

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6251 SENATE HEALTH, EDUCATION AND SOCIAL SERVICES

655

PRIVATE SECTOR

SELF-SUFFICIENCY TRUST

PUBLIC SECTOR

Governed by a Volunteer Board of Trustees Selected for individual commitment to and understanding of the needs of PEOPLE with DISABILITIES and THEIR FAMILIES.

Appointed by the National Foundation for the Handicapped.

The Board of Trustees:

- Set policy for the operating of the Private and Charitable Trust Funds.

Select and contract with Corporate Fiduciary Agent (Bank) to invest and manage all trust assets.

Select and contract with a Social Service Agent to complete all necessary intake processes, including the development of each Life-Care Plan.

Approve each Life-Care Plan and vote on participation of each family Trust/ Life-Care Plan.

- Use discretionary trustee powers in cooperation with the Special Trustee to modify or approve expenditures within the guidelines of each Life Care Plan.

*** The Board of Trustees must comply with the TRUST and TRUSTEES ACT of Illinois (Ill. Rev. Stat. Ch. 17, Par. 1651-1690).

* 1986 passed into law of Public Act 84-1373 creating a mechanism to receive private trust assets to expand, enhance and supplement services for disabled, eligible for services under the Illinois Department of Mental Health and Developmental Disabilities.

- Established Chapter 91 1/2 Sections 5-110 and 5-119 of the "Mental Health and Developmental Disabilities Code".

- Empowers the State Treasurer as ex-officio and custodian of the public sector fund.

- Provides for the Comptroller to direct payments from each account within the "fund" upon receipt of certified vouchers approved by the Director of DMH DD.

- Requires DMH DD to adopt rules and regulations for the administration of the public sector "fund".

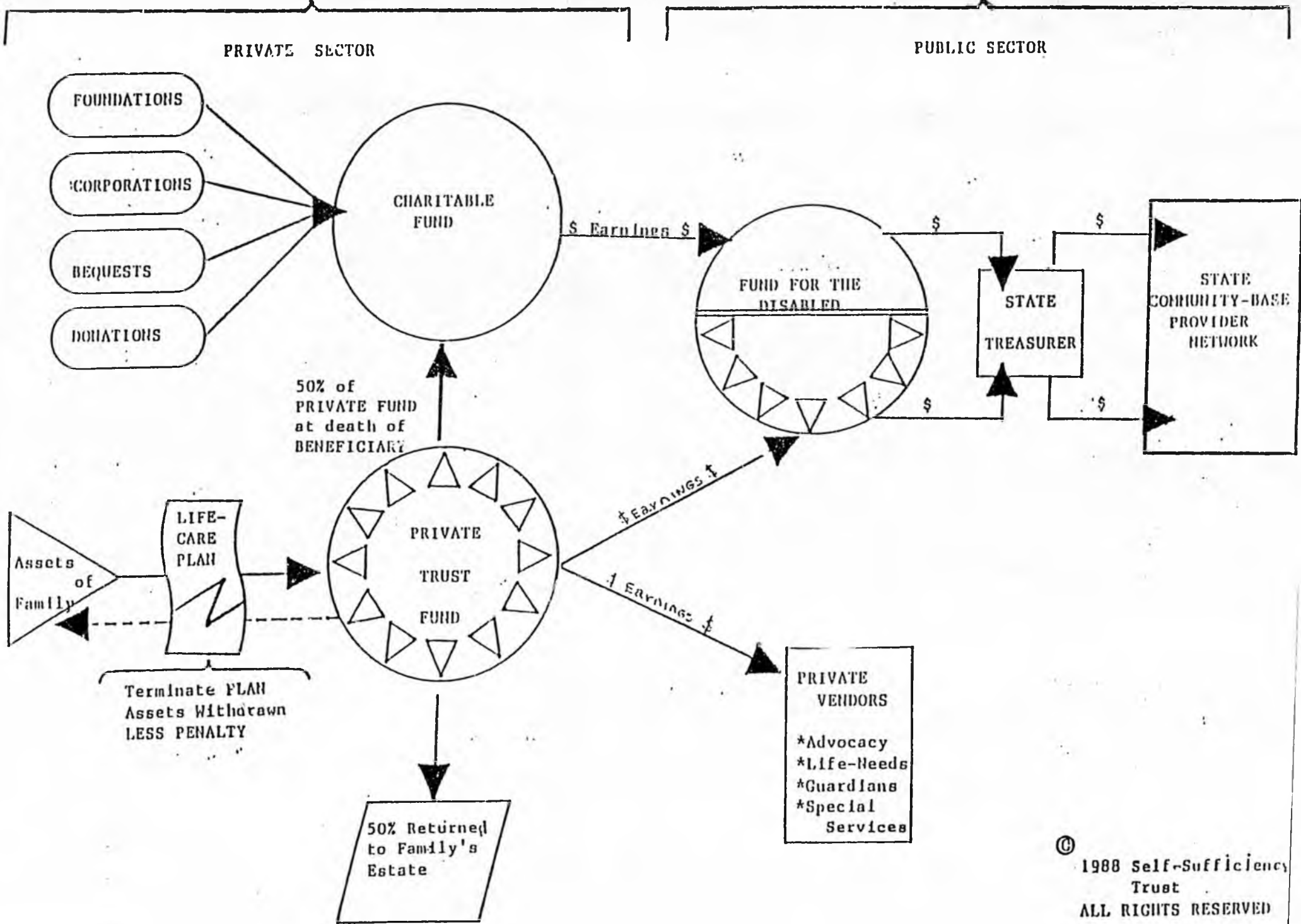
- Monies shall be spent pursuant to existing department rules governing expenditures for services and based upon the individual trust agreements (Life-Care Plan) for each eligible Beneficiary.

- If Director determines monies cannot be expended pursuant to department rules or service availability, funds and accrued interest will be returned to the beneficiary's Private Trust Fund.

** The receipt of monies from the Self-Sufficiency Trust (Private Fund) will not in any way reduce, impair or diminish the benefits each beneficiary would otherwise be entitled to under law.

*** Establishes a "Fund" for the Disabled to accept monies from any source which, subject to appropriations, will be used for services to low-income disabled eligible for DMH-DD services.

SELF-SUFFICIENCY TRUST
Supplemental Service Funding Process



MODEL ACT

An Act to provide for a Self-Sufficiency Trust for the developmentally disabled, mentally ill and physically handicapped.

STATE OF _____

BE IT ENACTED by the People of the State of _____,
as follows:

SECTION 1: Sections 1, 2 and 3 are added to the _____
_____ (detail the State law section dealing with
the disabled), the added sections to read as follows:

- (A) CREATION. There is hereby created the Self-Sufficiency Trust Fund. The State Treasurer, ex officio, shall be custodian of the Trust Fund, and the Comptroller shall direct payments from the Trust Fund upon vouchers properly certified by the (Director or Commissioner) of (name appropriate state agency). The Treasurer shall credit interest on the Trust Fund to the Trust Fund, and the Director shall allocate such interest pro rate to the respective accounts of the named beneficiaries of the Trust Fund. For the purposes of this section, the term "self-sufficiency trust" means a trust created by a nonprofit corporation which is a 501-C-3 organization under the United States Internal Revenue Code of 1954 and which was organized under the Nonprofit Corporation Act, Chap. _____ Section _____ for the purpose of providing for the care, or treatment of one or more developmentally disabled, mentally ill or physically handicapped persons or persons otherwise eligible for department services.
- (B) RULES. The department shall adopt such rules and procedures under the _____ Administrative Procedures Act, Title _____, chapter _____, as may be necessary or useful for the administration of the trust fund.

SECTION 3: ADMINISTRATION OF FUND

(A) NAMING BENEFICIARIES. The Department of (appropriate state agency) may accept money from a self-sufficiency trust for deposit in the trust fund pursuant to an agreement with the trust naming one or more beneficiaries who are developmentally disabled, mentally ill or physically handicapped persons or persons otherwise eligible for department services residing in this State and specifying the care, or treatment to be provided for them. The department shall maintain a separate account in the trust fund for each named beneficiary.

(B) CARE OF BENEFICIARIES. The money in these accounts shall be spent by the department, pursuant to its rules, only to provide care and treatment for the named beneficiaries in accordance with the terms of the agreement.

(C) RETURN OF MONEY. In the event that the director determines that the money in the account of a named beneficiary cannot be used for the care or treatment of the beneficiary in a manner consistent with the rules of the department and the agreement, or upon request of the self-sufficiency trust, the remaining money in that account, together with any accumulated interest on that account, shall be promptly returned to the self-sufficiency trust which deposited the money in the trust fund.

(D) OTHER BENEFITS NOT AFFECTED. The receipt by a beneficiary of money from the trust fund or of care or treatment pro-

vided with that money, shall not in any way reduce, impair or diminish the benefits to which the beneficiary is otherwise entitled by law.

SECTION 3: SPECIAL FUND

The fund for the disabled is created as a special fund from the State Treasury. The director may accept money from any source for deposit into the fund. The money in the fund shall be used by the department, subject to an appropriation, for the purpose of providing for the care, and treatment of low-income developmentally disabled, mentally ill and physically handicapped persons, or low-income persons otherwise eligible for department services, as defined by the department.



SELF-SUFFICIENCY TRUST
OF ILLINOIS

DISABLED POPULATION
PROFILE SYSTEM

DISABLED POPULATION PROFILE SYSTEM

OVERVIEW

There are two purposes for the Disabled Population Profile System:

- 1) It is the first step in forming a life-care plan for a disabled individual;
- 2) It is a planning tool which provides a system to collect information on the needs of the disabled population that are in need of services now and those needing services in the future. This information can be compiled state-wide and eventually nation-wide. Until now, there has been no successful system to accurately show these needs.

The service application will give the following information:

- 1) Parent demographic information;
- 2) Disabled person demographic information;
- 3) Functional disabilities of the disabled person - very basic "yes - no" function not an in-depth clinical review;
- 4) Scales for level determination - these scales will be used later to determine what level of residential care and day programming is needed by the disabled person. All costs associated with the level are also calculated (current year or future year costs). The system then takes these costs and produces an Income Earnings Projection which is the starting point for the financial planning for a parent for the needs of their son or daughter;
- 5) Current living arrangements and services;
- 6) Immediate needs of the disabled person;
- 7) Future needs - This is when the system takes the Life-Care needs, matches them to the level determination and costs for those needs, in any given year.

Self-Sufficiency Trust of Illinois

WHEN CAN I ENROLL IN THE SELF-SUFFICIENCY TRUST?

When it is time to deliver services under the Life Care Plan developed for your beneficiary who is disabled, you can enroll in and fund the Self-Sufficiency Trust (the "SST"). Depending upon your wishes, then, enrollment can occur currently, on a future set date, or at your death.

The Self-Sufficiency Trust has only two enrollment procedures. The first is for donors who desire services CURRENTLY; the second is for donors who desire services on a FUTURE SET DATE or AT THEIR DEATH.

CURRENT ENROLLMENT PROCEDURES

If the Life Care Plan for your beneficiary who is disabled has been completed and you have determined that services are to be purchased immediately, then your enrollment in the SST will be completed at once.

As you work with the SST Interviewers, your attorney and advisors, you will complete the Life Care Plan [which defines the services and the timing of their delivery to be provided to your disabled beneficiary], the Transfer Document [which is the agreement you sign with the SST], and the Appointment of Special Trustee [which gives you or your appointee a voice in the provision of services to your disabled beneficiary].

