,376.17		
98	\$15,392.85		\$157.90		\$16,439.55	\$364.30	\$837.90	\$514.51	\$750.00		\$323.40	\$1,699.56		
99	\$16,439.55		\$151.70		\$17,527.45	\$402.40	\$931.90	\$525.10	\$750.00		\$406.80	\$2,106.36		
0	\$17,527.45		\$147.40		\$18,658.65	\$446.10	\$1,038.90	\$535.94	\$750.00		\$502.96	\$2,609.32		
1	\$18,658.65		\$142.90		\$19,825.65	\$496.90	\$1,168.30	\$547.05	\$750.00		\$621.25	\$3,230.58		
2	\$19,825.65		\$133.90		\$21,021.45	\$555.80	\$1,316.20	\$558.45	\$750.00		\$757.75	\$3,988.33		
3	\$21,021.45		\$127.50		\$22,248.95	\$623.40	\$1,481.40	\$623.40	\$824.30		\$858.00	\$4,846.33		
4	\$22,248.95		\$120.20		\$23,507.25	\$699.90	\$1,660.50	\$699.90	\$908.28		\$960.60	\$5,806.93		
5	\$23,507.25		\$110.50		\$24,793.85	\$785.40	\$1,853.50	\$785.40	\$1,003.23		\$1,068.10	\$6,875.03		
Cumulative Totals						\$3,964.00	\$5,958.93	1,635.30	\$24,793.85	\$6,080.80	\$20,744.55	\$10,741.60	\$17,499.24	\$1,635.30

ASSUMPTIONS:

4.00% Inflation Rate FY 89
9.01% Rate of Return FY 89

6.00% Inflation Rate FY 90
10.00% Rate of Return FY 90

* SOURCE: Alaska Department of Revenue
November 1988

CONSENSUS FORECAST FOR FY 89/90, DOR MID CASE (91-05)
3/22/89-LFD

6.00% Inflation Rate FY 91-05
10.00% Rate of Return FY 91-05

** SOURCE: Population Projections From
Revenue Mid Case Forecast - November 1988

April 3, 1989

Lisa Hochstadt
House State Affairs Committee
P.O. Box V
Juneau, AK 99811

Re: Comments of Sterling Gallagher to the House State Affairs
Committee on the Alaska Permanent Fund

Dear Ms. Hochstadt,

The Alaska Permanent Fund is the linchpin of the State's financial base. The reason for this is that the rating agencies view the Permanent Fund as a general fund State asset. While it is not pledged to any State bonds or State agency bonds, they correctly perceive that if one of the State agencies got into trouble, the State would use the income from the fund to solve the financial problem.

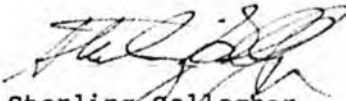
The State has an AA credit rating from both Moodys and Standard and Poors. This is an extremely high credit rating in light of the volatile and single revenue source. Louisiana has been downgraded to a Baa. All other oil states have been downgraded. The only exception is Alaska and the reason for this is the Alaska Permanent Fund. State debt is equal to 4% of the Permanent Fund (\$400 million). The State budget is approximately 23% of the Permanent Fund. The existence of the Permanent Fund also influences several other State financing agencies such as Alaska Housing Finance Corporation and it's \$6 billion assets, Alaska Industrial Economical Development Authority and it's \$1 billion of assets, Alaska Power Authority and its \$1 billion of assets, Alaska Municipal Bond Bank and it's \$100 million assets. The existence of the Permanent Fund also influences the credit rating, though not directly, of the the municipalities. Anchorage, Fairbanks, Juneau, Ketchikan and Kenai which are all A rated securities. These communities received an increase in their credit ratings in the early 1980s after the Permanent Fund became of substantial size. It is viewed by the market that the State cashflows are a major underpinning to these communities.

Several of the State bonding agencies use what is known as the State moral obligation to finance their operations. The moral obligation works by requiring the Governor to introduce a bill into the Legislature for funding certain reserve funds that the particular corporation have been drawn on. No State agency has had to draw on its reserve funds but the market perceives that the Legislature would fund such draws. The only case of such a draw was a case involving New York State and New York City and the Legislature did fund the reserve fund. Alaska Housing Finance Corporation, Alaska Industrial Economic Development Authority, Alaska Municipal Bond Bank, Alaska Power Authority and the Alaska Student Loan Corporation all have used the moral obligation in the past. Alaska Housing Finance Corporation does not currently use the moral obligation.

The moral obligation gives a State agency an automatic credit rating of one full step below the State rating so this insures that all the State agencies have at least A rated bonds. This has created substantial savings in the financing of various projects and has proved a feasibility for many projects.

The impact has been far beyond the \$10 billion of assets strictly involved with the Permanent Fund. It has given every State agency and municipality credit a strong market perception. This cannot be measured in just dollars but it also impacts the feasibility of the projects. The Alaska Permanent Fund has been a great asset in the development of the State in the last 10 years through its credit agencies.

Yours truly,



Sterling Gallagher
Vice President

State Affairs Committee
Alaska House of Representatives
March 15, 1989

Testimony Of

Jack Fargnoli

Chief Analyst
Division of Policy
Office of the Governor

Mr. Chairman, members of the Committee, thank you for the opportunity to testify today on the matter of Permanent Fund modeling. I will keep my remarks brief.

Today's review of Permanent Fund modeling is especially timely because it focuses attention on the fact that the way we look at the Permanent Fund is changing. In the past oil revenue was plentiful, and we had no need to clarify our understanding or our expectations of the Fund. Today, however, both of those needs are great.

Several factors make this so:

- o Given our fiscal and budgetary outlook, the role of the Permanent Fund in the State's fiscal affairs will increasingly be greater, not lesser.
- o Existing statutes already pose a potential conflict insofar as dividends and inflation-proofing increasingly compete for Permanent Fund earnings, rendering problematic any additional use of earnings in the future.
- o As outlined recently by Scott Goldsmith of ISER, the Permanent Fund already may have reached its maximum size in constant-dollar terms.
- o There is as yet little agreement on the fundamental purpose or purposes of the Permanent Fund.

It is in this context of changing needs and unresolved questions that issues about Permanent Fund modeling and projections should be raised.

