

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6132 HOUSE STATE AFFAIRS

536

Alaska State Legislature House of Representatives



3111 "C" STREET, SUITE 410
ANCHORAGE, ALASKA 99502
(907) 561-2033

DURING SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4039

REPRESENTATIVE
ALYCE HANLEY
DISTRICT 9, SEAT B

MEMBER
STATE AFFAIRS COMMITTEE
REGULATORY COMMITTEE

RECEIVED

February 26, 1990

FEB 26 1990

MEMORANDUM

TO: Representative "Red" Boucher, Chairman
House State Affairs Committee

FROM: Representative Alyce Hanley *A. Hanley*

RE: HB561 " An Act establishing the Alaska Men's Commission; and
providing for an effective date."

I am writing to request a hearing on HB561.

Since the introduction of this bill, I have received several calls and letters requesting an opportunity to speak in support of HB561.

I know you are aware of the problems experienced by many men in their roles as non-custodial parents. I agreed to introduce this legislation to provide a forum to hear those concerns. I recognized that men had not received the same representation before Alaska's Family Support Task Force. The Women's group had Ruth Lister as a spokesperson, the Children's group had Carla Tempone, while the men had no representative being paid with state funds.

I am not certain how best to solve this problem. Hopefully, by hearing people interested in testifying, the committee may determine additional means of assisting the entire family unit.

I would appreciate it if a State Affairs Committee hearing be scheduled for HB561 on behalf of myself as well as the others affected by this legislation.

Item 4



Alaska State Legislature

Please enter into the record my testimony to the House State Affairs
committee name

committee on HB 561, dated 4-4-90
bill/subject

I am Having Problems with C.S.E.P. and the ONLY information or recourse I have is Parents Rights groups. (Alaska Family Support Group and P.A.P.S. which I am a member of).

NO one seems to know how the C.S.E.D. system works, NO attorneys, or government Agency or C.S.E.D. its' self.

If the State supports, and funds a womens commission, they also should, for equality, should support a mens commission. A mens commission would help address the legitimate needs of men.

I understand that the women have a paid Lobbyist in Juneau, Ruth sister. men need, under equal Rights, stated by the constitution of the state of Alaska, a lobbyist also.

Signed: John M. Watson
Testifier

Alaska Family Support Group and P.A.P.S.
Representing (Optional)

P.O. Box 872082 Wasilla AK 99687
Address

373-3210
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House State Affairs
committee name
committee on House Bill 561, dated 4-4-90
bill/subject

I'm Cathy Soffland a ~~one~~ second wife living in poverty with my beloved husband Dave and 3 children due to child support payment problems. We feel there is a great need for a Men's Commission. Men are being treated as a minority and are being discriminated against regarding child support. Millions of dollars are allocated towards Women's commissions and now is the time to allocate some of these funds towards a men's commission. All the information we've received from CSED leans towards the support of the custodial parent (usually a woman). For a man to get information he can hire an attorney, go to the law library or join a group like Dads of The Ale Family Support Group. A men's commission is needed to straighten out the problems caused by CSED. Our second family needs your help.

Signed:

Catherine J. Soffland
Testifier

Representing (Optional)

HC 33 Box 2924

Address

376 6342

Phone No.

D A D S F A C T S



According to a federal Department of Health and Human Services pilot study of absent parents published in July 1988, between 38% and 49% of noncustodial parent households live below the poverty line!

"While 76 percent of the Florida CSE (child support enforcement) custodial parents lived below the poverty line, 38 percent of noncustodial parents did. In Ohio, 69 percent of the CSE custodial parent households were poor compared to an incidence of 49 percent among noncustodial parents..."
(emphasis supplied)

The Survey of Absent Parents, Pilot Results, U.S. Department of Health & Human Services, Office of the Secretary for Planning & Evaluation, July 1988, Executive Summary, page iii, paragraph b.

(This study was conducted by the University of Chicago Social Science Research Center, Project Director Mary O'Brien and its subcontractor, The Urban Institute, 2100 M. Street N.W., Washington, D.C. 20037, by Freya L. Sonenstein and Charles A. Calhoun.)

DADS AGAINST DISCRIMINATION believes that the needs of ALL children in poverty must be met in balanced public policy, particularly in limiting child support enforcement collection practices so that the stepchildren and natural children of noncustodial parent second families are left with a survival household income.

D A D S F A C T S



According to the U.S. Bureau of the Census, there are nearly as many "Married-couple Families" below the Poverty Level as there are "Female householders, no spouse present" living below the Poverty Level.

FAMILIES BELOW THE POVERTY LEVEL IN 1987

Married-couple families	3,085,000
Female householder, no spouse	3,636,000
Male householder, no spouse	338,000*

*The male householder, no spouse family in poverty increased by 51,000 families between 1986 and 1987--- the fastest growing family-type in poverty.

Money Income and Poverty Status in the United States: 1987,
Current Population Reports, Consumer Income, Series P-60, No. 161,
U.S. Department of Commerce, Bureau of the Census, John Keane,
Director.

DADS AGAINST DISCRIMINATION urges full funding of the AFDC Unemployed Parent program now mandated federally by the Family Support Act of 1988.

STANDARDS AND MAXIMUM PAYMENTS

Revised 12/15/89

AFDC		11/2% 7/1/81	7.4% 7/1/82	STDS. CHG. 1/1/83	3.5% 1/1/84	3.5% 1/1/85	3.1% 1/1/86	7/1/86	1.3% 1/1/87	4.2% 1/1/88	4.0% 1/1/89	4.7% 1/1/90
A1	1.)											
	2	508	546	597	617	638	657	657	665	692	719	752
	3	571	614	674	696	719	740	740	749	779	809	846
	4	634	682	751	775	800	823	823	833	866	899	940
	5	697	750	828	854	881	906	906	917	953	989	1034
	6	760	818	905	933	962	989	989	1001	1040	1079	1128
	7	823	886	986	1012	1043	1072	1072	1085	1127	1169	1222
	EA ADD	63	68	77	79	81	83	83	84	87	90	94
ANI	2.)											
	1	222	238	238	246	254	261	261	264	275	286	299
	2	445	476	476	492	508	522	522	528	550	572	598
	3	508	544	553	571	589	605	605	612	637	662	692
	4	571	612	630	650	670	688	688	696	724	752	786
	5	634	680	707	729	751	771	771	780	811	842	880
	6	697	748	784	808	832	854	854	864	898	932	974
	7	760	816	861	887	913	937	937	948	985	1022	1068
	EA ADD	63	68	77	79	81	83	83	84	87	90	94

FOOTNOTES: 1.) AFDC Grant including one adult.
2.) AFDC Grant for children only.

HOONAH COLD STORAGE

015438

02/01/90-02/28/90

Bobby R Worrel

Emp ID 153

574-52-8084

Current Pay Period

Year-To-Date

Gross & Other Pay

794.25

1,034.25

FICA

60.76-

79.12-

RegHrs

6.000

82.50

SUTA/ESC

4.77-

6.21-

Ot-Hrs

9.000

33.25

CSED Order

400.80-

400.80-

Net Pay

327.92

548.12

H B

563

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCHY - STATE CAPITOL
JUNEAU, ALA 99811
907-465-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMFR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 563

House State Affairs	3/6/90
House State Affairs	2/22/90
House State Affairs	2/21/90

- **Final Commission report said: Disclose All Uses of Fund Earnings**
- **Many Alaskans were upset to discover that reductions had been made for felon gate money and other deductions -**

This body has taken care of that problem with HB 511

- **Testimony was clear that money diverted from the dividend fund, other than for expenses associated with the administration of the program, were unacceptable**
- **HB 511 discloses to the public deductions, and requires that those deductions be fully explained**
- **I will be proposing an amendment today that will broaden this disclosure - this amendment requires that appropriations mandated by the constitution and special appropriations made by the legislature - including inflation proofing - be shown on the dividend check stub as well.**
- **It has been argued that, by including this information, there will be considerable public confusion -**
- **The public has a right to know and they want to know**

Notes

- **there will be no increase in the Fiscal Note by amending this bill**
- \$22,000 part time Document Processor IIs will be able to handle questions regarding the all disclosures**
- **If a question comes up about how all of the disclosure will fit on the stub, it can be done by smaller fonts; the attached gives you an idea of how it will work. Note that the percentage of the different appropriations will be shown. For example, in 1989, legislative**

appropriations accounted for roughly 61% of the dividend amount.