A summary of your file is then prepared for presentation to the Board of the Self-Sufficiency Trust. This file is identified only by the social security number of the disabled individual and contains a summary of the Life Care Plan, a verification of the financial projections, a verification that a Provider has been identified to provide services, and a verification that the Transfer Document and Appointment of Special Trustee have been executed by the donor.

If all these items are in order, the Board of Trustees will accept the enrollment pending funding. Immediately after that acceptance, the original Transfer Document and Appointment of Special Trustee are presented to the President of the Board for signature.

Now that enrollment has been approved, your file is returned to staff who will write to you giving instructions on how your funds are to be deposited into the SST. You will also be given copies of the fully signed Transfer Document and Appointment of Special Trustee.

When your funds are received and cleared, your enrollment is complete. Your disabled beneficiary becomes a Participant in the SST, and services will begin. Of course, we'll be interfacing with your Special Trustee as needed thereafter.

FUTURE/COMMITTED ENROLLMENT PROCEDURES

If you have completed the Life Care Plan for your beneficiary who disabled and determined that services are to be purchased at a Future Set Date or after your death, then your enrollment will be completed at that future time. However, it is important to both of us that your enrollment be COMMITTED. This allows you to depend upon and plan for your enrollment, and it allows us to plan for the future of the SST and your beneficiary.

Enrollment for future services is accomplished through testamentary devices, primarily through your Will and/or through life insurance.

As you work with the SST Interviewers, your attorney and advisors, you will complete the Life Care Plan. Then, if you intend to fund the Trust through your Will, you will prepare a new Will which includes the paragraphs necessary to enroll in and transfer funds to the SST and to appoint a Special Trustee.

If you intend to fund the Trust through life insurance, you will make the Self-Sufficiency Trust of Illinois the beneficiary of your policy for the sum need to fund your Life Care Plan, and you will complete a Transfer Document and an Appointment of Special Trustee. As an alternative, you can flow the insurance proceeds through your estate and enroll in the SST through your Will, as discussed above.

We then ask that you give the SST a photocopy of your Will (just the pages that relate to the SST) and of your life insurance beneficiary designation with a letter stating that you intend to enroll your disabled beneficiary in the SST at a future time. This tells us that you are COMMITTED to enrollment in the SST.

Once we have all these documents, a summary of your file is prepared for presentation to the Board of the Self-Sufficiency Trust. This file is identified only by the social security number of the disabled individual and contains a summary of the Life Care Plan, a verification of the financial projections, and a verification that your financial/estate planning and documentation is in order so that future funding and enrollment can occur.

If all these items are in order, the Board of Trustees will recognize the enrollment pending future funding.

It is then necessary for us to meet annually to update your file and review the needs of your disabled beneficiary. This is very important; we need to know that you are still committed to the SST so that we can plan for the time when your disabled beneficiary will need us. We will gladly accomodate these reviews via the telephone or mail if that is easier for you. [Please see the SST handout entitled UPDATE PROCEDURES].

At your death, we will work with your Executor and Special Trustee to complete enrollment as described in the first part of this handout.

If you make arrangements for this kind of testamentary enrollment and decide in future years that you want services to begin even though you are still alive, just arrange to meet with an SST Interviewer. That change can be easily accomplished and services begun at that time.

Suppose for a moment that you know now that you want services to begin on a SET FUTURE DATE --for example, if you want services to start when you retire in 1999-- the SST requires that you go through the testamentary enrollment procedure. Then if you die before 1999, your beneficiary is protected through your Will or life insurance. If you survive until 1999, we will arrange for immediate enrollment at that time.

Self-Sufficiency Trust of Illinois

As you learn about the Self-Sufficiency Trust of Illinois (the "SST"), you will see that the goal of the SST is to fund services to meet identified needs of individuals with disabilities for defined periods of time.

It is important that you clearly understand each element of this goal as you evaluate your own participation in the SST.

When you meet with the SST Interviewers, the goal of the meetings is mutually to define service needs and when the needs are likely to occur. During the first interview, you will complete the computer-based Disabled Population Profile System ("DPPS") by answering a variety of questions. These will range from identification information (such as name, address, social security number) to level-of-functioning information. You will be asked about a variety of services (such as residential, day programming, advocacy, and guardianship) and whether or not your disabled beneficiary will need these services. You will also be asked when you think these services should begin.

After your first interview, our computer will process your answers in a number of different ways, and we will begin to develop a Life Care Plan for the individual with disabilities.

From your identification answers, the DPPS will apply a geographic descriptor as formulated by Illinois Department of Mental Health and Developmental Disabilities ("DMH-DD").

From your level-of-functioning and program needs answers, the DPPS will identify the residential and day program setting appropriate to your disabled beneficiary within the program parameters established by DMH-DD.

From your service timing answers, the DPPS will determine the number of years each service is to be provided. In doing this, DPPS examines the current age of your disabled beneficiary and the date you want services to begin, and it factors in an average life span of eighty-one years.

Service cost information from DMH-DD, the Department of Rehabilitation Services, advocacy groups, guardianship services, and others are also accessed by the DPPS program.

Under the Mental Health Code of Illinois, the SST must make appropriate placement determinations when identifying services for individuals participating in the SST. All of our efforts are to this end, and you play a large part in our success by supplying complete and objective information about your beneficiary who is disabled.

At your second SST interview, we will review the computer-projected costs of various programs for your beneficiary who is disabled. All of these projections will be based upon the level-of-functioning information and start-up date which you provided in the first interview. If the information you have given us is inaccurate, then the projections may be inaccurate.

That's why we call them "projections". These figures give us both an estimate of the cost of services and allows you to begin financial planning.

Actual enrollment in the SST will take place only when services are to be delivered to the individual with disabilities. In all cases, a Provider of those services will be identified prior to enrollment. If applicable to the services to be supplied, the Provider will be asked to do a complete evaluation of your disabled beneficiary. If the results of this evaluation differ from the information you have given us, then there is the potential that the actual cost of services will differ from the projections.

Some donors are not interested in securing services under the SST right away. They may have minor beneficiaries or they may want to keep their adult beneficiaries home a few more years. In these cases, the donors might want to work with the SST and other SST donors in developing new housing for future occupancy, or the donors might wish simply to contact the SST in the future when they are ready for services. [Please see the SST handout entitled SELF-SUFFICIENCY TRUST RESIDENTIAL INITIATIVES.]

In many instances, the donors will want to use the SST to make plans for after their own death. In this event, we ask that a qualified third party make a level-of-functioning assessment, and based upon that evaluation we will cost out service as if it were to begin today. These figures can then be used by the donors to make estate plans and life insurance decisions. Each anniversary thereafter, the donors should meet with the SST Interviewer to update their file. At that time, the cost figures will be verified to reflect any significant changes in the condition of the beneficiary. The donors can then adjust their estate plans or life insurance beneficiary designations. [Please see the SST handout entitled ANNUAL UPDATE PROCEDURES.]

As you can see, you and your input are a vital part of the SST effort to fund services to meet the identified needs of your beneficiary with a disability for a defined period of time.

Self-Sufficiency Trust of Illinois

COMMITMENT TO EQUAL ACCESS

It is the commitment of the Board of Trustees of the Self-Sufficiency Trust of Illinois to offer equal access to all citizens of the State of Illinois to meet with Trust Interviewers.

INTAKE PROCESS FEES

All donors with a beneficiary who is disabled are encouraged to come in for one interview and enroll their beneficiary in the Disabled Population Profile System computer database. This information will be shared with the State of Illinois for planning purposes. Of course, confidentiality is strictly preserved.

Fee for one interview to enroll in the
Disabled Population Profile System.....NO CHARGE

Families who wish to learn more about the Self-Sufficiency Trust may choose to come in for a second and third interview for this purpose. It is possible to complete all enrollment steps in these two interviews, however, remember that you are not obligated in any way and that you may discontinue the process at any time.

Fee for second and third interviews to evaluate and
possibly enroll in the Self-Sufficiency Trust.....NO CHARGE
Additional interviews: Cook and collar counties \$90.00 per hour
All other counties..... \$60.00 per hour

TRUST MANAGEMENT FEE

After you have enrolled in the Self-Sufficiency Trust, the Trust charges a management fee of 1.4% (one and four-tenths percent) of annual principal and accrued interest to cover management costs.

Of this figure, 1% (one percent) is paid to the Self-Sufficiency Trust or its designated agent for account maintenance and administration. The remaining 0.4% (four-tenths percent) is paid to the bank for its management and investment of the Trust accounts.

UPDATE FEES

Families are encouraged to update their Disabled Population Profile System file in the event that there is a dramatic change in the condition or needs of their beneficiary who is disabled. In most instances this update can be handled through the mail.

Fee to update the Disabled Population Profile System...NO CHARGE

UPDATE FEES (Continued)

Families who are enrolled in and receiving services from the Self-Sufficiency Trust who wish to augment those services are invited to meet with us. Remember that you are not obligated in any way and that you may discontinue the process at any time.

Fee to augment current services, two interviews.....NO CHARGE
Additional interviews: Cook and collar counties \$90.00 per hour
All other counties..... \$60.00 per hour

Families who have neither completed current enrollment nor committed to future enrollment in the the Self-Sufficiency Trust and who wish to update their financial projections or to modify their Lif Care Plans are invited to do so.

Update fee for donors who are neither currently enrolled nor committed to future enrollment in the SST, maximum of two interviews.....\$100.00
Additional interviews: Cook and collar counties \$90.00 per hour
All other counties..... \$60.00 per hour

FUTURE/COMMITTED ENROLLMENT UPDATE FEES

Families who have committed to future enrollment in the Self-Sufficiency Trust are entitled to a one-year Annual Membership which includes the "SST Newsletter" free of charge. After the first year, the Annual Membership will cost \$100.00 per year and, in addition to the newsletter, includes one one-hour conference to review accounts and keep records up to date. Additional conference time is billable as follows:

Cook and collar counties \$90.00 per hour
All other counties..... \$60.00 per hour

JOINT EMERGENCY SERVICES FUND

The Board of Trustees of the Self-Sufficiency Trust is empowered to levy a variable nominal fee against each participant's account to fund a pooled Joint Emergency Services Fund. This Fund is available to all participants on an emergency first come, first served basis in the event that an unexpected change in the participant's condition results in a greater need than originally funded by the individual trust account

NOTICE: THE FEES HEREIN MAY BE CHANGED BY RESOLUTION OF THE BOARD OF TRUSTEES OF THE SELF-SUFFICIENCY TRUST WITHOUT NOTICE OR OBLIGATION.

WHAT DOES "UPDATE" MEAN?

During your first Self-Sufficiency Trust ("SST") interview, you will complete the Disabled Population Profile System ("DPPS") which is a computer-based file describing the status and needs of your beneficiary who is disabled. You may also have requested and at your second interview been given projections of the monies needed to fund services to meet the identified needs of your disabled beneficiary for a defined period of time.

Updating the DPPS file simply means reviewing your previous answers and supplying new answers that more accurately reflect your new situation.

If needed, new financial projections will also be prepared which reflect your new situation.

WHO NEEDS TO UPDATE THEIR FILE?

1. You should update your DPPS computer file anytime your disabled beneficiary experiences a dramatic and unexpected change in condition and/or needs. This information will then be shared with the Illinois Department of Mental Health and Developmental Disabilities to allow the state to plan for the needs of the disabled population. Of course, your privacy, and that of your disabled beneficiary will be fully protected; statistical information only will be given to the state.