First, it needs to be said that forecasts and projections of all kinds are essentially ham-handed attempts to grasp the future. We should not rely on, or base fundamental policy decisions on, the appearance of precision in them. What matters is the extent to which they facilitate understanding, the extent to which they improve contingency planning through prediction and the assessment of probabilities, and the extent to which they enable decisions based on the best knowledge and experience available.

Second, it needs to be said that the projections of the Permanent Fund Corporation do not adequately meet any of these standards. The reasons for saying this are as follows:

- o Most importantly, the Corporation's projections are not projections, but rather only a static (and arbitrary) description of what the Permanent Fund's future performance might be, if the Trustees' three percent real rate of return earnings goal were to be achieved. The projections indicate nothing about the likelihood of such an achievement, or about the nature of Fund performance that can actually be expected. Though the projection model is simplistic, and guilty of some methodological inconsistencies, this is its main shortcoming: beyond the current fiscal year, it does not provide a projection.
- o By appearing to provide a projection when in fact it does not, the Permanent Fund's model confounds understanding by promulgating misleading fiscal information, and by creating an unreliable basis for evaluating policy options. Any amount of scenario testing (higher or lower earnings, inflation or dedicated revenue assumptions) quickly reveals how differently such critical factors as reserve account balances, per capita dividend amounts, the growth of principal and conflicts between dividends and inflation-proofing (as well as the interactions among these factors) can appear - - i.e., how extremely sensitive these factors are to input assumptions, and how differently their importance appears under varying scenario assumptions. Lack of a true projection thus complicates any assessment involving the restructuring or augmenting of current Permanent Fund policies.
- o In spite of all the proven investment management knowledge, skills and expertise of the Permanent Fund Corporation, little if any of these resources seem to inform the Corporation's projections. Evidence of this is the fact that (except for those governing the current fiscal year) the model's assumptions, which presumably should reflect the Corporation's informed outlook, have remained exactly the same from month to month for years now, though investment market conditions have continuously changed. The Permanent Fund model thus by no means provides policy makers with the benefit of the Corporation's "best guess" about future Permanent Fund performance.

Overall, therefore, it is not surprising that different modeling techniques including ad hoc procedures have been adopted by various agencies in their efforts to estimate future Fund performance and evaluate a multitude of Permanent Fund proposals. Nor is it surprising that policy makers as well as the general public have been frustrated in their attempts to interpret, compare and reconcile the results of these varying estimates and evaluations.

The bottom line is that a crucial gap exists in our understanding of the Permanent Fund, its expected performance, and the possible long term effects on the Fund of any of a dozen or more major policy and budgetary proposals. The Permanent Fund Corporation is not entirely at fault in all this, because conditions have changed. What sufficed in the past, however, simply will not suffice any longer. We must progress from a state of limited useful information about the Permanent Fund to one that truly supports public decision making.

In view of these factors, the following suggestions are offered for consideration:

- o The Permanent Fund Corporation should make every effort to provide decision makers with a periodically updated projection that truly reflects their reasoned expectations about future events and actual Fund performance.
- o The projection should be more than just a spreadsheet print-out. Like our revised revenue forecast, it might include a narrative explaining the choice of assumptions used in compiling the projection, the sensitivity of key variables, and the market outlook on which the projection is based. In short, the projection should be recast as a tool useful to policy makers.
- o Policy makers should make their needs known, in this regard, to the Permanent Fund Corporation.
- o Technical and methodological inconsistencies in the model developed for the projections should be corrected.
- o The model should be used by other agencies as the basis for their own modeling of Permanent Fund performance and evaluations of Permanent Fund proposals.
- o More oversight of the Permanent Fund is needed.
- o A joint legislative-administration review of the Permanent Fund projection model should be undertaken.

Thank you, Mr. Chairman. I would be happy to answer any questions.

HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HB 249**

Income of Permanent Fund

Received March 23, 1989
by the Finance Committee

Heard April 13, 1989
Heard April 25, 1989

Committee Substitute adopted April 25, 1989

Passed Out of Committee April 25, 1989
3 Do Not Pass
3 No Recommendation

TABLE OF CONTENTS

HB 249: Income of Permanent Fund

- Item 1: HB 249 by The Finance Committee
CSHB 249 (SA)
- Item 2: Fiscal Notes by Department of Revenue
(Permanent Fund Dividend Division and
The Permanent Fund Corporation)
- Item 3: Memorandum from the Alaska Permanent Fund
Corporation, April 7, 1989
- Item 4: Research Request 89.334: The Effect of HB 249
on the Permanent Fund, April 4, 1989
- Item 5: Research Request 89.351: Disposition of
Permanent Fund Income, April 13, 1989

STATE OF ALASKA
THE LEGISLATURE

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Mary Van Nimwegen

HB 249

Name State Affairs 3/15/89

Original sponsor(s): Finance Committee

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA
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15 permanent fund during that year, as measured by the change in the
16 calendar year average United States consumer price index for all urban
17 consumers, multiplied by the average principal balance of the fund
18 during that year.

19 (b) The amount calculated under (a)(2) of this section shall be
20 treated as a return of capital to the principal of the permanent fund
21 and shall be transferred by the corporation to the principal of the
22 permanent fund.

23 (c) For reporting purposes, the corporation may compute net
24 income by any method that accords with generally accepted accounting
25 principles.

26 (d) Income available for distribution equals 21 percent of the
27 real [NET] income of the corporation for the last five fiscal years,
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19 addition to that account.

20 * Sec. 3. AS 43.23.045(b) is amended to read:

21 (b) Notwithstanding any contrary provision of law, each year the
22 Alaska Permanent Fund Corporation [COMMISSIONER] shall transfer to the
23 dividend fund 50 percent of the income of the Alaska permanent fund
24 earned during the fiscal year ending on June 30 of the current year
25 and available for distribution under AS 37.13.140(d). However, income
26 earned on money awarded after trial in State v. Amerada Hess, et al.;
27 1JU-77-847 Civ. (Superior Court, First Judicial District) shall be
28 treated in the same manner as other income of the Alaska permanent
29 fund, except that it is not available for distribution to the dividend

1 fund, and shall be annually deposited into the principal of the Alaska
2 permanent fund. If the commissioner of revenue determines that the
3 amount of a permanent fund dividend will be less than \$873, the com
4 missioner shall notify the corporation. Notwithstanding AS 37.13.145
5 the corporation shall transfer from the real income calculated unde
6 AS 37.13.140 to the dividend fund the amount needed to ensure that the
7 dividend for that year equals \$873. If the amount of real income is
8 insufficient for this purpose, the corporation shall transfer from the
9 earnings reserve account the additional amount needed to ensure that
10 the dividend equals \$873, or the balance in the account, whichever is
11 less.



Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

as of January 31, 1990

GROWTH OF FUND PRINCIPAL						
FY	FY Begin Balance	Appro- priations	Dedicated State Revenues*	Inflation Proofing	FY End Balance	Inflation Proofing Shortfall
78	0		54		54	
79	54		84		139	
80	139		344		493	
81	483	900	385		1,769	
82	1,769	800	400		2,969	
83	2,969	400	421	231	4,021	
84	4,021	300	366	151	4,838	
85	4,838	300	368	235	5,741	
86	5,741		323	216	6,281	
87	6,281	1,264 **	170	148	7,864	
88	7,864		418	303	8,585	
89	8,585		228	360	9,173	
90	9,173		253	446	9,872	
91	9,872		260	500	10,633	
92	10,633		290	539	11,462	
93	11,462		304	581	12,346	
94	12,346		319	625	13,291	
95	13,291		317	673	14,280	
96	14,280		300	722	15,302	
97	15,302		284	772	16,358	
98	16,358		266	825	17,449	
99	17,449		244	879	18,571	
0	18,571		220	934	19,725	
1	19,725		202	991	20,918	
2	20,918		176	1,050	22,144	
3	22,144		158	1,111	23,414	
4	23,414		143	1,174	24,731	
5	24,731		130	1,240	26,101	
Cumulative Totals Projected For FY 1990 - 2005:			3,866	13,062		

USE OF FUND INCOME							
Net Income	Distributions			Reserves		FY	
	Inflation Proofing	Per Capita Dividends	General Dividends*	Add (Delete)	FY End Balance		
2					1	78	
8					7	79	
32		12			12	80	
150		28			59	81	
368		71	\$1,000.00		185	82	
471	231	108	\$386.15	110	110	83	
530	151	175	\$331.29		203	84	
658	235	217	\$404.00		206	85	
1,021	216	303	\$556.26		501	86	
1,069	148	391	\$708.19		529	87	
788	303	424	\$826.93		62	88	
868	360	460	\$873.16	4	44	89	
931	446	479	\$873.00		6	90	
1,003	500	518	\$873.00		(15)	91	
1,075	539	529	\$873.00		7	92	
1,154	581	539	\$873.00		34	93	
1,242	625	550	\$873.00		67	94	
1,337	673	561	\$873.00		103	95	
1,439	722	572	\$873.00		145	96	
1,548	772	584	\$873.00		192	97	
1,665	825	595	\$873.00		245	98	
1,790	879	608	\$873.00		304	99	
1,923	934	620	\$873.00		369	0	
2,066	991	633	\$873.00		441	1	
2,218	1,050	646	\$873.00		522	2	
2,382	1,111	660	\$873.00		611	3	
2,559	1,174	674	\$873.00		711	4	
2,749	1,240	688	\$873.00		822	5	
27,079	13,062	9,454	\$13,968				

ASSUMPTIONS:

	Nominal Returns	Inflation	Real Rates of Return
FY 90:	9.14%	4.80%	4.34%
FY 91:	9.00%	5.00%	4.00%
FY 92-05:	9.00%	5.00%	4.00%

H.B. BILL NO. 249 WITH MID-CASE REVENUE PROJECTIONS

* SOURCE: Dedicated oil revenue estimates are from the Department of Revenue Fall '89 Mid-Case Forecast; population estimates used to calculate per capita dividends are from the Department of Revenue Spring '89 Low-Case Forecast, except FY 90 estimate of 530,000 PFD qualified applicants by DOR Dividend Division. NOTE: The FY 90 per capita PFD calculation assumes (per HB 500) that the following amounts are deducted (in millions): \$3.6 admin costs, \$12.3 hold harmless, \$7.63 to Corrections, and \$7.36 to Public Safety; in addition, it assumes that \$1.5 million is added to the PFD fund from the General Fund (per HB 428).

** The FY 86 Earnings Reserve Account end balance was appropriated by the legislature to the principal of the Permanent Fund effective July 1, 1986.



Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

as of January 31, 1990

GROWTH OF FUND PRINCIPAL						
FY	FY Begin Balance	Appro- priations	Dedicated State Revenues*	Inflation Proofing	FY End Balance	Inflation Proofing Shortfall
78			54		54	
79	54		84		139	
80	139		344		483	
81	483	900	385		1,769	
82	1,769	800	400		2,969	
83	2,969	400	421	231	4,021	
84	4,021	300	366	151	4,838	
85	4,838	300	368	235	5,741	
86	5,741		323	216	6,281	
87	6,281	1,264 **	170	148	7,864	
88	7,864		418	303	8,585	
89	8,585		228	360	9,173	
90	9,173		253	446	9,872	
91	9,872		260	500	10,633	
92	10,633		290	539	11,462	
93	11,462		304	581	12,346	
94	12,346		319	625	13,291	
95	13,291		317	673	14,280	
96	14,280		300	722	15,302	
97	15,302		284	772	16,358	
98	16,358		266	825	17,449	
99	17,449		244	879	18,571	
0	18,571		220	934	19,725	
1	19,725		202	991	20,918	
2	20,918		176	1,050	22,144	
3	22,144		158	1,111	23,414	
4	23,414		143	1,174	24,731	
5	24,731		130	1,240	26,101	
Cumulative Totals Projected For FY 1990 - 2005:			3,866	13,062		

USE OF FUND INCOME							
FY	Net Income	Distributions			Reserves		FY
		Inflation Proofing	Per Capita Dividends*	General Fund	Add (Delete)	FY End Balance	
78	2					1	78
79	8					7	79
80	32		12			12	80
81	150		28			28	81
82	368		71	\$1,000.00		71	82
83	471	231	108	\$386.15	110	110	83
84	530	151	175	\$331.29		203	84
85	658	235	217	\$404.00		206	85
86	1,021	216	303	\$556.26		501	86
87	1,069	148	391	\$708.19		529	87
88	789	303	424	\$826.93		62	88
89	868	360	460	\$873.16		44	89
90	931	448	479	\$873.00		6	90
91	1,003	500	518	\$873.00		(15)	91
92	1,200	539	529	\$873.00		133	92
93	1,302	581	539	\$873.00		183	93
94	1,416	625	550	\$873.00		241	94
95	1,540	673	561	\$873.00		307	95
96	1,676	722	572	\$873.00		382	96
97	1,823	772	584	\$873.00		467	97
98	1,982	825	595	\$873.00		562	98
99	2,155	879	608	\$873.00		669	99
0	2,342	934	620	\$873.00		788	0
1	2,546	991	677	\$937.00		877	1
2	2,762	1,050	746	\$1,015.00		966	2
3	2,992	1,111	822	\$1,100.00		1,058	3
4	3,236	1,174	905	\$1,189.00		1,157	4
5	3,496	1,240	994	\$1,284.00		1,262	5
32,401		13,062	10,297	\$15,128			