Someone may ask about how the IRS will respond to all of these disclosures.

Background: The DOR has an agreement with the IRS to treat the dividend stub as a 1099 form. That means the DOR does have to send out 1099's to dividend recipients which would be an added cost. Someone may argue that since the IRS has this informal agreement with DOR (stub = 1099), changing purpose of the stub may affect that agreement.

We have no evidence that the IRS will treat the stub any different with the passage of this bill. It should be noted that since DOR's agreement with the IRS, disclosures have appeared at the instigation of DOR, and nothing has happened. If the DOR was concerned, they would not have purposefully made the disclosures for the sex offender program and the prisoner gate money.



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

MEMORANDUM

To: House Finance Committee Members

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

Subject: HB 511 - \$1.5 Million Reimbursement to the Dividend Fund.

Date: April 10, 1990

The **Commission on the Future of the Permanent Fund** found, through considerable public testimony, that the public objected to the use of Dividend funds to pay for general government programs such as the Violent Crimes Compensation Fund, the Sex Offender Treatment Program and Felon Gate Money.

The intent of HB 511 is to reimburse the people of Alaska for those deductions made from their Dividend Checks in 1989. To accomplish this reimbursement, HB 511 makes an immediate appropriation from the General Fund to the Dividend Fund of \$1.5 million.

Background

In 1988, the legislature passed CSHB 245 which denied a dividend check to incarcerated felons. The Superior Court ruled in July of 1989 that withholding felon's dividend checks was unconstitutional, and until the issue could be resolved on appeal, the Court placed those Dividend checks in a trust fund.

If the state wins the appeal, the Dividend Fund will receive the trust money back. Resolution of this case, however, may not occur until after the 1990 checks are distributed. HB 511 ensures that the 1990 dividend checks are credited for the amount deducted in 1989.

If the state wins the appeal, \$1.5 million of the trust money plus interest will be deposited in the General Fund. The balance of the trust money would be deposited in the Dividend Fund. If the State



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

MEMORANDUM

TO: Finance Committee Members

FROM: Representative H.A. "Red" Boucher
Representative Max Gruenberg *MG*

RE: Dividend Fund Reimbursement: HB 511

Date: April 10, 1990

In 1989, \$1.5 million was deducted from the dividend fund for the Departments' of Correction and Public Safety to pay for the Violent Crimes Compensation Board, the sex offender treatment program and prisoner gate money which appeared on the stubs of all 1989 dividend checks. This deduction was based on the legislative policy that incarcerated felons should not receive a dividend check. The superior court ruled that the policy is unconstitutional and set up a trust fund which contains the felons' 1989 dividend money. The money will be held in trust until the issue can be resolved by the State supreme court. If the state prevails on appeal, the dividend fund will receive the trust money back.

Resolution of the issue may not occur until after the 1990 checks are distributed. This legislation would guarantee that recipients of the 1990 dividend are reimbursed for the \$2.89 which was deducted from their 1989 checks.

We believe that Alaskans should not bear the burden of this court challenge. We encourage you to support this legislation so that the deduction from the 1989 permanent fund dividend check can be reimbursed on the 1990 check.

CORRECTION

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



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

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If the state wins the appeal, the Dividend Fund will receive the trust money back. Resolution of this case, however, may not occur until after the 1990 checks are distributed. HB 511 ensures that the 1990 dividend checks are credited for the amount deducted in 1989.

If the state wins the appeal, \$1.5 million of the trust money plus interest will be deposited in the General Fund. The balance of the trust money would be deposited in the Dividend Fund. If the State

Supreme Court upholds the ruling of the Superior Court, the felons will receive a 1989 dividend check from the Trust Fund.

A summary of HB 511 and the disposition of the trust funds is attached.



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

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We believe that Alaskans should not bear the burden of this court challenge. We encourage you to support this legislation so that the deduction from the 1989 permanent fund dividend check can be reimbursed on the 1990 check.

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
HB 511
February 20, 1990

ANALYSIS:

Section 3 appropriates \$1.5 million plus interest from the General Fund to the Dividend Fund for distribution in 1990 to those eligible for 1990 dividends. This will result in an increase to the 1990 dividend of approximately \$3.00 per applicant.

Sections 4 and 5 establish appropriations from the 1989 Felon's Trust Account contingent upon the State winning the felon's case on appeal. Under Sections 4 and 5, this account will first be appropriated to the General Fund in the amount appropriated in Section 3, with the remainder to go back to the Dividend Fund.

If the State loses, the trust account will be paid out to the felons.

NOTE: The interest which is accruing to the trust account is coming from the General Fund. Is it the intention of the Legislature that this interest be appropriated to the Dividend Fund under Section 5?

BSN:1153

ALASKA HOUSE OF REPRESENTATIVES
CSHB 511(SA) AM

2ND SESSION 16TH LEG

0719790 10157 AM

	39	YEAS	0	NAYS	1	EXC	0	ABS		
Y	BARNES	Y	ELLIS	Y	JACKO	Y	PETTYJOHN			
Y	BOUCHER	Y	FINKELSTEIN	Y	KOPONEN	Y	PHILLIPS			
Y	BOYER	Y	FOSTER	Y	KUBINA	Y	RIEGER			
Y	BROWN	Y	FURNACE	Y	LARSON	Y	SHARP			
Y	COLLINS	Y	GOLL	Y	LEMAN	Y	SHULTZ			
Y	COTTEN	Y	GRUENBERG	Y	MACLEAN	Y	SWACKHAMMER			
Y	DAVIDSON	Y	GRUSSENDORF	E	MARTIN	Y	TAYLOR			
Y	DAVIS, C.	Y	HANLEY	Y	MENARD	Y	UCMER			
Y	DAVIS, M.	Y	HOFFMAN	Y	MILLER	Y	WALLIS			
Y	DONLEY	Y	HUDSON	Y	NAVARRE	Y	ZAWACKI			

+ VOTED FOR
- CHANGED VOTE

Item 2

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to the amount
of the permanent fund dividend
Sponsor: State Affairs Committee
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	22.0	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
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	32.0	10.0	10.0	10.0	10.0	10.0
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 (PFD)	32.0	10.0	10.0	10.0	10.0	10.0
TOTAL	32.0	10.0	10.0	10.0	10.0	10.0

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	3	3	3	3	3	3
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: February 28, 1990

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 2/28/90

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

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
 CSHB 563
 February 28, 1990

1. <u>Positions</u>	<u>FY 91</u>	<u>FY 92</u>
3 PPT Document Processor IIs, R8 @ \$2,446.08/Mo including salary and benefits for 3 months	= \$22.0	\$0.0
This position is to answer increased phone calls and letters regarding the special notice		
2. <u>Other Expenditures:</u>		
a) <u>Travel:</u>	\$0.0	\$0.0
b) <u>Contractual:</u>		
Estimated cost to print and fold 525,000 flyers	= \$10.0	\$10.0
c) <u>Supplies:</u>	\$0.0	\$0.0
d) <u>Equipment:</u>	\$0.0	\$0.0
Total Cost	\$32.0	10.0

Analysis:

Assuming the number of appropriations from the dividend fund, including administrative costs and hold harmless costs, stays under four, they can be identified on the face of the stub. A brief legislative history and purpose can be printed (in very small print) on the back. If more than four appropriations occur or if a more in-depth explanation is required, we will possibly have to go to a flyer insert, resulting in the noted contractual costs.

Regarding the one time requirement to insert an explanation of the 1989 appropriations in with the 1990 dividend, it is the considered opinion of this department that this action will create confusion in the public as to which year the deductions are for, etc., and will result in thousands of additional contacts. The additional staff is the estimated incremental cost of handling these usually irate and/or confused contacts.