There is no charge for an update of your Disabled Population Profile System file.

2. If you are using financial projections provided at your SST interview for purposes of financial planning, you should update your DPPS computer file and your financial projections anytime your disabled beneficiary experiences a dramatic and unexpected change in condition and/or needs.

You will be given new financial projections for cost of service based upon your beneficiary's new condition.

There is a Fee for updating your financial projections. Please see the handout entitled FEE INFORMATION.

3. You should update your Disabled Population Profile System computer file and your financial projections annually if you are participating in the Self-Sufficiency Trust as a Future Committed Enrollment through your Will or Life Insurance.

You will be given new financial projections for cost of service based upon your beneficiary's age and condition, and upon your Life Care Plan at the time the projections are prepared. This information can then be used to update your Will and/or your Life Insurance Beneficiary designations.

There is an annual Membership Fee for donors participating in the Trust in this manner. Please see the handout entitled FEE INFORMATION.

HOW DO I UPDATE MY SST RECORDS?

It's simple. Just call your local office or agent for the Self-Sufficiency Trust of Illinois. If you want to update your DPSS file only, chances are we will be able to do it through the mail. If you want to update your DPSS file and review new financial projections, then we will schedule a mutually convenient time to meet and discuss the necessary revisions.

Self-Sufficiency Trust of Illinois
Elmhurst Headquarters Telephone: 312/941-3498
Springfield Office: 217/744-9208

Chicago Agent: PACT, Inc. 312/641-6363

Aurora Agent: Association for Individual Development
312/892-1199

WHO IS ELIGIBLE TO PARTICIPATE?

To be eligible to participate in the Self-Sufficiency Trust of Illinois, an individual must meet two criteria.

First, the individual must be developmentally disabled or otherwise entitled to receive services from the Illinois Department of Mental Health and Developmental Disabilities.

Second, the individual beneficiary of the Trust account must reside in the State of Illinois. There is no requirement that the Donor(s) live in Illinois.

[See: Illinois Revised Statutes Chapter 91 1/2, Section 5-118.]

ARE THERE OTHER LIMITATIONS ON WHO CAN PARTICIPATE?

There are no other legal restrictions. However there are some practical considerations.

One of the primary goals of the Self-Sufficiency Trust of Illinois is to preserve entitlements received by an individual who is handicapped.

The Health Care Financing Administration (H.C.F.A) has stated that the Self-Sufficiency Trust of Illinois will not jeopardize Medicaid benefits in all but the following instances. Medicaid benefits would be jeopardized if the Trust account is set up by the disabled individual or his/her spouse using the disabled person or the spouse's funds. Medicaid benefits would also be jeopardized if a guardian or legal representative set up a Trust account for a disabled individual using funds that are the property of the disabled person.

Although individuals falling in these categories are eligible under Illinois law to participate in the Self-Sufficiency Trust, it might not be a wise financial decision to do so.

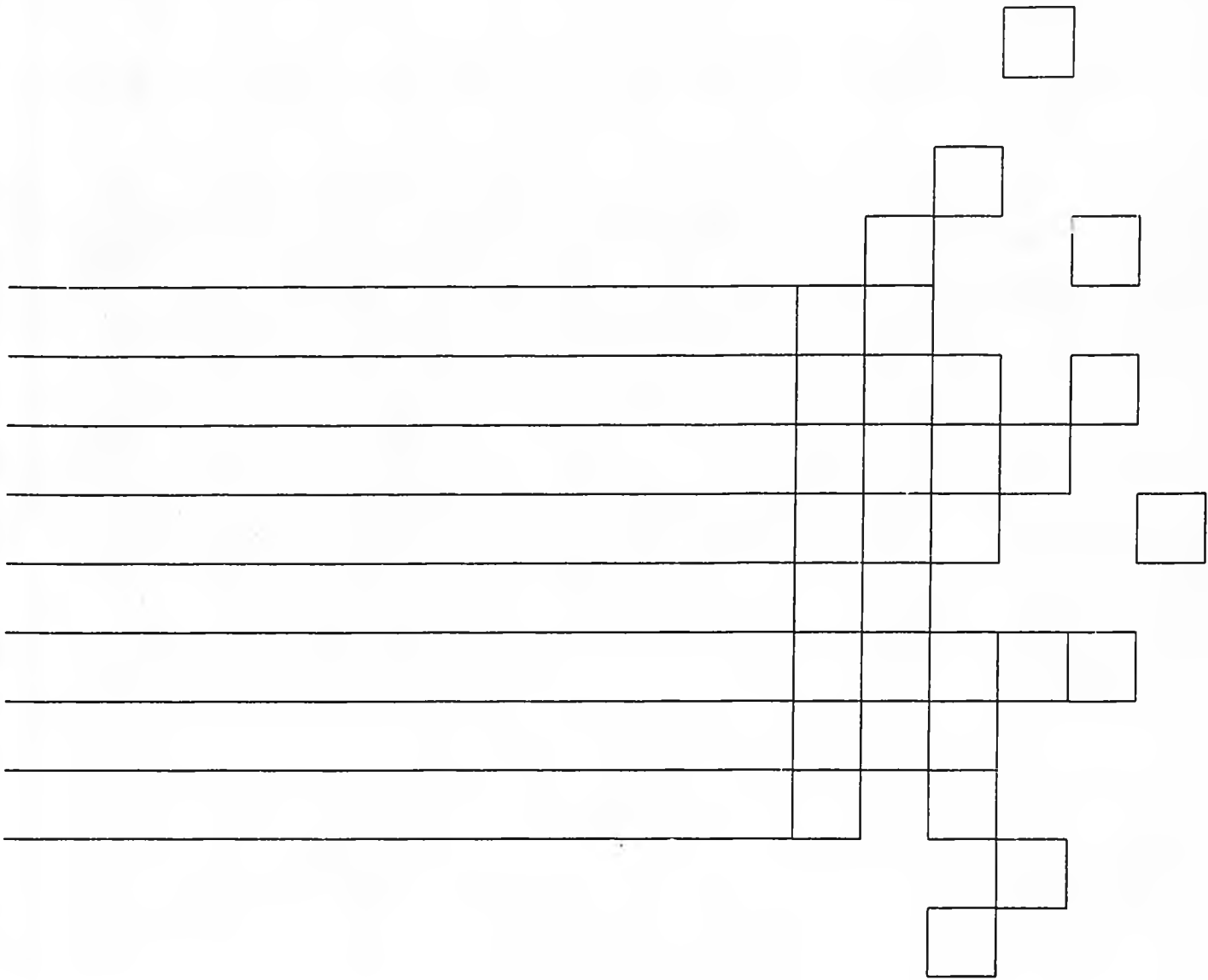
[See: Letter of January 6, 1988, from the Health Care Financing Administration to the National Foundation for the Handicapped, reprinted in the Appendices of the Illinois Self-Sufficiency Trust ATTORNEY HANDBOOK.]

WHAT ABOUT BENEFITS PAID BY SOCIAL SECURITY?

The Regional Commissioner of the Social Security Administration has determined that, based on current regulations, Self-Sufficiency Trust Assets will not count as resources in determining eligibility under the Supplemental Security Income (SSI) program.

[See: Letter of June 29, 1987, from the Office of the Regional Commissioner, Social Security Administration to Daniels and Sheen, counsel for the National Foundation for the Handicapped, reprinted in the Appendices of the Illinois Self-Sufficiency Trust ATTORNEY HANDBOOK.]

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



ILLINOIS REVISED STATUTES
CHAPTER 91 1/2 SECTIONS 5-118 AND 5-119
Attorney Handbook
Estate Planning for Persons with Disabilities



S B

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Alaska State Legislature

SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

MEMORANDUM

JANUARY 19, 1989

TO: SENATOR PAUL FISCHER, CHAIR
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

FROM: SENATOR JIM DUNCAN

SUBJECT: SENATE BILL 51, AN ACT RELATING TO WORKERS'
COMPENSATION REHABILITATION SPECIALISTS

I REQUEST THAT YOU SCHEDULE SB 51, RELATING TO WORKERS' COMPENSATION REHABILITATION SPECIALISTS FOR A HEARING AS SOON AS POSSIBLE.

A PROBLEM HAS ARISEN FOR A CONSTITUENT OF MINE AS THE RESULT OF THE RECENTLY REVISED WORKERS' COMPENSATION STATUTES. SECTION 47 OF CHAPTER 79, SLA 1988, ALLOWS A ONE YEAR GRACE PERIOD FOR PRACTICING REHABILITATION SPECIALISTS TO CONTINUE WITHOUT THE REQUIRED CERTIFICATION FROM JULY 1, 1988 TO JUNE 30, 1989. AFTER THAT PERIOD, CURRENTLY PRACTICING REHABILITATION SPECIALISTS WILL NOT BE ALLOWED TO CONTINUE IN THEIR WORK UNLESS THEY ARE CERTIFIED BY THE INSURANCE REHABILITATION SPECIALISTS COMMISSION.

IN PARTICULAR, A CONSTITUENT OF MINE OWNS A LOCAL REHABILITATION SERVICE AND HAS WORKED AS A VOCATIONAL REHABILITATION COUNSELOR SINCE JANUARY 1, 1984. TO MEET THE BACHELORS DEGREE REQUIREMENT FOR A CATEGORY TWO REHABILITATION SPECIALIST, SHE IS NOW TAKING 15 CREDIT HOURS IN ADDITION TO CONTINUING HER WORK AS A REHAB SPECIALIST. AT THE TIME OF ENACTMENT OF THE LEGISLATION, SHE STILL NEEDED TWO YEARS TO ATTAIN HER BACHELOR'S DEGREE. THIS MEANS THAT ON JUNE 30, 1989, SHE WILL BECOME INELIGIBLE TO CONTINUE HER WORK AS A REHABILITATION SPECIALIST IN SPITE OF THE FACT THAT SHE IS DOING AN EXCELLENT JOB AND HAS REFERENCES WHICH BEAR THIS OUT.

SB 51 WILL EXTEND THE GRACE PERIOD TO ATTAIN CERTIFICATION UNTIL JUNE 30, 1991, BUT ONLY FOR INDIVIDUALS WHO WERE ACTIVELY EMPLOYED FOR AT LEAST ONE YEAR BEFORE JUNE 30, 1988 AS REHABILITATION SPECIALISTS AND WHO CAN DEMONSTRATE THAT THEY ARE ACTIVELY PURSUING CERTIFICATION AS AN INSURANCE REHABILITATION SPECIALIST OR REHABILITATION COUNSELOR, AND WHO CAN PROVIDE TO THE DEPARTMENT OF LABOR AT LEAST TWO LETTERS OF RECOMMENDATION FROM INDIVIDUALS ACTIVE IN REHABILITATING INJURED WORKERS.

ATTACHMENTS



Alaska State Legislature

SENATOR JIM DUNCAN

P. O. BOX V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

SEPTEMBER 28, 1988

Ms. MARY PIERCE
MR. BOB ANDERS
WORKER'S COMPENSATION MANAGEMENT
LABOR TASK FORCE
4000 OLD SEWARD HIGHWAY
SUITE 203
ANCHORAGE, ALASKA 99503

DEAR MANAGEMENT LABOR TASK FORCE;

A PROBLEM HAS ARISEN FOR A CONSTITUENT OF MINE AS THE RESULT OF THE RECENTLY ENACTED WORKERS' COMPENSATION STATUTE. I PROVIDE THE FOLLOWING EXPLANATION AND REQUEST FOR THE TASK FORCE'S RESPONSE.