ASSUMPTIONS:

	Nominal Returns	Inflation	Real Rates of Return
FY 90:	9.14%	4.80%	4.34%
FY 91:	9.00%	5.00%	4.00%
FY 92-05:	10.00%	5.00%	5.00%

* SOURCE: Dedicated oil revenue estimates are from the Department of Revenue Fall '89 Mid-Case Forecast; population estimates used to calculate per capita dividends are from the Department of Revenue Spring '89 Low-Case Forecast, except FY 90 estimate of 530,000 PFD qualified applicants by DOR Dividend Division. NOTE: The FY 90 per capita PFD calculation assumes (per HB 500) that the following amounts are deducted (in millions): \$3.6 admin costs, \$12.3 hold harmless, \$.763 to Corrections, and \$.736 to Public Safety; in addition, it assumes that \$1.5 million is added to the PFD fund from the General Fund (per HB 428).

** The FY 86 Earnings Reserve Account end balance was appropriated by the legislature to the principal of the Permanent Fund effective July 1, 1986.

BILL NO. 249 WITH MID-CASE REVENUE PROJECTIONS

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 23, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 249

HOUSE BILL NO. 249 [INCOME OF PERMANENT FUND]
 "An Act relating to income from the permanent fund."

RECOMMENDATIONS:

- be replaced with CS HB 249(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 _____
- 2 zero fiscal note DOR
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Wendy Douley</u>	<input checked="" type="checkbox"/>		
<u>"Leave the permanent fund alone"</u>			
<u>Debra Hanley</u>		<input checked="" type="checkbox"/>	
<u>Frank Wenzel</u>		<input checked="" type="checkbox"/>	
<u>David Zuleta</u>		<input checked="" type="checkbox"/>	
<u>Jim Zwacki</u>	<input checked="" type="checkbox"/>		
<u>We have assumed a new commission and the public testimony must be.</u>			
<u>D.O. Goshue</u>	<input checked="" type="checkbox"/>		

D.O. Goshue
 Chairman's Signature

Item 2

STATE OF ALASKA
1989 LEGISLATIVE SESSION

Bill Version: HB 249
Publish Date: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to income from the
permanent fund
Sponsor: Finance Committee
Requestor: State Affairs and Finance

Agency Affected: Department of Revenue
BRU: Alaska Permanent Fund Corporation
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
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
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Jim Kelly Phone: 465-2407
Division: Alaska Permanent Fund Corporation Date: April 12, 1989

Approved by Commissioner: Hugh Malone Date: 4/12/89
Agency: Department of Revenue

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

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to income from the permanent fund
Sponsor: House Finance
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
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-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: This bill would have no effect on the administration of the dividend program.

Prepared By: Kevin Jones Phone: 465-2323
Division: Permanent Fund Dividend Division Date: April 7, 1989
Approved by Commissioner: Hugh Malina Date: 4/13/89
Agency: Revenue

Distribution (by preparer):

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

HB

252

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 252
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An act relating to the taxation of income derived by individuals
Sponsor: Koponen, Spohnholz, Ulmer et.al
Requestor: State Affairs and Finance

Agency Affected: Revenue
BRU: I & E Audit, Administrative Svcs., Commissioner's Office and Treasury
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	892.1	2180.9	2180.9	2180.9	2180.9	2180.9
TRAVEL	46.4	73.5	73.5	73.5	73.5	73.5
CONTRACTUAL	645.8	1415.4	1415.4	1415.4	1415.4	1415.4
SUPPLIES	11.7	37.5	37.5	37.5	37.5	37.5
EQUIPMENT	221.1	289.1	289.1	289.1	289.1	289.1
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	1817.1	3996.4	3996.4	3996.4	3996.4	3996.4

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

REVENUE	Less Than \$125m	Less Than \$250m	Less Than \$250m	Less Than \$250m	Less Than \$250m	Less Than \$250m
----------------	------------------	------------------	------------------	------------------	------------------	------------------

FUNDING: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
GENERAL FUND	1817.1	3996.4	3996.4	3996.4	3996.4	3996.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	1817.1	3996.4	3996.4	3996.4	3996.4	3996.4

POSITIONS:

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
FULL-TIME	34	62	62	62	62	62
PART-TIME	1	2	2	2	2	2
TEMPORARY	0	27	27	27	27	27

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: April 26, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: April 26, 1989

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to the taxation of income derived by individuals
Sponsor: Koponen, Spohnholz, Ulmer et.al
Requestor: State Affairs and Finance

Agency Affected: Revenue
BRU: Income & Excise Audit
Division _____
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	275.7	982.8	982.8	982.8	982.8	982.8
TRAVEL	34.9	64.0	64.0	64.0	64.0	64.0
CONTRACTUAL	158.4	269.6	269.6	269.6	269.6	269.6
SUPPLIES	5.3	18.6	18.6	18.6	18.6	18.6
EQUIPMENT	51.1	130.9	130.9	130.9	130.9	130.9
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	525.4	1465.9	1465.9	1465.9	1465.9	1465.9
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	525.4	1465.9	1465.9	1465.9	1465.9	1465.9
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	525.4	1465.9	1465.9	1465.9	1465.9	1465.9

POSITIONS:

FULL-TIME	13	32	32	32	32	32
PART-TIME	0	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: April 10, 1989

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by preparer):

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

Individual Income Tax
Fiscal Note Analysis

The Income and Excise Audit division has prepared this fiscal note using three broad categories to accomplish administration. The Audit function, Collections and Public Service.