FISCAL NOTE

REQUEST

Revision Date: April 4, 1990
Title: An Act relating to public notice on value of PFD
Sponsor: DUNCAN
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	7.3	-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	7.3	-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 (PFD)	7.3	-0-	-0-	-0-	-0-	-0-
TOTAL	7.3	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	1	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: April 4, 1990

Approved by Commissioner: William J. Venker for
Agency: Revenue

Date: 4-4-90

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

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 14, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 563

HOUSE BILL NO. 563

DISCLOSE PER. FUND INCOME EXPENDITURES

"An Act relating to disclosure of expenditures of permanent fund income; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB 563(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: HSA 2/28/90 letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact DOR
- zero fiscal note _____
- 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

Alvin ...

Jim ...

Jim ...

Richard ...

John ...

Walter ...

	Do Not Pass	No Rec	Amend

[Signature]

Chairman's Signature

CORRECTION

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

FISCAL NOTE

REQUEST

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Title: An Act relating to public
notice on value of PFD
Sponsor: DUNCAN
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	7.3	-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	7.3	-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 (PFD)	7.3	-0-	-0-	-0-	-0-	-0-
TOTAL	7.3	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	1	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: April 4, 1990

Approved by Commissioner: Walter J. Barber for
Agency: Revenue

Date: 4-4-90

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

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
 CS SB 346 (SA)
 April 4, 1990

1. Positions

	<u>FY 91</u>	<u>FY 92</u>
1 PPT Document Processor II, R8 @ \$2,446.08/Mo including salary and benefits for 3 months. FY 91 only =	\$7.3	\$0.0

This position is to answer increased phone calls and letters regarding the special notice

2. Other Expenditures:

a) <u>Travel:</u>	\$0.0	\$0.0
b) <u>Contractual:</u>	\$0.0	\$0.0
c) <u>Supplies:</u>	\$0.0	\$0.0
d) <u>Equipment:</u>	\$0.0	\$0.0

Total Cost	\$7.3	\$0.0
------------	-------	-------

Analysis:

The department supports full disclosure and clear accountability for expenditures from the dividend fund.

Section 2, line 20 through 25 requires additional information to be communicated to the public. It is feasible to print the information on the check stub. The department has only two concerns with this new requirement:

- a) We expect the public to be very interested in this breakdown of the source of their dividend. It is now an established fact that the public pays close attention to information on the permanent fund dividend check stub. We expect an increase in public contact. This increase is covered by the fiscal note request for one seasonal part-time Document Processor II to work at the Anchorage Dividend Information Office during October-December of 1990.
- b) Our second concern is the impact which the additional use of the check stub will have on the Department's tenuous agreement with the Internal Revenue Service that allows us to use the check stub as a "substitute 1099." Absent this agreement, the dividend program would incur approximately \$175,000 in additional postage and printing costs each year. If the Internal Revenue Service cancels our waiver because of their perception that the stub is being altered and will no longer serve as an acceptable "substitute 1099," then the next year's operating budget would have to reflect the additional costs.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 14, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 563

HOUSE BILL NO. 563

DISCLOSE PER. FUND INCOME EXPENDITURES

"An Act relating to disclosure of expenditures of permanent fund income; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB 53(SA) the g title
 a net title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: HSA 2/28/90 letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact DOR
- zero fiscal note _____
- 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

Glenn Nease
J. Paul Hill
Jim Bowdler
Katherine Macchiaro
John T. ...
David ...

	Do Not Pass	No Rec	Amend

John T. ...
Chairman's Signature

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF HB 563

Disclose Per. Fund Income Expenditures

Received February 14, 1990
by The State Affairs Committee

Heard February 21, 1990
Heard February 22, 1990
Heard March 1, 1990
Heard March 6, 1990

CSHB 563 (SA) Adopted March 6, 1990

Passed Out of Committee March 6, 1990
6 Do Pass

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HB 563: Disclose Per. Fund Income Expenditures

- Item 1:** HB 563 by the State Affairs Committee
CSHB 563 (SA)
- Item 2:** Fiscal Note and Analysis by Department of Revenue
- Item 3:** Memorandum from Rep. Boucher,
February 21, 1990
- Item 4:** Memorandum from Rep. Boucher,
February 28, 1990
- Item 5:** Adopted Letter of Intent, February 28, 1990

Item 4



Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS

MEMORANDUM

From: H.A. 'Red' Boucher, Chairman

To: House State Affairs Committee Members

Date: February 28, 1990

Subject: **HB563** - requiring disclosure of deductions from Dividend Fund' and an explanation of 1989 deductions.

Section 1- Amends AS 43.23.025 to require that each deduction from the dividend fund be listed on the check and that the legislative history and purpose of each deduction be fully explained either on the check or within the envelope which accompanies the check. The cost of this informational enclosure will be part of the administrative expenses in managing the dividend program and will be shown on the check stub.

The **(E)** amendment (page 2, lines 9-12) adds a clarification to the calculation used to determine the annual dividend payment so that the amount deducted from the dividend fund is subtracted from the calculation.

Section 2- This is a temporary law which requires the Commissioner of Revenue to prepare an explanation of itemized deductions contained on the 1989 check stub. The explanation will be included with the 1990 dividend check. Contingent upon an appropriation or court decision which reimburses the dividend fund for the 1989 deduction, this temporary law also requires that the added money be shown as a credit on the 1990 dividend check stub.



Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS

LETTER OF INTENT
TO ACCOMPANY
CS HB 563 (SA)

February 28, 1990

It is the intent of the **House State Affairs Committee** that all deductions from the earnings of the Permanent Fund be disclosed to the public in accordance with the recommendations contained in the Final Report of the **Commission on the Future of the Permanent Fund**. Section 1 would require that all appropriations from the Dividend Fund be listed on the dividend check stub.

It is the intent that all additional deductions from earnings be disclosed in a form other than on the check stub realizing that there is insufficient space on the check stub to list all expenditures paid from annual earnings. Those disclosures should include, 1) the Permanent Fund Corporation's operating budget, 2) the annual reinvestment of earnings to off-set the effects of inflation, 3) the \$3.5 million appropriated to the Department of Law and 4) any other deductions from the Earnings Reserve Account, the Dividend Fund or earnings of the Permanent Fund that is not otherwise listed on the check stub.

Therefore, the House State Affairs Committee endorses the current Corporation practice of including an informational flyer with the dividend check, and encourages the expansion of this flyer to include information which explains the amount and purpose of each deductions during the prior year.

Rep. H. A. "Red" Boucher, Chairman

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

Alaskans on the Future of the Fund

Final Report
Commission
the Future
Permanent Fund

**January 31,
1990**

HB

564



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

MEMORANDUM

From: H.A. 'Red' Boucher, Chairman

To: House State Affairs Committee Members

Date: February 21, 1990

Subject: Proposed legislation relating to the **Payout Rule** recommended by The Commission On The Future of the Permanent Fund in their January 31, 1990, report.

The Commission on the Future of the Permanent Fund's report, "**Alaskans on the Future of the Fund**", made several recommendations suggesting statute modifications designed to preserve the value of the Fund and assure a stable flow of earnings into the future. One of the main recommendations was the adoption of the "**payout rule**". The attached HB 564 would implement this concept.

The "**payout rule**" was developed in the 1960's by the Harvard Trust Fund and was suggested by the staff of the Permanent Fund Corporation. The "**payout rule**" would require that no more than five percent (5%) of the total value of all assets in the Fund be transferred to the legislature for distribution. Annual earnings would remain invested except that which is needed to meet the percentage payout.

The "**payout rule**" is a significant change in the current procedures of the Permanent Fund. To fully understand this legislation, I intend to form a subcommittee and hold work sessions over the next two weeks to address your questions and concerns regarding this legislation. I have spoken with the Department of Revenue and the Permanent Fund Corporation and they have agreed to participate in these discussion as well.

I would like to invite those members of the House State Affairs Committee who wish to serve on this subcommittee to advise me of your interest by Friday.