SECTION 47 OF CHAPTER 79 ALLOWS A ONE YEAR GRACE PERIOD FOR PRACTICING REHABILITATION SPECIALISTS TO CONTINUE WITHOUT THE REQUIRED CERTIFICATION FROM JULY 1, 1988 TO JUNE 30, 1989. AFTER THAT PERIOD, CURRENTLY PRACTICING REHABILITATION SPECIALISTS WOULD NOT BE ALLOWED TO CONTINUE IN THEIR WORK UNLESS THEY ARE CERTIFIED BY THE INSURANCE REHABILITATION SPECIALISTS COMMISSION.

IN PARTICULAR, A CONSTITUENT OF MINE OWNS A LOCAL REHABILITATION SERVICE AND HAS WORKED AS A VOCATIONAL REHABILITATION COUNSELOR SINCE JANUARY 1, 1984. TO MEET THE BACHELORS DEGREE REQUIREMENT FOR A CATEGORY TWO REHABILITATION SPECIALIST, SHE IS NOW TAKING 15 CREDIT HOURS IN ADDITION TO CONTINUING HER WORK AS A REHAB SPECIALIST. AT THE TIME OF ENACTMENT OF THE LEGISLATION, SHE STILL NEEDED TWO YEARS TO ATTAIN HER BACHELOR'S DEGREE. THIS MEANS THAT ON JUNE 30, 1989, SHE WILL BECOME INELIGIBLE TO CONTINUE HER WORK AS A REHABILITATION SPECIALIST IN SPITE OF THE FACT THAT SHE IS DOING AN EXCELLENT JOB AND HAS REFERENCES WHICH BEAR THIS OUT.

MY QUESTIONS ARE THESE: WAS IT THE TASK FORCE'S INTENT TO ALLOW ONLY ONE YEAR TO OBTAIN A FOUR YEAR DEGREE? DID THE TASK FORCE KNOW THE POTENTIAL IMPACT OF ALLOWING ONLY A ONE YEAR GRACE PERIOD? DID THE TASK FORCE BELIEVE THERE WAS ANY FLEXIBILITY WRITTEN INTO THE CURRLENT LAW WHICH WOULD ALLOW GRANDFATHERING IN OF THOSE REHAB SPECIALISTS WHO ARE MAKING A GOOD FAITH EFFORT TO

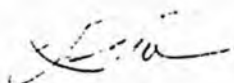
WORKERS' COMPENSATION MANAGEMENT
LABOR TASK FORCE
SEPTEMBER 28, 1988
PAGE 2

ATTAIN CERTIFICATION? IF NOT, WHAT WOULD BE THE TASK FORCE'S REACTION TO LEGISLATION EXTENDING THE GRACE PERIOD FOR ONE ADDITIONAL YEAR?

IF IT IS NECESSARY TO AMEND THE GRACE PERIOD STATUTORILY, I FEEL IT WOULD BE APPROPRIATE TO INCLUDE PROVISIONS WHICH REQUIRE THE AFFECTED REHAB SPECIALISTS TO PROVIDE LETTERS OF RECOMMENDATION FROM AT LEAST TWO INDIVIDUALS KNOWLEDGEABLE IN THE FIELD OF WORKER REHABILITATION, AS WELL AS PROOF THAT CERTIFICATION IS BEING ACTIVELY PURSUED.

I WOULD APPRECIATE THE TASK FORCE'S WRITTEN RESPONSE TO THIS REQUEST AFTER YOUR OCTOBER MEETING. THANK YOU FOR YOUR CONSIDERATION.

SINCERELY,



JIM DUNCAN
SENATOR



LAWS OF ALASKA

1988

Source

CCS SB 322

Chapter No.

79

AN ACT

Relating to workers' compensation; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 31, 1988
Actual Effective Date: Sections 42 and 50 take effect
June 1, 1988. Sections 1 - 41, and 43 - 49 take
effect July 1, 1988

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AN ACT

Relating to workers' compensation; and providing for an effective date.

* Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30.

(b) The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party. It is the specific intent of the legislature that workers' compensation cases be decided on their merits, except when otherwise provided by statute. It is also the intent of the legislature that the board possess the greatest possible authority in the exercise of its fact finding responsibilities and that the board's decisions be conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board.

(c) It is the intent of the legislature in amending AS 23.30.175 regarding benefits payable to recipients not residing in the state to

(1) recognize the levels of workers' compensation benefits brought about by the high cost of living that exists in the state as compared to other localities;

(2) increase the incentives to return to work; and

(3) remove obstacles to the utilization of vocational rehabilitation that may be brought about by the payment of workers' compensation

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benefits at the high levels provided by the Alaska workers' compensation law to individuals residing in localities with living costs lower than those in Alaska.

(d) It is the intent of the legislature to encourage employers to approve safety practices in the workplace and to use improved safety practices to reduce work related injuries.

(e) It is the intent of the legislature in amending AS 23.30.075(b) and 23.30.155 that the division of workers' compensation, division of insurance, and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements and penalties for noncompliance under AS 23.30.155. Strict enforcement is necessary because

(i) the state has failed to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer; and

(2) there is a lack of specific data from the division of workers' compensation and division of insurance to adequately assess the efficiency and costs of the workers' compensation system.

* Sec. 2. AS 21.39.155 is amended by adding a new subsection to read:

(c) An insurer may impose a surcharge not to exceed 25 percent of the premium for assigned risk pool insurance, except that a surcharge may not be applied to the first \$3,000 in premium in any policy year.

* Sec. 3. AS 21.09 is amended by adding a new section to read:

Sec. 21.09.015. WORKPLACE SAFETY PROGRAM. An insurer who provides workers' compensation insurance in this state shall establish and maintain a workplace safety rate reduction program, subject to the approval of the division of insurance.

* Sec. 4. AS 23.30.005(h) is amended to read:

(h) The department shall [MAY] adopt [IDENTICAL] rules for all

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panels, and procedures for the periodic selection, retention, and removal of both rehabilitation specialists and physicians under AS 23.30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out the provisions of this chapter. Process and procedure under this chapter shall be as summary and simple as possible. The department, the board or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate [WHICH RELATED] to questions in dispute. The superior court, on application of the department, the board or any members of it, shall enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records.

* Sec. 5. AS 23.30.020 is amended by adding a new subsection to read:

(b) An employee who knowingly makes a false statement as to the employee's physical condition on an employment application or preemployment questionnaire may not receive benefits under this chapter if

(1) the employer relied upon the false representation and this reliance was a substantial factor in the hiring; and

(2) there was a causal connection between the false representation and the injury to the employee.

* Sec. 6. AS 23.30.025 is amended by adding a new subsection to read:

(c) An insurer extending coverage required under this chapter by specifying Alaska in the other states section or similar provision of the insurance policy shall provide notice to the department under AS 23.30.085.

* Sec. 7. AS 23.30.030 is amended by adding a new paragraph to read:

(8) An annual insurance premium that exceeds \$2,000 may be paid on an installment basis of not fewer than two payments, if

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requested by the insured. Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium. The insurer shall include this provision in the insurance policy in a manner that clearly informs the insured of the provision.

* Sec. 8. AS 23.30.040(b) is amended to read:

(b) If an employee suffers a compensable injury that results in temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability, the employer or insurance carrier shall contribute to the second injury fund. The contribution shall be made annually at the time of the report filing required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM]. The amount of the contribution is the product of the compensation to which the employee is entitled for temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability and the applicable contribution rate set out in column A of this subsection. Payment need not be made to the second injury fund if the total contribution under this subsection is less than \$20. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

Column A	Column B	
	Reserve Rate	
Second Injury Fund	At Least	But Less Than
Contribution Rate	(Percent)	(Percent)
(Percent)		
6	0	50

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5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	

* Sec. 9. AS 23.30.040(h) is amended to read:

(h) Administration expenses of the state under this section and AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL] fund.

* Sec. 10. AS 23.30.041 is repealed and reenacted to read:

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The board shall select and employ a reemployment benefits administrator. The board may authorize the administrator to select and employ additional staff. The administrator is in the partially exempt service under AS 39.25.120.

(b) The administrator shall perform the following functions:

(1) enforce regulations adopted by the board to implement this section;

(2) recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;

(3) enforce the quality and effectiveness of reemployment benefits provided for under this section;

(4) review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;

(5) submit to the department, on or before January 1 of each year, a report of reemployment benefits provided under this

section for the previous fiscal year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including

(A) the estimated and actual cost of each active rehabilitation plan;

(B) the estimated and actual time of each rehabilitation plan;

(C) a status report on all individuals completing or terminating a reemployment benefits program including a return to work date;

(D) the cost of reemployment benefits;

(6) maintain a list of rehabilitation specialists who meet the qualifications established under this section;

(7) promote awareness among physicians, adjusters, injured workers, employers, employees, attorneys, training providers, and rehabilitation specialists of the reemployment program established in this subsection.

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at the time of injury, the employee or employer may request an eligibility evaluation for reemployment benefits. The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has an unusual and extenuating circumstance that prevents the employee from making a timely request. The administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation.

(d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23-30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

(e) An employee shall be eligible for benefits under this section upon the employee's written request and by having a physician predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" for

(1) the employee's job at the time of injury; or

(2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles."

(f) An employee is not eligible for reemployment benefits if

(1) the employer offers employment within the employee's

1 predicted post-injury physical capacities at a wage equivalent to at
2 least the state minimum wage under AS 23.10.065 or 75 percent of the
3 worker's gross hourly wages at the time of injury, whichever is great-
4 er, and the employment prepares the employee to be employable in other
5 jobs that exist in the labor market;

6 (2) the employee has been previously rehabilitated in a
7 former workers' compensation claim and returned to work in the same or
8 similar occupation in terms of physical demands required of the em-
9 ployee at the time of the previous injury; or

10 (3) at the time of medical stability no permanent impair-
11 ment is identified or expected.

12 (g) Within 10 days after the employee receives the adminis-
13 trator's notification of eligibility for benefits, an employee who
14 desires to use these benefits shall give written notice to the em-
15 ployer of the employee's selection of a rehabilitation specialist who
16 shall provide a complete reemployment benefits plan. If the employer
17 disagrees with the employee's choice of rehabilitation specialist to
18 develop the plan and the disagreement cannot be resolved, then the
19 administrator shall assign a rehabilitation specialist. The employer
20 and employee each have one right of refusal of a rehabilitation spe-
21 cialist.

22 (h) Within 90 days after the rehabilitation specialist's selec-
23 tion under (g) of this section, the reemployment plan must be formu-
24 lated and approved. The reemployment plan must include at least the
25 following:

26 (1) a determination of the occupational goal in the labor
27 market;

28 (2) an inventory of the employee's technical skills, phys-
29 ical and intellectual capacities, academic achievement, emotional

1 condition and family support;

2 (3) a plan to acquire the occupational skills to be employ-
3 able;

4 (4) the cost estimate of the reemployment plan, including
5 provider fees; the amount of tuition, books, tools, and supplies;
6 transportation; temporary lodging; or job modification devices;

7 (5) the estimated length of time that the plan will take;

8 (6) the date the plan will commence;

9 (7) the estimated time of medical stability as predicted by
10 the physician;

11 (8) a detailed description and plan schedule; and

12 (9) a finding by the rehabilitation specialist that the
13 inventory under (2) of this subsection indicates that the employee can
14 be reasonably expected to satisfactorily complete the plan and perform
15 in a new occupation within the time and cost limitations of the plan.