Audit Services Branch

Page 2

ASSUMPTIONS

The Income and Excise Audit Division will administer the individual income tax laws to insure compliance with Alaska Statutes. Although calendar year tax returns will not be due until 1991, a withholding tax system must be in place and operative by January 1, 1990. Additional staff must be hired and fully trained to accomplish the following:

1. Compliance. This function will be accomplished by utilizing both tax examiner and auditor staff. Tax examiners, more typically, will handle desk review and less complex issues. Auditors will complete field audits and deal with more sophisticated and complex tax issues.
2. Appeals Coordination. These positions will be staffed by both tax examiners and auditors depending on the complexity and issues involved.
3. Payroll Withholding. This function will be accomplished by staffing of tax examiners to reconcile employers quarterly withholding, returns, monthly deposits and annual statements. They will maintain and reconcile the employees W-2's to the employers returns.
4. Return Examination and Processing. This function will be completed by clerks and tax examiners. The filed returns will be checked for accuracy and completeness. Payments will be posted to the appropriate returns, and desk reviews will be completed to process the returns. Selected returns will be forwarded to an auditor for examination.
5. Public Education and Staff Training. This function will be performed by audit level staff members. Public education of the individual income tax laws and filing requirements will be accomplished through seminars conducted in various locations throughout the state and by training staff members dealing with the public. Staff training is necessary to maintain a competent level of employee and educate staff to the new and changing tax laws.

A schedule of estimated costs to operate the Audit Division programs are as follows. These costs are based on 1989 dollars and do not attempt to factor in inflation. These estimates are preliminary and presented solely to present to the reader a basic idea of the areas within this division which will be impacted by passage of this legislation.

	<u>FY 90</u>	<u>FY 91</u>
<u>Personal Services</u>		
1 Revenue Auditor IV	41.4	55.2
1 Tax Examiner III	27.3	36.4
1 Tax Examiner II	24.1	32.2
1 Tax Examiner I	21.3	28.4
1 Clerk IV	20.1	26.8
1 Clerk Typist III	19.1	25.4
1 Clerk Typist II	17.9	23.9
2 Revenue Auditor III		96.4
2 Tax Examiner II		64.1
2 Clerk Typist III		50.9
2 Revenue Auditor I		72.8
1 Appeals Officer III		48.2
	<u>\$171.2</u>	<u>\$560.7</u>
<u>Travel and Per Diem</u>		
	<u>\$ 6.5</u>	<u>\$ 14.0</u>
	<u>\$ 6.5*</u>	<u>\$ 14.0</u>
<u>Contractual</u>		
Training	4.0	14.5
Wang Terminals & Software	50.0	99.1
	<u>\$ 54.0</u>	<u>\$113.6</u>

*This figure reflects a one time travel cost for employer training to be conducted in various locations throughout the State in conjunction with the Public Services Division.

A. System Requirements

- | | |
|--|--|
| 1. Technical Analysis | No expenditures |
| 2. Generate Forms | No expenditures |
| 3. Educate and Assist Public | Expenditures covered by regular audit functions |
| 4. Receive Returns | No expenditures |
| 5. Process Cash for Deposit | No expenditures |
| 6. Microfilm Returns | No expenditures |
| 7. Establish Edit Selection Criteria | Expenditures covered by regular audit functions |
| 8. Perform Visual Edit | No expenditures |
| 9. Data Capture Return Information | No expenditures |
| 10. Perform Computer Edit | No expenditures |
| 11. Ensure Compliance with Filing Requirements | No expenditures |
| 12. Establish Refund/Credit to next Program | No expenditures; Expenditures covered by regular audit functions |
| 13. Document Filing or Destruction | No expenditures |
| 14. Perform Office Audit | 7 positions |

a) Personal Service Costs

<u>POSITIONS</u>	<u>RANGE</u>	<u>MONTHLY SALARY</u>	<u>ANNUAL SALARY WITH BENEFITS</u>
Revenue Auditor IV	20	3,564	55,170
Tax Examiner III	14	2,353	36,424
Tax Examiner II	12	2,072	32,075
Tax Examiner I	10	1,835	28,405
Clerk IV	9	1,731	26,796
Clerk Typist III	8	1,631	25,448
Clerk Typist II	7	1,545	<u>23,917</u>
TOTAL PERSONAL SERVICE EXPENDITURES			<u>\$228,235</u>

b) Contractual:	6 terminals, IOP, Memory upgrade, Communications	\$ 50,000
c) Supplies:	miscellaneous	4,500
d) Training		4,000
e) Equipment:	microfilm r/p, printer desks, chairs, etc.	<u>23,000</u>

TOTAL EXPENDITURES \$309,735

15. Perform Field Audit

a) Personal Service Costs

JUNEAU - 3 POSITIONS

<u>POSITIONS</u>	<u>RANGE</u>	<u>MONTHLY SALARY</u>	<u>ANNUAL SALARY WITH BENEFITS</u>
Revenue Auditor III	18	3,113	\$ 48,189
Tax Examiner II	12	2,072	32,075
Clerk Typist III	8	1,631	<u>25,448</u>
TOTAL PERSONAL SERVICE EXPENDITURES			<u>\$105,712</u>

b) Contractual:	3 terminals, Communications	\$ 18,000
c) Supplies:	miscellaneous	2,000
d) Training		3,000
e) Equipment:	desks, chairs, etc.	11,000
f) Travel		<u>5,000</u>

TOTAL EXPENDITURES \$144,712

ANCHORAGE - 4 POSITIONS

a) Personal Service Costs

<u>POSITIONS</u>	<u>RANGE</u>	<u>MONTHLY SALARY</u>	<u>ANNUAL SALARY WITH BENEFITS</u>
Revenue Auditor I	14	2,353	\$ 36,424
Revenue Auditor I	14	2,353	36,424
Revenue Auditor III	18	3,113	48,189
Clerk Typist III	8	1,631	<u>25,448</u>
TOTAL PERSONAL SERVICE EXPENDITURES			<u>\$146,485</u>

b) Contractual: 4 terminals, Communications	\$ 20,500
c) Supplies: miscellaneous	3,500
d) Training	5,000
e) Equipment: desks, chairs, etc.	13,000
f) Travel	<u>6,000</u>