Figure 2:

PAYOUT RULE-PROPOSED SYSTEM

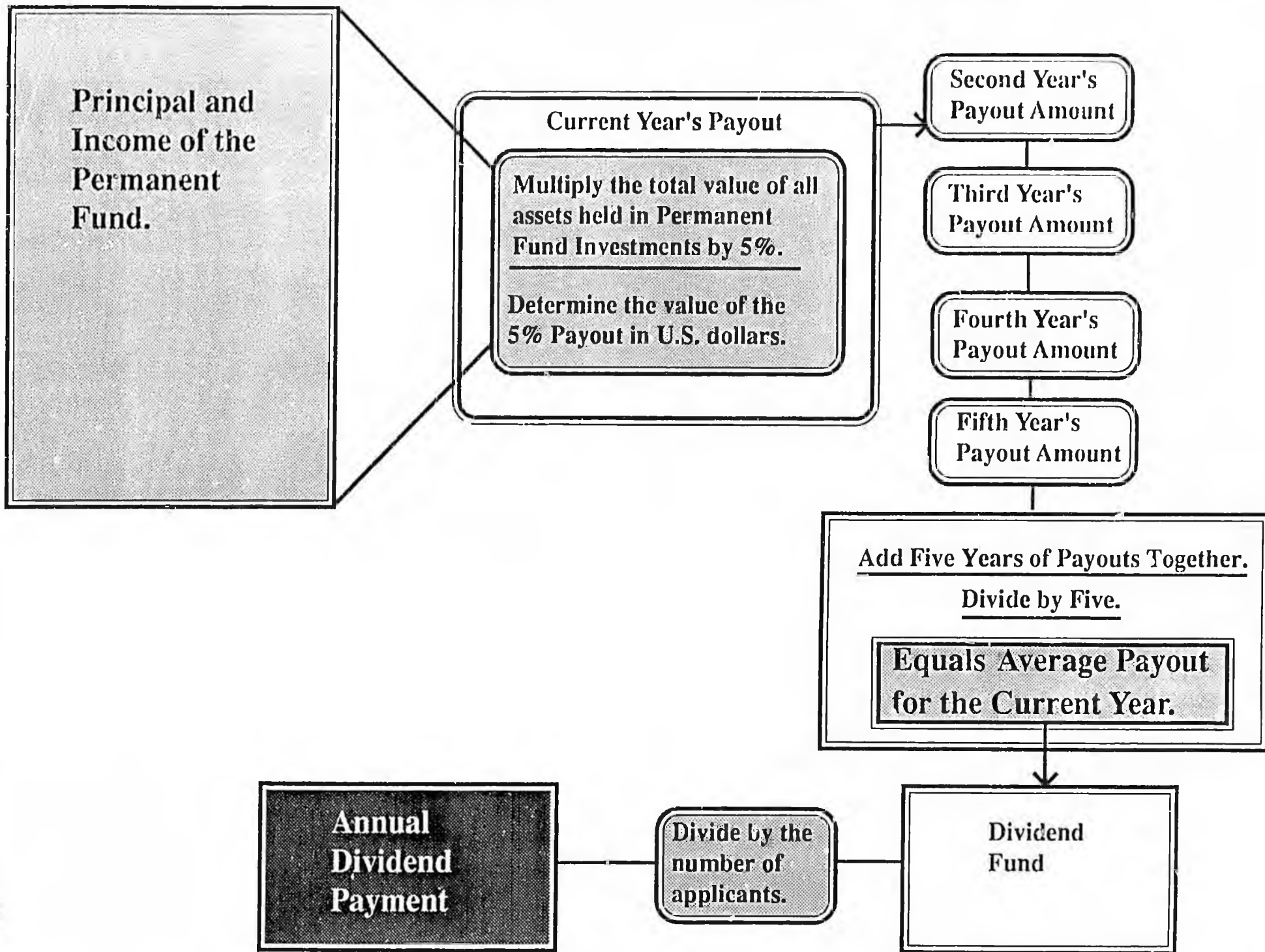
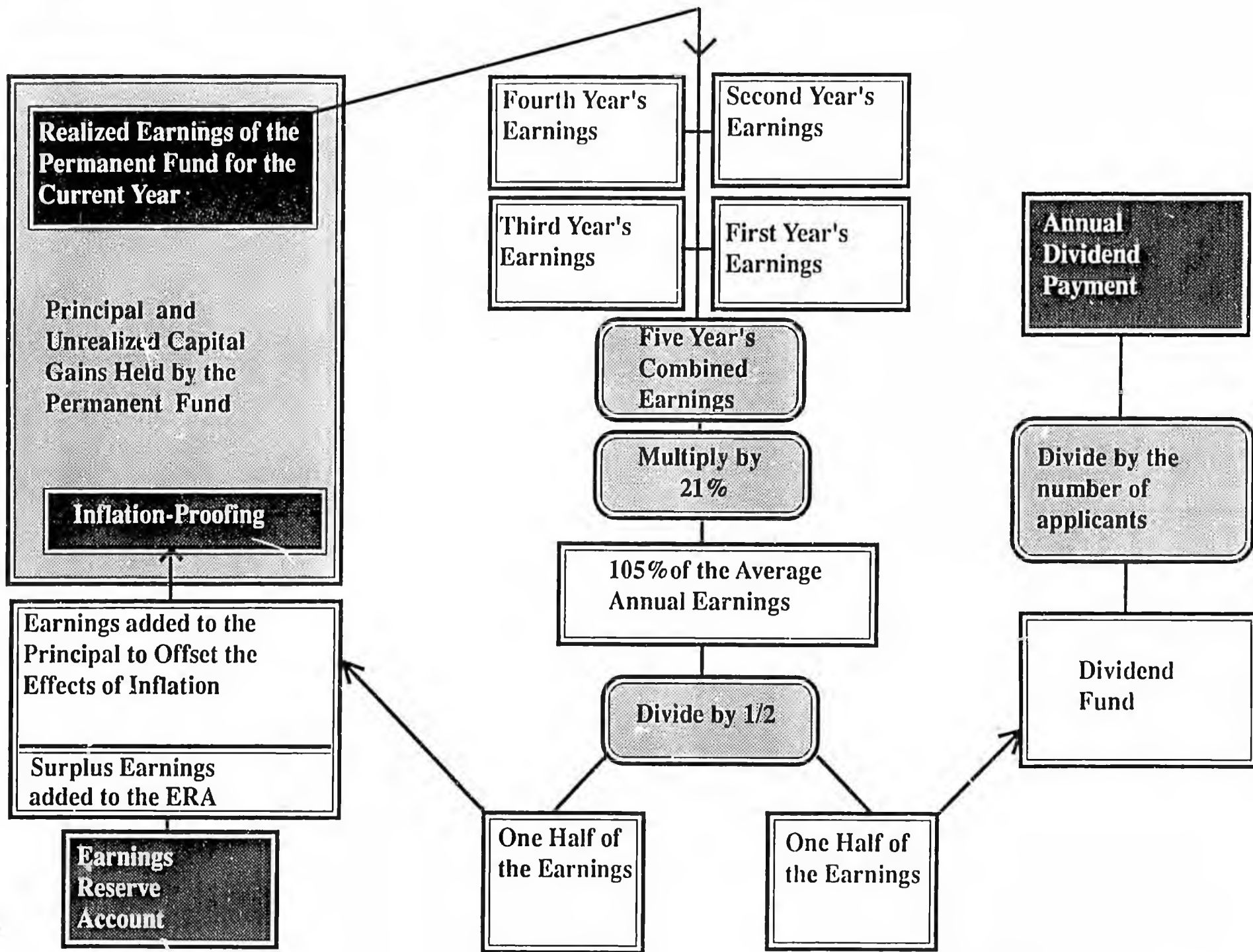


Figure 1: ALASKA PERMANENT FUND - CURRENT SYSTEM



H B

568

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF HB 568

Retirement Benefits Not Exempt from ODRO

Received February 22, 1990
by the State Affairs Committee

Heard March 28, 1990
Heard March 29, 1990

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

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HB 568: Retirement Benefits Not Exempt from QDRO

- Item 1:** HB 568 by the State Affairs Committee
- Item 2:** Fiscal Note by Department of Administration
- Item 3:** Sectional Analysis
- Item 4:** Letter from Police and Fire Retirement Board,
November 20, 1990
- Item 5:** Letter from Police and Fire Retirement Board,
March 5, 1990
- Item 6:** Memorandum from Staff re: Background
Information

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 22, 1990

FURTHER REFERRALS:

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 568

HOUSE BILL NO. 568

RETIREMENT BENEFITS NOT EXEMPT FROM QDRO

"An Act relating to the definition of qualified domestic relations orders for retirement plan interest and payment exemptions."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

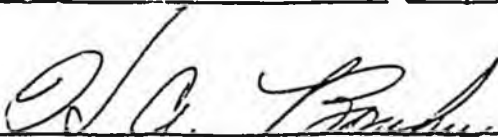
- [] fiscal impact _____
- [X] zero fiscal note DOA
- [] zero with analysis _____

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

SIGNING DO PASS:

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>		✓	
<i>[Signature]</i>		✓	
<i>Gillean P. Maclean</i>		✓	
<i>W. David Douley</i>		X	



 Chairman's Signature

Item 2

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An Act relating to qualified domestic relations orders
Sponsor: House State Affairs
Requestor: _____

Agency Affected: Administration
BRU: Retirement and Benefits
Components: Retirement and Benefits

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Sally Smith, Director *Sally Smith*
Division: Retirement and Benefits
Approved by Commissioner: Frank S. Baxter *Frank S. Baxter*
Agency: Department of Administration

Phone: 465-4470
Date: 2/23/90
Date: 3/1/90

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

Item 3

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 13, 1990

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

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

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

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

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

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

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

If I may be of further assistance, please advise.

TC:mi
wkmi6/055

MEMORANDUM

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

FROM: Dennis J. Burns, Aide
House State Affairs

DATE: March 28, 1990

RE: HB 568

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

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

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

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

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

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

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

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

However, it is unclear reading the statutes - AS 14.25.220(31) and AS 39.35.680(34) - whether the QDRO definition as defined by Mr. Schaible is implicit.

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

June 6, 1988

STEVE COWPER, GOVERNOR

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

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

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

Dear Governor Cowper:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

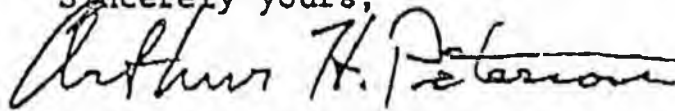
the credit system and unfairly restrictive for creditors.

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

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

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

Sincerely yours,


for Grace Berg Schaible
Attorney General

GBS:VBR:JJ:pjg

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CURRENT STATUS: (S) STA

STATUS DATE: 04/11/88

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

SB 504

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

PRIME SPONSOR: FINANCE COMMITTEE

CURRENT STATUS: (S) STA

STATUS DATE: 04/11/88

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

SB 505

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

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: (S) CALENDAR 5/9

STATUS DATE: 05/09/88

JRN-DATE	JRN-PG		ACTION
04/12/88	2984	(S)	READ THE FIRST TIME - REFERRAL(S)
04/12/88	2984	(S)	STA, THEN HES, FIN
04/28/88	3244	(S)	STA RPT CS 3DP SAME TITLE
04/28/88	3244	(S)	FISCAL NOTE PUBLISHED
05/06/88	3524	(S)	HES REFERRAL WAIVED
05/09/88	3751	(S)	FIN REFERRAL WAIVED
05/09/88	3758	(S)	RULES TO 2ND SUPPLEMENTAL CALENDAR
05/09/88	3758	(S)	NOT TAKEN UP

SB 506

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

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: (S) TRA

STATUS DATE: 04/12/88

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

SB 507

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

PRIME SPONSOR: RULES COMMITTEE

BY REQUEST OF THE GOVERNOR

CURRENT STATUS: (S) TRA

STATUS DATE: 04/13/88

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

SB 508

CSSB 508(FIN)

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

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: CHAPTER 135 SLA 88

STATUS DATE: 06/08/88

JRN-DATE	JRN-PG		ACTION
04/14/88	3030	(S)	READ THE FIRST TIME - REFERRAL(S)
04/14/88	3030	(S)	JUD, THEN FINANCE
04/21/88	3148	(S)	JUD WAIVED FIVE-DAY NOTIFICATION RULE
04/25/88	3182	(S)	JUD RPT 4DP
04/25/88	3182	(S)	ZERO FISCAL NOTE PUBLISHED
05/03/88	3353	(S)	FIN RPT CS 4DP 2NR NEW TITLE
05/03/88	3394	(S)	ZERO FISCAL NOTE PUBLISHED
05/05/88	3459	(S)	RULES TO CALENDAR
05/05/88	3461	(S)	READ THE SECOND TIME
05/05/88	3461	(S)	FIN CS ADOPTED UNAN CONSENT
05/05/88	3461	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/05/88	3461	(S)	READ THE THIRD TIME - CSSB 508(FIN)
05/05/88	3461	(S)	PASSED Y20 N-
05/05/88	3485	(S)	TRANSMITTED TO (H)
05/06/88	3515	(H)	READ THE FIRST TIME - REFERRAL(S)
05/06/88	3515	(H)	LABOR & COMMERCE THEN JUDICIARY
05/07/88	3607	(H)	L&C REFERRAL WAIVED
05/08/88	3639	(H)	JUD RPT 4DP
05/09/88		(H)	RULES TO CALENDAR 5/9/88
05/09/88	3685	(H)	READ THE SECOND TIME
05/09/88	3685	(H)	ADVANCED TO THIRD READING UNAN CONSENT
05/09/88	3685	(H)	READ THE THIRD TIME - CSSB 508(FIN)
05/09/88	3685	(H)	PASSED Y35 N- AS
05/09/88	3685	(H)	RETURN TO (S), TRANSMIT TO GOVERNOR NEXT
05/27/88	3812	(S)	1:15 PM 5/17/88 TRANSMITTED TO GOVERNOR
07/12/88	3851	(S)	SIGNED INTO LAW 6/8 CHAPTER 135 SLA 88
07/12/88	3852	(S)	EFFECTIVE DATE OF LAW 9/6/88

Chapter 135

AN ACT

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

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

09.38.010(a)

(a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of ~~the~~ [THAT] individual or the dependents of ~~the~~ [THAT] individual, but the value of the homestead exemption may not exceed \$56,000 [\$27,000].

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

09.38.010(b)

(b) If property owned by the entirety or in common is used by one or more individual owners or their dependents as their principal residence, each owner is entitled to a homestead exemption of that owner's interest in the property as provided in (a) of this section. The aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed \$56,000 [\$27,000]. If there are multiple owners of property exempt as a homestead, the value of the exemption of each individual owner may not exceed ~~the~~ [THAT] individual owner's pro rata portion of \$56,000 [\$27,000].

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

09.38.017

Sec. 09.38.017. EXEMPTION OF RETIREMENT PLAN INTERESTS AND PAYMENTS. (a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's creditor:

-1-

CSSR 308(Fin)

Chapter 135

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

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

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

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

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

(a) In this section,

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

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

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

Sec. 4. AS 09.38.020 is amended to read:

09.38.020

Sec. 09.38.020. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE LIMITATIONS. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$3,000 [\$1,500] chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably

CSSR 308(Fin)

-2-

Chapter 135

necessary for one household;

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

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

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

(c) An individual is entitled to exemption, not exceeding \$7,000 [\$1,400] in aggregate value, of implements, professional books, and tools of the trade.

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

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$3,000 [\$1,500] if the full value of the motor vehicle does not exceed \$20,000 [\$10,000].

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

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

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

(a) Except as provided in (b) and (c) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the

Chapter 135

Individual debtor's weekly net earnings not to exceed \$350 [\$175]. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

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

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$1,400 [\$700], except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

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

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

- (1) benefits paid by reason of disability, illness, or unemployment;
- (2) money or property received for alimony or separate maintenance;
- (3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of

(14, 38, 025(a))

(14, 38, 030(b))

(14, 38, 030(a))

09.38.030(a)

Chapter 135

whom the individual was or is a dependent;

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

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

* Sec. 9. AS 09.38.050(b) is amended to read:

(b) The exemption amounts under AS 09.38.030 may be increased when the individual submits an affidavit, under penalty of perjury, stating that the individual's earnings alone support the individual's household; by so doing, the maximum part of the individual's aggregate disposable earnings for any week subject to execution may not exceed the amount by which the individual's disposable earnings for that week exceed \$530 [\$275], or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.030(b), a maximum amount of \$7,200 [\$1,100] available in a [ANY] month is exempt.