16 (i) Reemployment benefits shall be selected from the following
17 in a manner that ensures remunerative employability in the shortest
18 possible time:

19 (1) on the job training;

20 (2) vocational training;

21 (3) academic training;

22 (4) self-employment; or

23 (5) a combination of (1) - (4) of this subsection.

24 (j) The employee, rehabilitation specialist, and the employer
25 shall sign the reemployment benefits plan. If the employer and em-
26 ployee fail to agree on a reemployment plan, either party may submit a
27 reemployment plan for approval to the administrator; the adminis-
28 trator shall approve or deny a plan within 14 days after the plan is
29 submitted; within 10 days of the decision, either party may seek

review of the decision by requesting a hearing under AS 23.30.110; the board shall uphold the decision of the administrator unless evidence is submitted supporting an allegation of abuse of discretion on the part of the administrator; the board shall render a decision within 30 days after completion of the hearing.

(k) Benefits related to the reemployment plan may not extend past two years from date of plan approval or acceptance, whichever date occurs first, at which time the benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall provide wages equal to 60 percent of the employee's spendable weekly wages but not to exceed \$525, until the completion or termination of the plan. A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed \$10,000.

(m) Only a rehabilitation specialist may accept case assignments as a case manager and sign eligibility determinations and reemployment plans. A person who is not a rehabilitation specialist may perform rehabilitation casework if the work is performed under the direct supervision of a rehabilitation specialist employed in the same firm

and location.

(n) After the employee has elected to participate in reemployment benefits, if the employer believes the employee has not cooperated the employer may terminate reemployment benefits on the date of noncooperation. Noncooperation means unreasonable failure to

(1) keep appointments;

(2) maintain passing grades;

(3) attend designated programs;

(4) maintain contact with the rehabilitation specialist;

(5) cooperate with the rehabilitation specialist in developing a reemployment plan and participating in activities relating to reemployability on a full-time basis;

(6) comply with the employee's responsibilities outlined in the reemployment plan; or

(7) participate in any planned reemployment activity as determined by the administrator

(o) Upon the request of either party, the administrator shall decide whether the employee has not cooperated as provided under (n) of this section. A hearing before the administrator shall be held within 30 days after it is requested. The administrator shall issue a decision within 14 days after the hearing. Within 10 days after the administrator files the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110; the board shall uphold the decision of the administrator unless evidence is submitted supporting an allegation of abuse of discretion on the part of the administrator; the board shall render a decision within 30 days after completion of the hearing.

(p) In this section

(1) "administrator" means the reemployment benefits

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administrator under AS 23.30.041(a);

(2) "employability" means possessing the ability but not necessarily the opportunity to engage in employment that is consistent with the employee's physical status imposed by the compensable injury;

(3) "labor market" means a geographical area that offers employment opportunities in the following priority:

- (A) area of residence;
- (B) area of last employment;
- (C) the state;
- (D) other states;

(4) "physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear or see;

(5) "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing;

(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

(7) "remunerative employability" means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's gross hourly wages at the time of injury; if the employment is outside the state, the stated 60 percent shall be adjusted to account for the difference

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between the applicable state average weekly wage and the Alaska average weekly wage.

* Sec. 11. AS 23.30.055 is amended to read:

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.020(b). However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee.

* Sec. 12. AS 23.30.075(b) is amended to read:

(b) If an [AN] employer [WHO] fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board, upon conviction the court shall impose a fine of \$10,000 and may impose a sentence of [, IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY] imprisonment for not more than one year [, OR BY BOTH]. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the

[SAID] corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the [SUCH] corporation shall be subject to the penalties prescribed in this subsection [HEREIN] and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the [SAID] corporation at that [SUCH] time is not insured or qualified as a self-insurer.

* Sec. 13. AS 23.30.095(a) is amended to read:

(a) The employer shall furnish medical, surgical, and other attendants or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE, IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE

ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD].

* Sec. 14. AS 23.30.095(c) is amended to read:

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or health care provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice, the physician or health care provider shall furnish a written treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan shall be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments.

If the treatment plan is not furnished as required under this subsection, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing standards for frequency of treatment.

* Sec. 15. AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the physician resides [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit to an [ANY] examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during

the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. An autopsy may not be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If adequate notice is not given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

* Sec. 16. AS 23.30.095(f) is amended to read:

(f) All fees and other charges for medical treatment or service [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND] shall be subject to regulation by the board but may not exceed usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, as determined by the board. An employee may not be required to pay a fee or charge for medical treatment or service.

* Sec. 17. AS 23.30.095(j) is repealed and reenacted to read:

(j) The board may appoint a medical services review committee, or contract with an existing organization in the state or another state, to assist and advise the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter.

* Sec. 18. AS 23.30.095 is amended by adding a new subsection to read:

(k) In the event of a medical dispute regarding determinations

of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, a second independent medical evaluation shall be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of the examination and medical report shall be paid by the employer. The report of the independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the event of fraud or gross incompetence.

* Sec. 19. AS 23.30.105(a) is amended to read:

(a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out of an occupational disease shall be four years from the date of injury, and the right to compensation for death is barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

* Sec. 20. AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board. After completion of the hearing the board shall close the hearing record. If a settlement agreement is reached by the parties less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

* Sec. 21. AS 23.30.120 is amended by adding a new subsection to read:

(c) The presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress.

* Sec. 22. AS 23.30.125 is amended by adding a new subsection to read:

(f) Subject to an employer's or employee's burden of proof, a finding of fact made by the board as a part of a compensation order is conclusive unless the court specifically finds that a reasonable person could not have reached the conclusion made by the board.

* Sec. 23. AS 23.30.130(a) is amended to read:

(a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under [IN ACCORDANCE WITH] the procedure prescribed in respect of claims in AS 23.30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

* Sec. 24. AS 23.30.155(c) is amended to read:

(c) The insurer or adjuster (EMPLOYER) shall notify the board and the employee on a form prescribed by the board that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. An initial report shall be filed with the board and sent to the employee within 28 days after the date of issuing the first payment of compensation. If at any time 21 days or more pass and no compensation payment is issued, a report notifying the board and the employee of the termination or suspension of compensation shall be filed with the board and sent to the employee within 28 days after the date the last compensation payment was issued. A report shall also be filed with the board and sent to the

employee within 28 days after the date of issuing a payment increasing, decreasing, resuming, or changing the type of compensation paid. If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not notified within the 28 days prescribed by this subsection for reporting, the insurer or adjuster (EMPLOYER) shall pay a civil penalty of \$100 for the first day plus \$10 for each day thereafter that the [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under this subsection (SECTION) may not exceed \$1,000 for a failure to file a required report. Penalties assessed under this subsection are eligible for reduction under (m) of this section. A penalty assessed under this subsection after penalties have been reduced under (m) of this section shall be increased by 25 percent and shall bear interest at the rate established under AS 45.45.010.

* Sec. 25. AS 23.30.155(d) is amended to read:

(d) If the employer controverts the right to compensation the employer shall file with the board and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer controverts the right to compensation after payments have begun, the employer shall file with the board and send to the employee a notice of controversion within seven days after an installment of compensation payable without an award is due. When payment of temporary disability benefits is controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits, the most recent employer or insurer who is party to the claim and who may be liable shall make the payments during the pendency of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all costs and attorneys' fees incurred by the

prevailing employer, shall be made within 14 days of the determination.

* Sec. 26. AS 23.30.155(e) is amended to read:

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 [20] percent of it. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment.

* Sec. 27. AS 23.30.155(f) is amended to read:

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 25 [20] percent of it which shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award is had as provided in AS 23.30.125 and an interlocutory injunction staying payments is allowed by the court.

* Sec. 28. AS 23.30.155(m) is repealed and reenacted to read:

(m) On or before March 1 of each year the insurer or adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical, and related benefits, vocational rehabilitation expenses, legal fees, including a separate total for fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the

preceding calendar year. If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If during the preceding year the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer's or adjuster's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the insurer or adjuster receives notification from the commissioner regarding the timeliness of the reports. If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is late, and \$10 for each additional day the report is late. If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

* Sec. 29. AS 23.30.155 is amended by adding new subsections to read:

(n) If the employer is self-insured or uninsured, the requirements of (c) and (m) of this section apply to the employer.

(o) The board shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After

receiving notice from the board, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

* Sec. 30. AS 23.30.175 is repealed and reenacted to read:

Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of compensation for disability or death may not exceed \$700 and initially may not be less than \$110. However, if the board determines that the employee's spendable weekly wages are less than \$110 a week as computed under AS 23.30.220, or less than \$154 a week in the case of an employee who has furnished documentary proof of the employee's wages, it shall issue an order adjusting the weekly rate of compensation to a rate equal to the employee's spendable weekly wages. If the employer can verify that the employee's spendable weekly wages are less than \$154, the employer may adjust the weekly rate of compensation to a rate equal to the employee's spendable weekly wages without an order of the board. If the employee's spendable weekly wages are greater than \$154, but 80 percent of the employee's spendable weekly wages is less than \$154, the employee's weekly rate of compensation shall be \$154. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

(b) The following rules apply to benefits payable to recipients not residing in the state at the time compensation benefits are payable:

(1) the weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the ratio of the cost of living of the area in which the recipient resides to the cost of living in this state;

(2) the calculation required by (1) of this subsection does not apply if the recipient is absent from the state for medical or rehabilitation services not reasonably available in the state;

(3) if the gross weekly earnings of the recipient and the resulting compensation rate is determined under AS 23.30.220(a)(2), the calculation required by this subsection applies only to the portion of the recipient's weekly compensation rate attributable to wages earned in the state;

(4) application of this subsection may not reduce the weekly compensation rate to less than \$154 a week, except as provided in (a) of this section.

(c) The board shall provide by regulation for the determination and comparison of living costs for this state and the other areas in which recipients reside and for the annual redetermination and comparison of these costs.

* Sec. 31. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In making this determination the market for the employee's services shall be

- (1) area of residence;
- (2) area of last employment;
- (3) the state of residence; and
- (4) the State of Alaska.

* Sec. 32. AS 23.30.180 is amended by adding a new subsection to read:

(b) Failure to achieve remunerative employability as defined in AS 23.30.041(p) does not, by itself, constitute permanent total disability.

* Sec. 33. AS 23.30.185 is amended to read:

Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

* Sec. 34. AS 23.30.190 is repealed and reenacted to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$135,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person

determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

(c) The impairment rating determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury. If the combination of a prior impairment rating and a rating under (a) of this section would result in the employee being considered permanently totally disabled, the prior rating does not negate a finding of permanent total disability.

* Sec. 35. AS 23.30.200 is amended to read:

Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.

* Sec. 36. AS 23.30.200 is amended by adding a new subsection to read:

(b) The wage-earning capacity of an injured employee is determined by the actual spendable weekly wage of the employee if the actual spendable weekly wage fairly and reasonably represents the wage-earning capacity of the employee. The board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury, the degree of physical impairment, the usual employment, and other factors or circumstances in the

case that may affect the capacity of the employee to earn wages in a disabled condition, including the effect of disability as it may naturally extend into the future.

* Sec. 37. AS 23.30.220(a) is amended to read:

(a) The spendable weekly wage of an injured employee at the time of an injury is the basis for computing compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:

(1) The gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury.