TOTAL EXPENDITURES \$194,485

APPEALS - 2 POSITIONS

a) Personal Service Costs

<u>POSITIONS</u>	<u>RANGE</u>	<u>MONTHLY SALARY</u>	<u>ANNUAL SALARY WITH BENEFITS</u>
Appeals Officer III	18	3,113	\$ 48,189
Tax Examiner II	12	2,072	32,075
TOTAL PERSONAL SERVICE EXPENDITURES			<u>\$ 80,264</u>

b) Contractual: 2 terminals, Communications	\$ 10,625
c) Supplies: miscellaneous	1,000
d) Training	2,500
e) Equipment: desks, chairs, etc.	5,000
f) Travel	<u>3,000</u>

TOTAL EXPENDITURES \$102,389

GRAND TOTAL EXPENDITURES \$751,321

Collections Branch

Page 7

ASSUMPTIONS

1. There are approximately 15,000 employers and 100,000 families which will be required to file under an income tax bill.
2. Withholding will begin January 1, 1990. A significant number of delinquencies on first quarter returns will not appear until June 1, 1990.
3. Individual returns will begin January 15, 1991. A significant number of delinquencies will not appear until July 1, 1991.
4. The Audit Division estimates they will generate 5,000 billings per year. Approximately 10% will be appealed; 30% will be paid; and the remaining 60% (or 3,000 billings) will become delinquent.
5. The average taxpayer case consists of 2.5 billings resulting in 1,200 additional taxpayer cases. Old case work levels will decrease by approximately 100 cases by July 1, 1991.

Current Number of Taxpayer Cases	785
Projected Inventory Decline	<u>(100)</u>
Subtotal	685
Additional Inventory	<u>1,200</u>
Expected Inventory at July 1, 1991	<u>1,885</u>

6. The maximum workable inventory for Tax Collection Specialist and Revenue Enforcement Officer II positions is 120 taxpayer cases. The maximum workable inventory for a Revenue Enforcement Officer III is 70 taxpayer cases. (Please see the attached workload analysis.)
7. The necessary travel by each field Revenue Enforcement Officer will be one week long trip per quarter. Accordingly, travel for each current Revenue Enforcement Officer will increase by one week long trip per quarter.
8. Workstations are currently available for the new position in Juneau and for two of the new positions in Anchorage.

COMPUTATIONS--FY '90Personal Services

1 Revenue Enforcement Officer III (range 18, @ 49.0/year)	16.9
1 Revenue Enforcement Officer II (range 16, @ 42.8/year)	14.8
2 Tax Collection Specialist II (range 12, @ 33.6/year)	23.0
1 Accounting Clerk III (range 10, @ 30.0/year)	<u>10.3</u>

<u>Total FY '90 Personal Services</u>	<u>65.0</u>
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Travel

2 Revenue Enforcement Officers to IRS Phase I training	
Transportation (2 trips @ \$500)	1.0
Per Diem (2 trips X 42 days @ \$80/day)	6.7
3 Revenue Enforcement Officers X 1 trip @ quarter	
Transportation (5 trips @ \$1,000)	3.0
Per Diem (3 trips X 5 days @ \$80/day)	<u>1.2</u>

<u>Total FY '90 Travel</u>	<u>11.9</u>
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Contractual Services

Increased toll costs (5 employees @ \$150/mo)	3.0
Printing for forms, letterhead, etc.	3.0
Increased postage costs	<u>.4</u>

<u>Total FY '90 Contractual Services</u>	<u>6.4</u>
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Commodities

Paper, pens, etc. (5 employees X 1/4 year @ \$250/year)	<u>.3</u>
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<u>Total FY '90 Commodities</u>	<u>.3</u>
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Equipment

2 Workstations for Support Personnel	@ \$5,273.73	10.6
2 Swivel-Tilt Chairs with arms	@ \$ 640.81	1.3
1 File cabinet (5 drawer legal w/lock)	@ \$ 341.35	.3
2 12 digit Desk Calculators (printing)	@ \$ 135.03	.3
3 Wang Computer Terminals	@ \$4,900.00	14.7
3 Okidata u82a Microline Printers	@ \$ 330.00	1.0
2 Telephones	@ \$ 343.00	<u>.7</u>

<u>Total FY '90 Equipment Costs</u>	<u>28.9</u>
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<u>Total FY '90 Costs</u>	<u>112.5</u>
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Computations--FY '91Personal Services

1 Revenue Enforcement Officer IV (range 20, @ 58.8/year)	29.4
2 Tax Collection Specialist II (range 12, @ 34.4/year)	17.2
1 Accounting Clerk III (range 10, @ 30.8/year)	7.7
1 Clerk Typist III (range 8, @ 27.6/year)	6.9
Positions hired during FY '91	<u>195.0</u>

Total FY '91 Personal ServicesTravel

5 Revenue Enforcement Officers X 1 trip @ quarter	
Transportation (20 trips @ \$1,000)	20.0
Per Diem (20 trips X 5 days @ \$80/day)	<u>8.0</u>

Total FY '91 Travel 28.0Contractual Services

Increased toll costs (10 employees @ \$150.00/month)	11.3
Printing for forms, letterhead, etc.	4.0
Increased postage costs (estimated @ \$350.00/month)	<u>4.2</u>

Total FY '91 Contractual Services 19.5

<u>Commodities</u> Paper, pens, etc. (10 employees @ \$250/year)	<u>1.6</u>
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Equipment

5 Workstations for Support Personnel @ \$5,273.73	26.4
5 Swivel-Tilt Chairs with arms @ \$ 640.81	3.2
2 File cabinets (5 drawer legal w/lock) @ \$ 341.35	.7
5 12 digit Desk Calculators (printing) @ \$ 135.03	.7
3 Wang Computer Terminals @ \$4,900.00	14.7
1 Okidata u82 Microline Printers @ \$ 330.00	.3
5 Telephones @ \$ 343.00	<u>1.7</u>

Total FY '91 Equipment Costs 47.7

<u>Total FY '91 Costs</u>	<u>\$353.0</u>
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Public Services Branch

Page 10

ASSUMPTIONS

1. Regulations will be promulgated requiring monthly or quarterly reporting of taxes withheld on wages.
2. Approximately 17,500 withholding reports and 275,000 annual individual income tax returns will need processing.
3. Public Services Branch will provide individual income tax assistance to both businesses and individuals.
4. Public Services Branch will develop employee training for the division and employer training for the public.