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

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

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

09.38.050(b)

09.38.055

Eff. 9/6/88

Chapter 136

AN ACT

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

* Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

Municipality
of
Anchorage



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

TOM FINK,
MAYOR

Item 5
RECEIVED
MAR 12 1990

POLICE AND FIRE RETIREMENT BOARD

March 5, 1990

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

Dear Mr. Boucher:

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

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

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

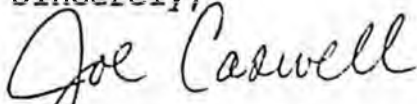
The Honorable H. A. "Red" Boucher
March 5, 1990
Page 2

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

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

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

Sincerely,



Joe Caswell
Chairman
Police and Fire Retirement Board

JC/lhk
Attachments

Item 4

Municipality of Anchorage



P.O. BOX 198650
ANCHORAGE, ALASKA 99519-8650
(907) 343-4295

TOM FINK
MAYOR

POLICE AND FIRE RETIREMENT BOARD

November 20, 1989

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

Dear Representative Boucher:

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

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

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

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

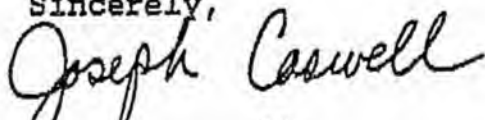
AS 09.38.017 could be interpreted as superseding existing law and thereby jeopardizing the federally-mandated independence of governmental pension plans. The new statute clearly conflicts with existing state pension laws. And if the statute is applied only to municipal pension plans, it clearly denies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

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

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

Thank you again for your assistance in this matter.

Sincerely,



Joseph Caswell
Chairman
Police and Fire Retirement Board

JC:lhk

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

<i>Senate Judiciary</i>	<i>4/22/88</i>
<i>Senate Finance</i>	<i>5/2/88</i>
<i>Senate Finance</i>	<i>5/3/88</i>

to satisfactorily performing the duties of another position and for which the employee is including a condition resulting from a physical or mental condition that includes the first pay period ending on or after the last pay period ending on or after the date of termination; and

(C) whose employees are not required by law to participate in the system;

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

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

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

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

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

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

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

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

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

(36) "retirement" means that period of time from the first day of the month following (A) the date of termination and (B) application for retirement, in which a person is appointed to receive a retirement benefit, other than occupational or nonoccupational disability benefit;

(37) "seasonal" refers to an employee who is occupying a position for less than 12 months each year where it is anticipated that the same employee will return to the position when needed and includes a temporary employee of the legislature if part of the service for the legislature during each calendar year is performed during a legislative session;

(38) "surviving spouse" means the spouse of an employee who has been married to the employee for at least one year at the time of the employee's death; the one-year marriage requirement does not apply when the employee's death was an occupational or accidental death;

(39) "system" means the Public Employees' Retirement System of Alaska;

(40) "vested member" is an active member who meets the five-year credited service requirement to qualify for a retirement benefit. (§ 3 ch 143 SLA 1960; am § 2 ch 93 SLA 1962; am § 3 ch 102 SLA 1963; am § 10 ch 155 SLA 1966; am § 14 ch 83 SLA 1967; am §§ 18 — 21 ch

1968)

(41) "organization or entity" means an organization or entity of the state for the purpose of

providing a method other than

management of Administration;

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

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

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

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

(e) In this section,

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

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

(3) "retirement plan" means a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, or 26 U.S.C. 409 (Internal Revenue Code). (§ 3 ch 135 SLA 1988)

Editor's notes. — Section 11, ch. 135, SLA 1988 provides that this section "does not apply to the assets of a bankruptcy estate in a proceeding filed under 11 U.S.C. (Bankruptcy) before September 6, 1988."

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$3,000 chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably necessary for one household;

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

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

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

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

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

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$3,000 if the full value of the motor vehicle does not exceed \$20,000. (§ 2 ch 62 SLA 1982; am § 4 ch 135 SLA 1988)

redemption. The or a redemption, or a il another redemption, rchased or redeemed. nant, the purchaser or of the property or the . (§ 15.31 ch 101 SLA

ions Act.

n of earnings and liquid as- exemption amount cy proceedings nt of dollar amounts

An individual is enti- individual's interest in ence of the individual lue of the homestead

imon is used by one or s their principal resi- d exemption of that a) of this section. The tions allowable with \$54,000. If there are ead, the value of the xceed the individual

d under an execution, order of the court. The s, within 60 days after under this section or the filing of a timely ay repurchase prop- a sale on execution s of the sale plus the highest bid and the 2) the amount of the

claim. If the individual does not exercise the repurchase r this subsection, the clerk of the court shall first remit an t determined to be exempt to the individual from the proceeds and the balance less the cost of the sale to the creditor. For the e of collecting an amount remaining unpaid on a judgment e purchase of property by an individual under this subsection, r or the creditor's assignee may not make another levy on e property repurchased.

on entry of the order of confirmation under (c) of this section iration of the time period for repurchase, the clerk may exe- eed to the property and when delivered it shall be sufficient to ow all title of the individual in the premises sold to the purchaser e. AS 2 ch 62 SLA 1982; am §§ 1, 2 ch 135 SLA 1988)

cross references. — For current ex- amounts, see 8 Alaska Adminis- 5.030. Section 9 amendments. — The 1988 am substituted "the individual"

for "that individual" twice in subsection (a) and once in the last sentence in subsection (b), and "\$54,000" for "\$27,000" in subsection (a) and in the last two sentences in subsection (b).

NOTES TO DECISIONS

of judicial lien to extent of homestead exemp- Section 5224) of the Bankruptcy U.S.C.) provides that ". . . the may avoid the fixing of a [judicial] e property to the extent that e impairs an exemption . . ." To e whether there is such an im- of a homestead exemption, the tions are taken by the court: (1) e ranked in order of priority e) to the extent of the

value of the property; (2) the gross amount of the homestead exemption is subtracted from the value of the property; and (3) from the remainder left, each lien is subtracted, one at a time, beginning with the most senior lien, until a judicial lien is reached. Then the judicial lien is subtracted. To the extent that all or any portion of the judicial lien exceeds the remainder derived in (2), above, it is voidable. In re Duncan, 43 Bankr. 833 (Bankr. D. Alaska 1984).

See, 09.38.015. Property exempt without limitation.

cross references. — For provisions ex- amounts held in the public em- tion fund and public employee

retirement benefits from levy to enforce the collection of a debt, see AS 39.35.505.

NOTES TO DECISIONS

ed in *Abundance of Anchorage v. County of Chugach Co.*, 722 P.2d 919 (Alaska 1986).

See, 09.38.017. Exemption of retirement plan interests and payments. In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's creditor: 1) The interest of the individual in a retirement plan; and

H B

570

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 570

Procurement Code Amendments

Received March 15, 1990
by The Judiciary Committee

Heard March 29, 1990
Heard April 4, 1990

Adopted CSHB 570 (SA) April 4, 1990

Passed Out of Committee April 4, 1990
1 Do Pass
3 No Recommendation

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HB 570: Procurement Code Amendments

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CSHB 570 (SA)
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February 27, 1990
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- Item 5: Memorandum from Alaska Railroad Corporation,
March 13, 1990
- Item 6: Rule No. 8: Adopting Procurement Rules for the
Corporation
- Item 7: Chapter 30. State Procurement Code

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 15, 1990

FURTHER REFERRALS:

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 570

HOUSE BILL NO. 570

PROCUREMENT CODE AMENDMENTS

"An Act relating to state procurement."

RECOMMENDATIONS:

- [X] be replaced with CSHB570(SA) [X] the same title
[] a new title
 [] have attached amendment(s)
 [] do pass
 [] do not pass
 [X] no recommendation
 [] individual recommendations
 [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

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

- [] fiscal note(s) _____
 [X] zero fiscal note(s) 3/15/90 - DOA
 [] zero fn/analysis _____

SIGNING DO PASS:

O.C. Bush

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>George Kaylor</u>	✓		
<u>David Lindstrom</u>	✓		
<u>Conrad Johnson</u>	✓		

O.C. Bush
 Chairman's Signature

BY THE JUDICIARY COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 570

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state procurement."