(2) If the employee was absent from the labor market for 18 months or more of the two calendar years preceding the injury [THE BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the board shall [MAY] determine the employee's gross weekly earnings for calculating compensation by considering the nature of the employee's work and work history, but compensation may not exceed the employee's gross weekly earnings at the time of injury.

(3) If an employee when injured is a minor, an apprentice, or a trainee in a formal training program, as determined by the board, whose wages under normal conditions would increase during the period of disability, the projected increase may be considered by the board in computing the gross weekly earnings of the employee.

(4) If the employee is injured while performing duties as a volunteer ambulance attendant, policeman, or fireman, the gross weekly earnings for calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, policeman, or fireman employed in the political subdivision where the injury

occurred, or, if the political subdivision has no full-time ambulance attendants, policemen, or firemen, at a reasonable figure previously set by the political subdivision to make this determination but in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week.

* Sec. 38. AS 23.30.275 is amended by adding a new subsection to read:

(c) If employer contributions to a qualified pension or profit sharing plan have been included in the determination of gross earnings and the employee is receiving pension or profit sharing payments, weekly compensation benefits payable under this chapter shall be reduced by the amount paid or payable to the injured worker under the plan for any week or weeks during which compensation benefits are also payable. The amount of the reduction may not in any week exceed the increase in weekly compensation benefits brought about by the inclusion of employer contributions to a qualified pension or profit sharing plan in the determination of gross earnings.

* Sec. 39. AS 23.30.244 is amended to read:

Sec. 23.30.244. CIVIL DEFENSE AND DISASTER RELIEF FORCES AS STATE EMPLOYEES. A resident of Alaska temporarily engaged in a civil defense or disaster relief function in another state or country under [THE PROVISION OF] AS 26.23.130 or as a volunteer in this state is considered an employee of the state for purposes of this chapter.

* Sec. 40. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may not discriminate in hiring, promotion, or retention policies or practices against an employee who has in good faith filed a claim for or received benefits under this chapter. An employer who violates this section is liable to the employee for damages to be assessed by the

court in a private civil action.

(b) This section may not be construed to prevent an employer from basing hiring, promotion, or retention policies or practices on considerations of the employee's safety practices or the employee's physical and mental abilities; nor may this section be construed so as to create employment rights not otherwise in existence.

(c) This section may not be construed to prohibit an employer from requiring a prospective employee to fill out a preemployment questionnaire or application regarding the person's prior health or disability history as long as it is meant to either document written notice for second injury fund reimbursement under AS 23.30.205(c) or to determine whether the employee has the physical or mental capacity to meet the documented physical or mental demands of the work.

* Sec. 41. AS 23.30.265(15) is amended to read:

(15) "gross earnings" means periodic payments, by an employer to an employee for employment before any authorized or lawfully required deduction or withholding of money by the employer, including compensation that is deferred at the option of the employee, and excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee that is not fully taxable to the employee during the pay period, except that the total amount of contributions made by an employer to a qualified pension or profit sharing plan during the two plan years preceding the injury, multiplied by the percentage of the employee's vested interest in the plan at the time of injury, shall be included in the determination of gross earnings; the value of room and board if taxable to the employee may be considered in determining gross earnings; however, the value of room and board that would raise an employee's gross weekly earning above the state [ALASKA] average weekly wage at the time of injury may

not be considered;

* Sec. 42. AS 23.30.265(17) is amended to read:

(17) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury; "injury" [, AND] includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices which function as part of the body and further includes an injury caused by the wilful act of a third person directed against an employee because of the employment; "injury" does not include mental injury caused by mental stress unless it is established that (A) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment, and (B) the work stress was the predominant cause of the mental injury; the amount of work stress shall be measured by actual events; a mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination or similar action, taken in good faith by the employer;

* Sec. 43. AS 23.30.265 is amended by adding a new paragraph to read:

(34) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence.

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* Sec. 44. AS 23.30.210 and 23.30.265(28) are repealed.

* Sec. 45. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b), as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by sec. 28 of this Act, on or before March 1, 1989, each employer that is subject to those sections shall file a report and make the appropriate contribution for all claims existing as of December 31, 1988. The period covered in the report shall be from the date of the termination report or the last anniversary report filed, if one has been filed, through December 31, 1988.

* Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwithstanding AS 21.39.030, workers' compensation rates filed by rating organizations for use in the state may not be increased before January 1, 1990.

(b) Rate filings made after December 31, 1988, must fully reflect the legal effect of changes made to the workers' compensation system by this Act.

* Sec. 47. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as enacted by sec. 10 of this Act, for the period from July 1, 1988, until June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041 includes a person who was actively employed for at least one year before June 30, 1988, in providing rehabilitation services to an injured worker receiving benefits under AS 23.30.

* Sec. 48. APPLICABILITY. Except for secs. 8, 24, 28, 29, 42, and 46 of this Act, this Act applies only to injuries sustained on or after July 1, 1988.

* Sec. 49. Section 2 of this Act applies to assigned risk pool insurance policies that are entered into or renewed on or after July 1, 1988.

* Sec. 50. Section 42 of this Act applies to injuries sustained on or after the effective date of sec. 42 of this Act.

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* Sec. 51. Sections 42 and 50 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 52. Sections 1 - 41, and 43 - 49 of this Act take effect July 1, 1988.

**GUIDE TO
INSURANCE REHABILITATION SPECIALISTS
CERTIFICATION**

CERTIFICATION OF INSURANCE REHABILITATION SPECIALISTS COMMISSION

A DIVISION OF

BOARD FOR REHABILITATION CERTIFICATION

**1156 SHURE DRIVE, SUITE 350
ARLINGTON HEIGHTS, ILLINOIS 60004**

SECTION 3. CRITERIA FOR ELIGIBILITY:

To be eligible to sit for the CIRS examination, an applicant must meet ALL requirements in ONE of the categories listed below. Education and employment experience requirements must have been fully satisfied by the application deadline date (JANUARY 1, OR JULY 1). Applications not meeting the eligibility criteria of one of the following categories at the application deadline date will be referred to the Credentials Committee for review to determine eligibility. Please be reminded, the application processing fee is non-refundable. Read categories carefully; CIRSC will charge a \$20.00 handling fee for any check returned for non-sufficient funds.

CATEGORY ONE

Degree or Certification or License:

Current Registered Nurse (RN)
Valid Certified Rehabilitation Counselor (CRC)

or

Master's degree or Doctorate degree in:

Rehabilitation Counseling, Rehabilitation Administration, Work Adjustment, Vocational Rehabilitation, Job Placement, or Psychology.

Acceptable Employment Experience Required:
(See definition Section 4)

A minimum of two years full-time (or the equivalent) employment providing direct or indirect rehabilitation services to a disabled population receiving benefits from a disability compensation system.

CATEGORY TWO

Degree Required:

Bachelor's, Master's, or Doctorate in any other discipline.

Acceptable Employment Experience Required:
(See definition Section 4)

A minimum of four years of full-time (or the equivalent) employment providing direct or indirect services to a disabled population receiving benefits from a disability compensation system.

Contribution Rate - (Percent)	At Least (Percent)	But Less Than (Percent)
1	150	175
0	175	

(c) If an employee suffers a compensable injury that results in death and the employee is not survived by a widow, widower, child, or dependent relative eligible to receive death benefits under AS 23.30.215, the employer or insurance carrier shall pay \$10,000 to the second injury fund.

(d) The board may refund a payment made into the second injury fund if the employer or insurance carrier shows that it made the payment by mistake or inadvertence, or if it shows there existed at the time of the death of the employee a beneficiary entitled to benefits under AS 23.30.215.

(e) *[Repealed, § 27 ch 93 SLA 1982.]*

(f) All amounts collected as civil penalties under AS 23.30.155(c) shall be paid into the second injury fund.

(g) The attorney general may investigate claims and hire expert witnesses necessary to prevent fraudulent or excessive claims for money in the second injury fund.

(h) Administration expenses of the state under this section and AS 23.30.205 shall be paid from the general fund.

(i) The amount of a payment to the second injury fund and the conditions under which a payment is required of an employer or insurance carrier must be in accordance with the version of (b) of this section in effect on the date that the injury to the employee occurred. (§ 32 ch 193 SLA 1959; am § 1 ch 117 SLA 1960; am § 8 ch 42 SLA 1962; am § 1 ch 99 SLA 1966; am § 1 ch 199 SLA 1970; am § 1 ch 6 SLA 1976; am §§ 2, 5 ch 59 SLA 1981; am §§ 2, 27 ch 93 SLA 1982)

Cross references. — For status of fund as an account in the general fund, see AS 37.05.155; for current provisions on vocational retraining, see AS 23.30.041; for contribution rate from July 1, 1981 until December 31, 1982, see sec. 6, ch. 59, SLA 1981 in the Temporary and Special Acts.

The 1982 amendment substituted "or permanent total disability" for "permanent total disability, or for rehabilitation under AS 23.30.191" in the fourth sentence of subsection (b), added the present fifth sentence of subsection (b), and repealed subsection (e), which concerned vocational retraining and rehabilitation of certain permanently disabled persons.

Effect of amendments. — The 1981 amendment rewrote this section.

NOTES TO DECISIONS

Applied in *Bignell v. Wise Mechanical Contractors*, Sup. Ct. Op. No. 2566 (File No. 5929), 651 P.2d 1163 (1982).

Quoted in *Ketchikan Gateway Borough v. Saling*, Sup. Ct. Op. No. 2006 (File No. 3820), 604 P.2d 590 (1979).

Sec. 23.30.041. Rehabilitation of injured workers. (a) The board shall select and employ a rehabilitation administrator and may autho-

rize the rehabilitation administrator to select and employ additional rehabilitation staff. The rehabilitation administrator is in the partially exempt service under AS 39.25.120.

(b) The rehabilitation administrator shall implement the provisions of this section, and study the issue of rehabilitation, both physical and vocational, on a continuing basis.

(c) If an employee suffers a permanent disability that precludes return to suitable gainful employment, the employee is entitled to be fully evaluated for participation in a rehabilitation plan within 90 days after the date of injury. A full evaluation shall be performed by a qualified rehabilitation professional. If, in the opinion of the qualified rehabilitation professional, the medical, physical, or emotional state of the employee precludes a full evaluation, the rehabilitation professional shall prepare a preliminary evaluation. A preliminary evaluation shall include the reasons why a full evaluation cannot be made, an opinion as to when the employee will be eligible for a full evaluation, and any information that would be included in a full evaluation that can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation. If the employer does not timely schedule an evaluation under this subsection, the board or a person designated by the board may retain a qualified rehabilitation professional to perform the evaluation. The employer shall pay the reasonable costs of an evaluation under this subsection.

(d) A full evaluation by a qualified rehabilitation professional shall include a determination whether a rehabilitation plan is necessary and shall include the following specific determinations:

(1) whether the rehabilitation plan will enable the employee to return to suitable gainful employment;

(2) whether the employee can return to suitable gainful employment without the rehabilitation plan;

(3) the cost of the rehabilitation plan, including all costs to be incurred by the employer during the rehabilitation plan, and an estimate of whether the continuing benefits and compensation due to the employee under this chapter after the conclusion of the rehabilitation plan will be more or less than the benefits and compensation payable to the employee under this chapter if a rehabilitation plan is not implemented.