Public Services Operating BRU

Expenditures

<u>Personal Services</u>		<u>FY 90</u>	<u>FY 91</u>
1 Revenue Office Manager	3,293 @ 12 mos.	39.5	39.5
2 Document Processing Clerk III	2,468 @ 10 mos.		49.4
1 Document Processing Clerk I	2,468 @ 10 mos.		24.7
2 Clerk Typist II	2,118 @ 10 mos.		42.4
1 Document Processor II	2,468 @ 4 mos.		<u>9.9</u>
<u>Total Annual Wages and Benefits</u>		<u>39.5</u>	<u>165.9</u>

The Revenue Office Manager's position will be activated in July of 1990 to develop employee training for the division and employer training for the public on the withholding requirements which will begin in the first quarter of 1990. The remaining positions will be activated in September 1991 to allow for training of individual income required on April 15, 1991.

Travel

Employer Training

One employee to Anchorage, Fairbanks, Nome, Kotzebue, Barrow, Kodiak, Kenai Peninsula, Sitka, Ketchikan, Bethel, Petersburg, and Wrangell

6.5 -0-

Administrative Travel

Anchorage and Fairbanks 10.0 12.0

Employee Training _____ 10.0

Total Travel 16.5 22.0

Employees hired to assist the general public in the completion of their individual income tax returns will be required to participate in a training course. Funds are designated above to facilitate course presentation in Anchorage and Juneau.

<u>Contractual</u>	<u>FY 90</u>	<u>FY91</u>
Advertising campaign		
Withholding requirements	45.0	
Income Tax Filing		80.0
Postage	30.0	8.5
Printing	5.0	5.0
Telephone Charges	15.0	30.0
Messenger Service	2.0	5.0
Computer Terminal Maintenance (7)	.5	3.5
Publications	.5	2.0
Reconfiguration of Office Space	<u>-0-</u>	<u>2.5</u>
<u>Total Contractual</u>	<u>98.0</u>	<u>136.5</u>

Enactment of the individual income tax with the requirement for employer withholding from wages will be brought to the attention of the public. Funds are requested for production of a television and radio advertising campaign plus two mailouts to all businesses informing them of the requirement to withhold an employee's wages. Funds are also requested in FY 91 for a general newspaper, radio and television campaign to notify the general public to file, where to file, and where to get help in completing their returns.

Supplies

Office Supplies	.5	6.0
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Office supplies are estimated at \$.5 per employee.

Equipment

Office Equipment	5.0	31.2
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Office equipment and furniture includes desks, chairs, calculators, file cabinets, and computer terminals.

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An act relating to the taxation of income derived by individuals
Sponsor: Koponen, Spohnholz, Ulmer et.al
Requestor: State Affairs and Finance

Agency Affected: Revenue
BRU: Administrative Services
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	529.0	1097.1	1097.1	1097.1	1097.1	1097.1
TRAVEL	10.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	402.9	1028.1	1028.1	1028.1	1028.1	1028.1
SUPPLIES	5.5	18.0	18.0	18.0	18.0	18.0
EQUIPMENT	163.2	158.2	158.2	158.2	158.2	158.2
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	1110.6	2309.4	2309.4	2309.4	2309.4	2309.4
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	1110.6	2309.4	2309.4	2309.4	2309.4	2309.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	1110.6	2309.4	2309.4	2309.4	2309.4	2309.4

POSITIONS:

FULL-TIME	19	28	28	28	28	28
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	27	27	27	27	27

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: April 10, 1989

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by preparer):

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

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
Individual Income Tax Bill

Assumptions:

1. The Administrative Services Division will be responsible for the following functions relative to the Alaska Individual Income Tax Withholding System and the Alaska Individual Income Tax Return Processing System.
 - a) Design, purchase and distribute all necessary tax returns and related forms.
 - b) Process all tax returns, including mail handling, microfilming, document review, data capture and filing.
 - c) Process all remittances of tax due which is received with tax returns.
 - d) Design, program, test, document, and maintain the automated Alaska Individual Income Tax Withholding System and Alaska Individual Income Tax Return Processing System.
 - e) Process and account for all individual income tax refunds to individuals.
 - f) Establish an automated billing subsystem for routine tax deficiencies, penalty and interest.
 - g) Acquire and maintain computer capacity to accommodate the two systems and the access required by the department's users.
2. The Department of Revenue will contract with a bank to provide a "lock-box" function, with employees depositing all individual income taxes withheld on a monthly basis.
3. The Department of Administration's data processing chargeback system will require that the Department of Revenue budget for the cost of data processing resources used by the withholding system and returns processing system. The total chargeback is budgeted in Administrative Services.
4. The Permanent Fund Dividend program will stay intact through FY94, in its current form.
5. The processing of Withholding and Individual Income Tax returns will be automated as much as possible.
6. The Alaska Individual Income Tax Withholding System must be in place before January 1, 1990.
7. The Alaska Individual Income Tax Return Processing System must be in place before January 1, 1991.
8. The fiscal note includes the incremental cost of providing space for the employees and equipment required by the department.

9. After reviewing the fiscal analyses of all divisions, an estimate of the additional computer resources needed has been made. This cost assumes:
- a) The withholding and income tax processing systems will reside on DDA's mainframe computer and will be programmed in command-level CICS.
 - b) To gain the tremendous advantages in programming development offered by the Wang VS, Revenue will purchase a software package which allows an analyst/programmer to write programs on the Wang VS and have them translated to command level CICS to run on the mainframe, which offers economical storage and processing for large files.
10. Given the existing federal tax law, this bill requires all persons receiving a permanent fund dividend to file an Alaska Individual Income Tax return. However, for purposes of this fiscal analysis, it is assumed that the final version would not require filing by a person whose only source of income is the Alaska Permanent Fund Dividend. Thus, most of Alaska's children would not have to file. If this proves not to be the case, there will be an incremental cost of processing the additional 180,000 tax returns.

Program Summary:

The Alaska Individual Income Tax will require the creation of two major processing systems:

- 1) Alaska Individual Income Tax Withholding System.
- 2) Alaska Individual Income Tax Return Processing System.

In addition to designing, programming and maintaining the two above mentioned automated systems, the Administrative Services Division will process, review, microfilm, and data capture approximately 70,000 withholding forms and 275,000 Alaska Individual Income Tax returns annually. Refund warrants will be issued on approximately 213,750 of the returns filed. In addition, approximately 25,000 individual letters will be prepared, mailed, and controlled in response to persons who file incomplete tax returns or whose tax returns result in a mathematical adjustment.