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

8 * Section 1. AS 36.30.015(e) is amended to read:

9 (e) The board [BOARDS] of directors of [THE ALASKA RAILROAD
10 CORPORATION AND] the Alaska State Housing Authority shall adopt proce-
11 dures to govern the procurement of supplies, services, professional
12 services, and construction [BY THE CORPORATION]. The procedures must
13 be substantiially equivalent to the procedures prescribed in this
14 chapter and in regulations adopted under this chapter.

15 * Sec. 2. AS 36.30 is amended by adding a new section to read:

16 Sec. 36.30.035. ALASKA RAILROAD CORPORATION. The board of
17 directors of the Alaska Railroad Corporation shall adopt and publish
18 procedures to govern the procurement of supplies, services, profes-
19 sional services, and construction. The procedures must meet accepted
20 railroad industry standards under AS 42.40.100.

21 * Sec. 3. AS 36.30.040(b) is amended by adding a new paragraph to read:

22 (17) cost-plus-a-percentage-of-cost contract provisions
23 allowed under AS 36.30.370.

24 * Sec. 4. AS 36.30.100(b) is amended to read:

25 (b) Competitive sealed bidding is not required

26 (1) when the commissioner determines in writing that food,
27 clothing, or medical supplies, or supplies [MATERIALS] for use in
28 laboratory or medical studies may be purchased otherwise to the best
29 advantage of the state;

- 1 (2) [WHEN RATES ARE FIXED BY LAW OR ORDINANCE;
2 (3)] for the purchase of products or services manufactured
3 or provided by an employment program; or
4 (3) [(4)] for the purchase of products or services provided
5 by the correctional industries program established under AS 33.32 [;
6 (5) FOR PROFESSIONAL SERVICES; OR
7 (6) FOR CONCESSIONS OPERATED ON STATE PROPERTY].

8 * Sec. 5. AS 36.30.370 is amended to read:

9 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
10 this section, any type of contract that will promote the best inter-
11 ests of the state may be used, except that the use of a cost-plus-a-
12 percentage-of-cost contract is prohibited except as authorized by (b)
13 of this section. A cost-reimbursement contract may be used only when
14 a determination is made in writing by the procurement officer that a
15 cost-reimbursement contract is likely to be less costly to the state
16 than any other type or that it is impracticable to obtain the sup-
17 plies, services, professional services, or construction required
18 except under a cost-reimbursement contract.

19 * Sec. 6. AS 36.30.370 is amended by adding a new subsection to read:

20 (b) A construction contract may provide that the contractor
21 shall be paid on a cost-plus-a-percentage-of-cost basis for extra work
22 that could not be reasonably anticipated, if the extra work is
23 required for the satisfactory completion of the project under the
24 contract.

25 * Sec. 7. AS 36.30.850(b) is amended by adding new paragraphs to read:

26 (22) disposals of supplies acquired through foreclosure of
27 loans issued under AS 03.10;

28 (23) purchases of curatorial and conservation services to
29 maintain, preserve, and interpret

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(A) objects of art; and

(B) items having cultural, historical, or archaeological significance to the state;

(24) acquisition of confidential seismic survey data necessary for pre-sale oil and gas lease analyses under AS 38.05.180;

(25) contracts for village public safety officers;

(26) purchases of supplies and services to support the operations of the Alaska state troopers or the division of fish and wildlife protection if the procurement officer for the Department of Public Safety makes a written determination that publicity of the purchases would jeopardize the safety of personnel or the success of a covert operation;

(27) expenditures when rates are set by law or ordinance.

* Sec. 8. AS 36.30.540(4) and 36.30.540(5) are repealed.

→ because of community → uniqueness of
role of officers

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to state procurement
 Sponsor: House Judiciary Committee
 Requestor: House Transportation

Agency Affected: Commerce & Economic Dev.
 BRU: Alaska Railroad Corporation
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

As the Alaska Railroad Corporation is not subject to the Executive Budget Act, this legislation will have no fiscal impact on the state budget. However, an analysis of the cost of this legislation to the Railroad is attached.

Prepared by: Guy Bell, Director
 Division: Administrative Services

Phone: 465-2505
 Date: 3/12/90

Approved by Commissioner: Larry Mercurieff *Guy Bell*
 Agency: Department of Commerce & Economic Development


Date: 3/12/90

Distribution (by preparer):

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

Memorandum
March 12, 1990

To: Linda Wild
Department of Commerce and Economic Development

From: Larry Houle 
Alaska Railroad Corporation

Re: Fiscal Note Information HB 570

The ARRC is impacted in two specific areas as a result of the state procurement code. We are in support of HB 570 as it is written because it would allow the corporation to return to our original procurement program, consistent with railroad industry standards and our enabling legislation AS 42.40.

1) The state procurement procedures clearly add two full time staff to the ARRC procurement department. One supervisor at approximately \$50,000 per annum and one Procurement Officer at approximately \$40,000 per annum. In addition to their annual salaries the corporation must pay an additional 21% in annual benefits such as; unemployment insurance, workman's compensation, medical and dental insurance.

2) The state procurement procedures also add an additional 30 to 45 days to the procurement process thereby, eliminating our ability to take advantage of certain spot market purchases and market opportunities where low pricing is available for only a limited time frame. It is difficult to quantify this delay in hard dollars, but estimate it to cost ARRC approximately \$300,000. per annum.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to State
procurement."
Sponsor: Judiciary Committee
Requestor: _____

Agency Affected: Administration
BRU: General Services and Supply
Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The bill makes minor housekeeping changes to the State procurement code. The impacts to the Department of Administration are negligible for FY 90 as well as future years.

Prepared by: Robert J. Link, Director
Division: General Services and Supply
Approved by Commissioner: Frank S. Baxter
Agency: Department of Administration

Phone: 465-2250
Date: 3/5/90
Date: 3/6/90

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

Item 3

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)
914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spennard, Upper Midtown Anchorage

MEMORANDUM

TO: Rep. H. A. "Red" Boucher
Chairman, House State Affairs Committee

FROM: Rep. Max F. Gruenberg, Jr.
Co-Chairman, House Judiciary Committee *Max*

SUBJECT: Scheduling of HB 570

DATE: February 27, 1990

HB 570, "An act relating to state procurement", was introduced by the House Judiciary Committee and was referred to the State Affairs Committee on March 15.

This bill makes several minor amendments to the state Procurement Code which are derived from provisions dropped from SB 170 in the House last year. It also changes the law regarding procurements by the Alaska Railroad. A sectional analysis is attached.

The bill is ready for a hearing. Please schedule the bill at your earliest opportunity.

SECTIONAL ANALYSIS OF
HOUSE BILL 570

Sections 1 and 2 [AS 36.30.015(e), -.035]

The Alaska Railroad is not currently covered by the Procurement Code. However, AS 36.30.015(e) requires the ARR to adopt procurement procedures substantially equivalent to the Procurement Code. Section 1 removes that requirement, which is replaced by a requirement in Section 2 that the ARR adopt and publish procurement procedures that meet accepted railroad industry standards. The language in Section 2 implements existing AS 42.40.100(8).

Sections 3, 5 and 6 [AS 36.30.040(b); -.370]

These three sections implement a proposal set forth in Section 15 of SB 170. They make it clear that the general prohibition against cost-plus-percentage-of-cost contracts in the Procurement Code does not apply to change orders in construction contracts. Change orders are standard construction contract terms that provide for payment for unanticipated work during the course of a construction contract. Such work is outside the scope of the original contract, but is routinely performed by the contractor.

NO
and
project
out to bid

Section 4 [AS 36.30.100(b)]

The bill deletes three of six existing exemptions from the competitive sealed bidding requirement of the Procurement Code, including purchases where the rates are fixed by law, for professional services, and for concessions on state property. Under the bill, if rates are fixed by law the transaction will now be completely exempted from the Procurement Code, by virtue of new AS 36.30.850(b)(27) [page 3, line 13]. Contracts for professional services and concessions on state property may be exempted from competitive sealed bidding only by administrative action.