(e) A rehabilitation plan may consist of any of the following; however, if the employee can be restored to suitable gainful employment with rehabilitation plans of higher preference, then a rehabilitation plan of a lower preference need not be offered by the employer. The order of preference for rehabilitation plans is

(1) prosthetic devices and training that enables work at the same or similar occupation as at the time of injury;

(2) work site modification and vocational training for the same or

(4) vocational training for a new occupation; and

(5) academic training for a new occupation if the educational level is attainable by the employee and employment in the new occupation is believed to be available to the employee in the employee's community at the time academic training is completed.

(f) The employer and employee may agree on a vocational rehabilitation plan. If the employer and employee fail to agree on a vocational rehabilitation plan, any of the parties may submit a plan for approval to the rehabilitation administrator. The rehabilitation administrator shall approve, modify, or deny a plan within 14 days after the plan is submitted. Within 10 days of the rehabilitation administrator's decision any party may seek review of the decision by requesting a hearing in accordance with AS 23.30.110.

(g) Vocational rehabilitation services may not exceed 37 weeks, except that vocational rehabilitation services may be extended an additional 37 weeks if the rehabilitation administrator determines that special circumstances exist. This subsection does not prohibit an employer or carrier from providing extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabilitation process. The board may award an employee being rehabilitated under this section an additional \$200 a month if it finds that a case of extreme financial hardship exists. The employer shall pay all costs of a rehabilitation plan under this section.

(h) Refusal by an injured employee to participate in an evaluation or a rehabilitation plan approved by the rehabilitation administrator or agreed to by the parties results in forfeiture of disability compensation for the period the refusal continues. However, if an employee begins participation in a rehabilitation plan within two months from the date of refusal, and successfully completes the rehabilitation plan and becomes employed for a period of 30 consecutive business days following the completion of the rehabilitation plan, the employee shall receive a lump-sum payment of 25 percent of the compensation forfeited by the employee. The lump-sum payment is available only once to an employee refusing rehabilitation. The rehabilitation administrator may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the rehabilitation provider.

(i) For purposes of this section, an employee is restored to suitable gainful employment if the employee can return to (1) work at the same or similar occupation with the same employer or an employer in the same industry as the employer at the time of injury; (2) an occupation using essentially the same skills as the job at time of injury but in a

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Relations

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different industry; (3) an occupation using different skills but using the employee's academic achievement level at the time of injury; or (4) an occupation requiring an academic achievement level that is different from that attained at the time of injury. An employee shall be returned to suitable gainful employment in the order indicated in (1) — (4) of this subsection.



(j) "Qualified rehabilitation professional" means a person who by education and experience has the skills to make judgments, administer and interpret tests, counsel, and make recommendations concerning the medical, intellectual, emotional, physical, or motivational capacity of a person to accept and perform suitable gainful employment, and to design, implement and supervise programs that tend to enhance a person's medical, intellectual, emotional, physical, or motivational capacity to accept suitable gainful employment. (§ 3 ch 93 SLA 1982)

Cross references. — For legislative intent and applicability of this section, see secs. 1 and 29, respectively, ch. 93, SLA 1982 in the Temporary and Special Acts.

NOTES TO DECISIONS

Prior Law. — The last injurious exposure rule adopted as to permanent total disability benefits, i.e., that when employment with successive employers contributes to a worker's disability, the employer at the time of the most recent injury is liable for disability payments, was also applicable as to vocational retraining benefits under former AS 23.30.191. *Parker Drilling Co. v. Wester*, Sup. Ct. Op. No. 2565 (File No. 5759), 651 P.2d 842 (1982).

Under former AS 23.30.191 the board could award temporary total disability benefits to an employee with an unscheduled disability whose condition has stabilized medically, but who was pursuing an approved vocational rehabilitation program. *Bignell v. Wise Mechanical Contractors*, Sup. Ct. Op. No. 2566 (File No. 5929), 651 P.2d 1163 (1982).

AS 23.30.045(a) clearly contemplated that the employer would bear the cost of

payments under former AS 23.30.191 and that the policy of limited employer liability was not inconsistent with periodic increases in liability. *Alaska Pac. Assurance Co. v. Julian*, Sup. Ct. Op. No. 928 (File No. 1710), 513 P.2d 1097 (1973).

Under the clear language of AS 23.30.045(a), the employer is liable for all payments made pursuant to AS 23.30.160 through AS 23.30.215. *Alaska Pac. Assurance Co. v. Julian*, Sup. Ct. Op. No. 928 (File No. 1710), 513 P.2d 1097 (1973).

Former AS 23.30.040(e) and former AS 23.30.191 both provided for maintenance compensation. But former AS 23.30.191 specifically stated that payments made pursuant to it were "in addition to the amount allowed under AS 23.30.040 for maintenance." Only payments made pursuant to AS 23.30.040 are the responsibility of the second injury fund. *Alaska Pac. Assurance Co. v. Julian*, Sup. Ct. Op. No. 928 (File No. 1710), 513 P.2d 1097 (1973).

Article 2. Duties of Employer.

Section

- 45. Employer's liability for compensation
- 50. Employer's liability despite negligence of a third party
- 55. Exclusiveness of liability
- 60. Election of direct payment presumed
- 65. Employer's record of injuries
- 70. Report of injury to board

Section

- 80. Employer's failure to insure
- 85. Duty of employer to file evidence of compliance
- 90. Self-insurance certificates
- 92. Volunteer ambulance attendants, policemen and firemen insurance
- 95. Medical examinations

Title 23
Industry



Alaska State Legislature

SENATOR JIM DUNCAN

P. O. BOX V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

NOVEMBER 25, 1988

MS. MARY PIERCE
MR. BOB ANDERS
WORKER'S COMPENSATION MANAGEMENT
LABOR TASK FORCE
4000 OLD SEWARD HIGHWAY
SUITE 203
ANCHORAGE, ALASKA 99503

DEAR MANAGEMENT LABOR TASK FORCE;

AS EXPRESSED TO YOU IN MY LETTER OF SEPTEMBER 28, 1988, A PROBLEM HAS ARISEN FOR A CONSTITUENT OF MINE AS THE RESULT OF THE RECENTLY ENACTED WORKERS' COMPENSATION STATUTE. I PROVIDE THE FOLLOWING EXPLANATION AND BILL DRAFT FOR THE TASK FORCE'S ANALYSIS AND RESPONSE.

SECTION 47 OF CHAPTER 79 ALLOWS A ONE YEAR GRACE PERIOD FOR PRACTICING REHABILITATION SPECIALISTS TO CONTINUE WITHOUT THE REQUIRED CERTIFICATION FROM JULY 1, 1988 TO JUNE 30, 1989. AFTER THAT PERIOD, CURRENTLY PRACTICING REHABILITATION SPECIALISTS WOULD NOT BE ALLOWED TO CONTINUE IN THEIR WORK UNLESS THEY ARE CERTIFIED BY THE INSURANCE REHABILITATION SPECIALISTS COMMISSION.

IN PARTICULAR, A CONSTITUENT OF MINE OWNS A LOCAL REHABILITATION SERVICE AND HAS WORKED AS A VOCATIONAL REHABILITATION COUNSELOR SINCE JANUARY 1, 1984. TO MEET THE BACHELORS DEGREE REQUIREMENT FOR A CATEGORY TWO REHABILITATION SPECIALIST, SHE IS NOW TAKING 15 CREDIT HOURS IN ADDITION TO CONTINUING HER WORK AS A REHAB SPECIALIST. AT THE TIME OF ENACTMENT OF THE LEGISLATION, SHE STILL NEEDED TWO YEARS TO ATTAIN HER BACHELOR'S DEGREE. THIS MEANS THAT ON JUNE 30, 1989, SHE WILL BECOME INELIGIBLE TO CONTINUE HER WORK AS A REHABILITATION SPECIALIST IN SPITE OF THE FACT THAT SHE IS DOING AN EXCELLENT JOB AND HAS REFERENCES WHICH BEAR THIS OUT.

MY QUESTIONS ARE THESE; WAS IT THE TASK FORCE'S INTENT TO ALLOW ONLY ONE YEAR TO OBTAIN A FOUR YEAR DEGREE? DID THE TASK FORCE KNOW THE POTENTIAL IMPACT OF ALLOWING ONLY A ONE YEAR GRACE PERIOD? DID THE TASK FORCE BELIEVE THERE WAS ANY FLEXIBILITY WRITTEN INTO THE CURRENT LAW WHICH WOULD ALLOW GRANDFATHERING IN

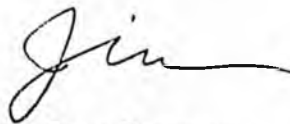
WORKERS' COMPENSATION MANAGEMENT
LABOR TASK FORCE
NOVEMBER 25, 1988
PAGE 2

OF THOSE REHAB SPECIALISTS WHO ARE MAKING A GOOD FAITH EFFORT TO ATTAIN CERTIFICATION? IF NOT, WHAT WOULD BE THE TASK FORCE'S REACTION TO LEGISLATION EXTENDING THE GRACE PERIOD FOR TWO ADDITIONAL YEARS?

I HAVE ENCLOSED A COPY OF A DRAFT BILL WHICH WOULD EXTEND THE GRACE PERIOD UNTIL JUNE 30, 1991, BUT ONLY FOR INDIVIDUALS WHO WERE ACTIVELY EMPLOYED FOR AT LEAST ONE YEAR BEFORE JUNE 30, 1988 AS REHABILITATION SPECIALISTS AND WHO CAN DEMONSTRATE THAT THEY ARE ACTIVELY PURSUING CERTIFICATION AS AN INSURANCE REHABILITATION SPECIALIST OR REHABILITATION COUNSELOR; AND WHO CAN PROVIDE TO THE DEPARTMENT OF LABOR AT LEAST TWO LETTERS OF RECOMMENDATION FROM INDIVIDUALS ACTIVE IN REHABILITATING INJURED WORKERS.

I WOULD APPRECIATE YOUR SUPPORT FOR THIS BILL. PLEASE PROVIDE ME WITH YOUR COMMENTS AND RECOMMENDATION ON THIS DRAFT LEGISLATION AS SOON AS POSSIBLE AFTER YOUR DECEMBER MEETING. THANK YOU FOR YOUR CONSIDERATION.

SINCERELY,



JIM DUNCAN
SENATOR

ENCLOSURE

STATE OF ALASKA

STEVE COWPER, GOVERNOR

FEB - 2 1989

DEPARTMENT OF LABOR

DIVISION OF WORKERS' COMPENSATION

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BOX 21149
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NOTICE

The attached regulations became effective October 28, 1988. These regulations take the place of emergency regulations which were originally adopted by the Department of Labor on July 1, 1988. The regulations will be published in Register 108 of the Alaska Administrative Code, which should be issued in January 1989.