Finally, the addition of such a major program to the Department of Revenue will definitely impact the ability of the Administrative Services Division to provide general administrative support services with the existing staff.

The Administrative Services Division will require staffing as early as FY90 in order to design and establish the computerized processing systems envisioned, and to produce the forms required. In late FY90, staffing will come on board to process the Withholding reports and returns. In FY91, additional staff will be needed to support the Alaska Individual Income Tax Return Processing System. The analysis below shows the estimated expenditures for FY90 - FY94.

FY90

1. Positions:

A. Data Processing:

1 PFT Analyst/Programmer V, R21,
@ \$4,856/Mo including salary and
benefits for 12 months = \$58,272

2 PFT Analyst/Programmer IV, R19,
@ \$4,281/Mo each including salary
and benefits for 12 months = 102,744

2 PFT Analyst/Programmer III, R17,
@ \$3,730/Mo each including salary
and benefits for 6 months = 44,760

The above analyst programmer team will design, program, and maintain the two major systems mentioned above, including all subsystems and interfaces with the existing Revenue systems and the Alaska State Accounting System.

These systems will provide for a minimum of the following:

Alaska Individual Income Tax Withholding System

- * Online system comparable to the federal system with monthly deposits, quarterly returns, and an annual reconciliation.
- * Direct deposit system at a "lock-box" bank by employers.
- * Automatic generation of:
 - quarterly packets of:
 - * monthly deposit coupons
 - * quarterly tax returns
 - notices of tax deficiencies, penalty and interest
 - standard correspondence
 - management reporting data.
- * Interface with accounts receivable system and Alaska Individual Income Tax Return Processing System.

Alaska Individual Income Tax Return Processing System

- * document locator number system
- * return data capture
- * online systems
 - access/inquiry
 - address changes
 - status change system
 - generation of out cards
 - use of microfilm vs hard copy for review
 - automated calculation checks
 - generation of reduced refund notices with appeal rights
 - generation of automated billings for deficiencies, penalty and interest with appeal rights
- * interface with accounts receivable system (A/R)
- * interface with AIITWHS to verify claimed withholding
- * history file
- * possibility of multi-year file for easy access to information on prior year activity, etc.
- * check writing for refunds
- * management reporting data

B. Document Processing:

1. Mailroom

1 PFT Clerk IV, R9, @ \$2,343/Mo
including salary and benefits for
3 months = \$7,029

This position will augment the existing mailroom staff to perform the task of receiving, opening, sorting, and distributing an additional:

- * approximately 70,000 pieces of mail due to the Alaska Individual Income Tax Withholding System (17,500 employers times four quarterly returns.
- * handling, sorting and posting of additional outgoing/incoming mail as follows:
 - approximately 7,000 missing information letters, billing notices, and correspondence with employers.

2. Manual Review

1 PFT Tax Examiner III, R14, @
\$3,124/Mo including salary and
benefits for 5 months = \$15,620

2 PFT Document Processor I, R7, @
\$2,113/Mo including salary and
benefits for 3 months = 12,708

These positions will manually review all Withholding Tax returns filed based on a predetermined criterion.

- * identify incomplete returns
- * send out automatically generated missing information letters and billing notices

3. Microfilming

1 PFT Document Processor I, R7 @
\$2,118/Mo including salary and
benefits for 3 months = \$6,354

These positions will augment the existing microfilm staff to microfilm, assign document locator numbers, and date stamp 100% of Withholding Tax returns filed.

4. Data Capture

2 PFT Data Processing Clerk I, R8,
@ \$2,222/Mo including salary and
benefits for 3 months = \$13,332

These positions will augment the existing Data Entry staff to data capture and verify captured data of 100% of returns filed.

C. General Departmental Support Services

1 PFT Chief, Income Tax Operations,
R23, @ \$5,558/Mo including salary
and benefits for 12 months = \$66,696

1 PFT Personnel Assistant II, R14,
@ \$3,115/Mo including salary and
benefits for 12 months = 37,380

1 PFT Clerk Typist III, R8,
@ \$2,222/Mo including salary
and benefits for 12 months = 26,664

1 PFT Supply Officer II, R16
@ \$3,515/Mo including salary
and benefits for 12 months = 43,180

2 PFT Accounting Clerk III, R10,
@ \$2,468/Mo including salary and
benefits for 12 months = 59,232

1 PFT Publications Specialist I,
R13, @ \$2,915/Mo including
salary and benefits for 12 months 34,980

These positions will augment the existing general administration support staff for the additional programs and related 100+ new employees.

* Personnel:

- classification of positions and respond to reclassification requests
- maintain payroll and leave records
- process registers, and arrange interviews
- handle grievances, information requests, typing tests, etc.

* Fiscal:

- increase in travel requests
- general distributions
- handling increase in cancelled warrants

* Supply and purchasing:

- increase in supply orders for paper intensive organization
- Purchases increase:
 - * general equipment
 - * computer terminals, printers
 - * maintenanc contracts
 - * general office supplies
- Property Control (terminals, furniture, calculators, etc. will increase

* Forms management:

- preparation of Individual Income Tax booklet each year (considerably more complex than PFD booklet)
- preparation of employment withholding forms
- miscellaneous support forms:
 - * missing information letter
 - * denial forms
 - * check stock (refunds)

* General:

- general supervision and management of major additional line program in division, in addition to:
 - * permanent fund dividend program
 - * shared taxes
 - * administrative services to the department

TOTAL PERSONAL SERVICES

\$529.0

2. Other Expenditures:

a) Travel:

on-site review of selected tax return processing systems in other states \$4.0

training for analyst/programmers in command level CICS and Wang VS Cobol. \$6.0

TOTAL TRAVEL

\$10.0

b) Contractual:

Terminals

1. 3 Wang 4250 workstations	\$16,216
2. 3 Wang emulator boards	2,415
3. 2 Wang 4230 key-punch terminals, 2 months	1,800
4. Microfilmer, with maintenance, 3 months	3,792
5. 4 phones, centrex costs, local and long distance	5,390
6. printing: Withholding Returns, Deposit Coupons, envelopes, calendars, W-4's, etc.	42,000
7. postage	22,000
8. chargeback for computer time from DCA	91,600
9. Wang/IBM development package (NETRON-CAP) with maintenance	123,500
10. Wang/IBM remote access software with maintenance	5,240
11. Wang Disk Pack cleaning	700
12. IBM Control Unit maintenance	600