Section 7 [AS 36.30.850(b)]

This section adds a number of specific transactions to the list of transactions exempt from the Procurement Code. They are subsections:

(22): disposals of supplies acquired through foreclosure of loans from the Alaska Agricultural Loan Fund (AS 03.10);

(23): purchases of curatorial and conservation services for state-owned objects of art or of cultural, historical, or archaeological significances;

(24): acquisitions of confidential seismic survey data necessary for pre-sale oil and gas lease analyses;

(25): contracts for village public safety officers;

(26): purchases supporting operations of law enforcement officers, if a finding is made that publicity of the purchases would jeopardize the safety of personnel or the success of the operation; and

(27): expenditures where rates are set by law.

Subsections (22) through (25) are retained from Section 17 of SB 170. Subsections (26) and (27) are derived from language in Section 18 of SB 170.

Section 8 [repealers]

This section repeals AS 36.30.540 (4) and (5). Those provisions required the Commissioner of Administration to biennially report to the legislature a list of all in and out of state procurements. The information remains available on request.

ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

MEMORANDUM
March 13, 1990

To: House Transportation Committee

From: Larry J. Houle
Legislative Liaison
Alaska Railroad Corporation

Re: Position Paper HB 570

Thank you Mr. Chairman for the opportunity to comment before your committee and give testimony relating to HB 570 as it affects the Alaska Railroad Corporation.

The Alaska Railroad Corporation is a unique experiment in public ownership of a private business. As you know, the Alaska Railroad Corporation Act established the Corporation as a self-sustaining business, exclusively responsible for the financial and legal obligations incurred by the railroad, and provide for the prudent operation of the railroad according to sound business management practices. Further, the management is charged with the responsibility of fostering long-term economic growth and development of the state's land and natural resources, as well as maintain the viability of the railroad pending eventual sale or transfer from state ownership.

March 13, 1990
Page 2 of 4

For the past five and a half years the railroad has operated as a self-sustaining business. As you know, we have not come back to you in the legislature to ask for any subsidies and in fact have turned down monies offered to us for passenger services. We did this to preserve our mandate of operating on a business-like basis because we felt that by applying sound business management practices we could effectively reduce costs or increase revenues on this service to a point where you would be satisfied with the returns.

This brings me to the reason we are here. The same law which established the corporation also charged us with the responsibility of ensuring the procurement procedures of the corporation meet accepted railroad industry standards. The corporation held public hearings and adopted such policies and procedures early on in our corporate existence. We felt we had excellent vendor relations, good sources of supplies and an efficient, well-managed procurement program in accordance with how other railroads operate. However, as you know in 1987 and 1988, the state adopted a new procurement code as a result of certain circumstances in Fairbanks. The railroad corporation was included in these new rules and regulations as being required to have "substantially equivalent" policies and procedures. There was nothing wrong with the way we had been conducting our procurement program but, all of a sudden, in mid-stream, we had to change our whole approach. As a result, we are

March 13, 1990
Page 3 of 4

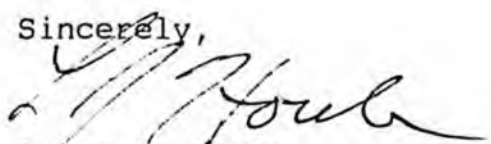
no longer similar to industry practices but are forced to try to implement "public" procurement practices while attempting to conduct a "private" business on a profitable basis. We have added two additional staff positions just to handle additional administrative burdens required under the new law. I might add these new positions have not added anything to the bottom line of the corporation, but are simply handling paperwork. Further, we feel an additional 30 to 45 days have been added to the procurement process. As you are fully aware, in business, time is money. Hard dollar costs are hard to determine in cases like this, but I feel confident in saying we are spending an additional \$200 hundred thousand dollars annually because of the procurement code.

The corporation is fully committed to the principles of competitive bidding, and fair and equitable treatment of its vendors and suppliers. Prime consideration to the company's interest is achieved while seeking to maintain and further long-term, mutually profitable, ethical supplier relationships. The Alaska Railroad is bottom line oriented. As a result, we must insure we have the best procurement program available which purchases needed materials and supplies at the most competitive rate while ensuring quality, dependable service. We are a business and as such we must be given the opportunity to pursue market opportunity when and where it arises. Market opportunity is not a consideration in the state procurement code.

March 13, 1990
Page 4 of 4

House Bill 570 language which is before you for consideration would return the Alaska Railroad Corporation to the standard expected of us as a private business and as stated in our enabling legislation AS.42.40. Procedures which are consistent with accepted railroad industry standards assures you we are acting in a consistent, fair, publicly accountable practice while ensuring the Corporation has the ability to pursue its legislative mandate of maintaining itself as a viable investment of the State of Alaska.

Sincerely,



Larry J. Houle
Alaska Railroad Corporation

Rule No. 8 Adopting Procurement Rules for the Corporation.

Summary: The rule provides for the procurement and purchasing of materials, supplies and services for the Corporation. The rule provides for purchasing, procurement by requesting bids, procurement by purchase order, oral agreements to purchase, contract negotiations, inspection of goods received, decisions to make or buy materials or supplies, returns to vendors, female and minority owned vendors, product endorsements, purchases by employees, price quotations, standardization of material purchases, use of the Corporation name, vendor relations and selection, and requirements of State law.

ALASKA RAILROAD
CORPORATION

SUBJECT:	Procurement Rules	Rev. No.	0	Index	A
		Issue Date	7-18-85	Page	1 of 8

PROCUREMENT RULES1100.0 PROCUREMENT POLICY

1100.1 Objective The overall objective of this Rule is to assure that needed goods and services are obtained in a manner that treats vendors fairly and equitably, and provides the best value to the Corporation.

1100.2 Competition ARRC policy is to purchase all goods and services with a value of \$1,000.00 or more on a competitive basis. Purchases made without competition must be justified in writing, approved, and be fair and reasonable.

1100.3 Written Solicitations Written solicitations will be utilized on all acquisitions of material and/or services with an estimated unit price of \$5,000.00 or more, unless specifically authorized by the V.P. Finance.

1100.4 Formal Solicitations A written "Invitation for Bid" or "Request for Proposal" will be utilized on all acquisitions of material and/or services that have an estimated unit price of \$25,000.00 or more.

ALASKA RAILROAD
CORPORATION

SUBJECT:	Procurement Rules	Rev. No.	0	Index	A
		Issue Date	7-18-85	Page	2 of 6

1100.5 Professional Services Procurement of Professional Services are made in accordance with AS 36.98 et seq.

1100.6 Female, Minority, and Alaskan Owned Vendors It is the policy of the ARRC to encourage meaningful participation of female, minority, and Alaskan owned vendor sources to provide useful and acceptable quality services or material at competitive prices.

1200.0 GENERAL PROVISIONS

1200.1 Authority These rules are adopted under the authority of AS 42.40.010 et seq., and P.L. 97-468 (The Alaska Railroad Transfer Act), 45 U.S.C. Sections 1201-1214 ("ARTA"). These rules shall be read in a manner consistent with applicable law.

1200.2 Application These rules shall apply to all employees of the Alaska Railroad Corporation (ARRC).

**ALASKA RAILROAD
CORPORATION**

SUBJECT:	Procurement Rules	Rev. No.	0	Index	A-
		Issue Date	7-10-85	Page	5 of 8

1200.3 Delegation The CEO may delegate the authority and responsibilities necessary for the implementation of these rules as he may deem appropriate.

1200.4 Procedures The CEO shall establish such procedures as are necessary to implement these rules.

1200.5 Conflict with Existing Rules These rules supersede the rules continued in effect by Emergency Rule No. 85-2, which have no further force or effect. These rules shall control in the event of a conflict between these rules and any other rules of the ARRC existing as of the date of adoption of these rules.

1200.6 Terminology The use of any gender in these rules shall be deemed to include the other gender, wherever appropriate. The use of the singular in these rules shall be deemed to include the plural and vice versa, wherever appropriate.

1200.7 Product Endorsement Requests for approval of a news release or advertisement stating that the ARRC, or any of its operating units or personnel, uses a product made or service

must be approved by the CEO.