CHAPTER 45
COMPENSATION, MEDICAL BENEFITS, AND PROCEEDINGS BEFORE
THE ALASKA WORKERS' COMPENSATION BOARD

Section

- 10. (Repealed)
- 20. Transaction of business
- 25. Forms
- 30. Fees
- 35. (Repealed)
- 40. Parties
- 50. Pleadings
- 52. Medical summary
- 54. Discovery
- 60. Service
- 63. Computation of time
- 65. Prehearings
- 70. Hearings
- 72. Venue
- 74. Continuances and further hearings
- 80. (Repealed)
- 82. Medical treatment
- 84. Medical travel expenses
- 86. Physician's reports
- 90. Additional examination
- 92. Selection of an independent medical examiner
- 95. Release of information
- 100. (Repealed)
- 110. Record of proceedings
- 120. Evidence
- 122. Rating permanent impairment
- 130. Findings and awards and orders
- 132. Survival of accrued benefits
- 134. Modification and offset of compensation; reimbursement
- 136. Notice of payment or modification of compensation
- 138. Cost-of-living adjustment
- 140. (Repealed)
- 142. Interest
- 150. Rehearings and modification of board orders
- 160. Agreed settlements
- 162. Present value for purposes of third-party settlement
- 170. Listing of cases
- 174. Uninsured employers
- 178. Appearances and withdrawals
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- 182. Controversion
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- 400. List of rehabilitation specialists
- 410. Eligibility of rehabilitation specialist
- 415. Definition of rehabilitation specialist
- 420. Rehabilitation specialist's application
- 430. Assignment of rehabilitation specialists
- 440. Removal of rehabilitation specialists
- 490. Gross hourly wages
- 900. Definitions

* Section 1. 8 AAC 45.070(b) - (e) are repealed and readopted to read:

(b) Except for a hearing scheduled on the board's or its designee's motion, no hearing will be scheduled unless a party requests a hearing by filing with the board, and serving on the opposing party, an affidavit of readiness for hearing which states that the party has completed necessary discovery, obtained necessary evidence, and is fully prepared for the hearing. A hearing is initiated as follows:

(1) After the opposing party files an answer under 8 AAC 45.050 to an application or petition, or 20 days after the service of the application or a petition, whichever occurs first, an affidavit requesting a hearing may be filed. If an affidavit is filed before the time set by this paragraph,

(A) no action will be taken by the board or its designee; and

(B) another affidavit must be filed after the time set by this paragraph.

(2) A party may request either an in-person hearing or a hearing based on the documents and evidence in the board's file.

(3) If the board or its designee determines that a hearing should be set, the board or its designee will give notice of the hearing in accordance with AS 23.30.110.

(c) If a party opposes a hearing, an affidavit stating the specific reason why a hearing is not appropriate must be filed with the board and served on the opposing party within 10 days after service of a request for a hearing. The board or its designee will not consider as an opposition a general allegation that the case should not be heard or that a party is not ready. The affidavit in opposition must be filed with the board's office nearest the requested hearing location. If an affidavit of opposition is filed, the board or its designee will, within 30 days after the filing of the affidavit of opposition, conduct a prehearing conference and set a hearing date or set a date by which board action will be taken.

(d) If an agreed settlement is reached less than 14 days before a scheduled hearing and

(1) it conforms to AS 23.30.012 and 8 AAC 45.160, and is filed with the board at least two working days before the scheduled hearing, the parties must appear at the scheduled hearing time to request board action under AS 23.30.012 on the agreed settlement; if the board does not approve the agreed settlement, the hearing will proceed as scheduled; or

(2) it is not in accordance with AS 23.30.012, 8 AAC 45.160 and this subsection, the parties must appear before the board or its designee at the scheduled hearing time to state the terms of the settlement agreement; after the parties have stated the terms of the settlement, a request to continue, postpone, cancel, or change the scheduled hearing may be made in accordance with 8 AAC 45.074; if the board or its designee denies the request to continue, postpone, cancel, or change the scheduled hearing, the hearing will proceed as scheduled.

(e) If a settlement is reached more than 14 days before a scheduled hearing, but it is not written and signed by the parties, and approved by the board, the hearing will proceed as scheduled. (In effect before 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107)

Authority: AS 23.30.005
AS 23.30.110
AS 23.30.135

* Sec. 2. 8 AAC 45.074(a) is amended to read:

(a) Continuances, postponements, cancellations, or changes of scheduled hearings are not favored by the board and will not be routinely granted. The board or its designee will, in its discretion, grant a continuance, postponement, cancellation, or change of a scheduled hearing without a formal hearing only upon good cause shown by the party requesting the continuance, postponement, cancellation, or change. Good cause exists only when

(1) a material witness is unavailable on the scheduled date and the taking of the witness' deposition is not feasible;

(2) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;

(3) a party or representative becomes ill;

(4) a party, a representative of a party, or a material witness becomes unexpectedly absent from the state;

(5) irreparable harm will result from a failure to grant the requested continuance, or

(6) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, but it does not conform to 8 AAC 45.070(d)(1). (Eff. 5/28/83, Register 86; am 7/1/88, Register 107)

Authority: AS 23.30.005
AS 23.30.110
AS 23.30.135

* Sec. 3. 8 AAC 45.074(c) is amended to read:

(c) The parties may stipulate in writing to a continuance. The board or its designee will grant a stipulated continuance only if the board or its designee determines that good cause, as defined in (a) of this section, exists. (Eff. 5/28/83, Register 86; am 7/1/88, Register 107)

Authority: AS 23.30.005
AS 23.30.110
AS 23.30.135

* Sec. 4. 8 AAC 45.082 is amended by adding new subsections to read:

(e) A written treatment plan under AS 23.30.095 is required for payment of services provided on an outpatient basis for an injury that occurs on or after July 1, 1988. A written treatment plan is not required before providing services while the employee is hospitalized.

(f) If an injury occurs on or after July 1, 1988, and requires continuing and multiple treatments of a similar nature, the standards for payment for frequency of outpatient treatment for the injury will be as follows. Except as provided in (h) of this section, payment for a course of treatment for the injury may not exceed more than three treatments per week for the first month, two treatments per week for the second and third months, one treatment per week for the fourth and fifth months, and one treatment per month for the sixth through twelfth months. Upon request, and in accordance with AS 23.30.095(c), the board will, in its discretion, approve payment for more frequent treatments.

(g) The board will, in its discretion, require the employer to pay for treatments that exceed the frequency standards in (f) of this section only if the board finds that

(1) the written treatment plan was given to the employer and employee within 14 days after treatments began;

(2) the treatments improved or are likely to improve the employee's condition; and

(3) a preponderance of the medical evidence supports a conclusion that the board's frequency standards are unreasonable considering the nature of the employee's injury.

(h) An employee or employer may choose to pay for a course of treatments that exceeds the frequency standards in (f) of this section even though payment is not required by the board or by AS 23.30.095.

(i) Fees for medical treatment are determined as follows:

(1) The fee may not exceed the physician's actual fee or the usual, customary, and reasonable fee as determined under this subsection, whichever is lower.

(2) The board will publish annually a bulletin for the "Workers' Compensation Manual," published by the department, which gives the name and address of the organization whose schedule of providers' charge data must be used in determining the usual, customary, and reasonable fee for medical treatment or services for injuries that occur on or after July 1, 1988. The manual and the organization's name and address are available upon request from the State of Alaska Workers' Compensation Division, P.O. Box 21149, Juneau, Alaska 99802-1149.

(3) The usual, customary, and reasonable fee must be determined based on the 90th percentile of the range of charges for similar services reported to the organization described in (2) of this subsection. The organization's charge data must be used as follows:

(A) If the organization publishes the schedule of usual, customary, and reasonable fees on a quarterly basis, the publication for the calendar quarter in which the employee received treatment must be used. However, if the organization instead publishes the schedule semi-annually, the semi-annual publication for the period in which the employee received treatment must be used. The usual, customary, and reasonable fee must be based on the schedule in effect at the time the employee received the treatment.

(B) If the community in which services were rendered is not included in the organization's data, or if the type of treatment the employee received is not included in the organization's data for the community in which services were rendered, the usual and customary fee must be based on the data reported for the community nearest to the community in which the services were rendered to the employee.

(C) If the type of treatment or service the employee received is not included in the organization's data and the employer has evidence that the fee exceeds the usual, customary, and reasonable fee charged in the community for the treatment or services rendered, the employer shall pay the physician based on the employer's evidence. In accordance with AS 23.30.110 and 8 AAC 45.070, the physician may request a hearing for a board determination of the usual, customary, and reasonable fee in the community for the treatment or service, and the board will determine and award the usual, customary, and reasonable fee. (Eff. 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am / / , Register)

Authority: AS 23.30.005
AS 23.30.095

* Sec. 5. 8 AAC 45 is amended by adding new sections to read:

8 AAC 45.092. SELECTION OF AN INDEPENDENT MEDICAL EXAMINER.

(a) Under AS 23.30.095(k), the board will maintain a list of physicians' names for second independent medical evaluations for injuries occurring on or after July 1, 1988. The names will be listed in categories based on the physician's designation of his or her specialty or particular type of practice and the geographic location of the physician's practice. A copy of the list is available upon request from the State of Alaska, Workers' Compensation Division, P.O. Box 21149, Juneau, Alaska 99802-1149.

(b) The list of physicians will be created as follows:

(1) The board or its designee will ask the Alaska Chiropractic Society, Alaska Dental Society, and Alaska State Medical Association to make recommendations from within their respective specialties. The recommendations must be received by the board on or before November 1, 1989, and on or before November 1 of each year after that.

(2) By December 15 of each year, the board will publish a bulletin for the "Workers' Compensation Manual," published by the department, listing the names of the physicians recommended by the Alaska Chiropractic Society, the Alaska Dental Society and the Alaska State Medical Association as well as the names of independent medical examiners whose terms of appointment will expire in the following year. A copy of the bulletin is available upon request from the State of Alaska Workers' Compensation Division, P.O. Box 21149, Juneau, Alaska 99802-1149.

(3) An attorney who meets the following criteria may recommend physicians for inclusion on the board's list, as described in (5) of this subsection. The attorney must

(A) be admitted to the practice of law in this or another state;

(B) have personally presented a total of five cases, no more than two of which were resolved agreed settlements, for board decision during the year preceding the recommendation; and

(C) in the year preceding the recommendation, have represented one class of litigants, either employees or employers, 90 percent of the time; based on the class of litigant that was represented 90 percent of the time, the board will classify the attorney as either an employee or employer attorney.

(4) An attorney may submit a letter of recommendation for a physician even though the physician's name was not included in the bulletin described in (2) of this subsection. Letters of recommendation will be accepted between September 15, 1988 and October 31, 1988, and from January 1 through March 1 of each year after that.

(5) Upon receipt of letters of recommendation for a physician from at least two employee attorneys and two employer attorneys who meet the criteria of (3) of this subsection, the board or its designee will send the physician an application and ask if the physician is interested in performing second independent medical examinations. Unless the board determines that good cause exists to extend the time, within 60 days after the date of the board's letter the physician must submit

(A) a completed application listing the physician's education, training, work experience, specialty, and the particular discipline in which the physician is licensed, as well as the names and addresses of professional organizations that have certified the physician or in which the physician is an active member;

(B) a copy of or proof of the physician's current license from the appropriate licensing agency in the state in which the physician practices;

(C) a certificate of insurance for the physician's current and enforceable professional liability insurance for the services performed; the certificate of insurance must provide for 30-day prior notice to the board of cancellation, nonrenewal, or material change of the policy; and

(D) a certificate of insurance for the physician's workers' compensation insurance if the physician has employees; the certificate of insurance must provide for 30-day prior notice to the board of cancellation, nonrenewal, or material change of the policy.

(6) If the physician complies with (5) of this subsection, the physician's name will be added to the board's list of independent medical examiners. Except as provided in (c) of this section, the physician's name will remain on the list for three years if the physician annually submits a copy of or proof of licensing by the appropriate state agency, a certificate of insurance for professional liability insurance and, if required under AS 23.30, workers' compensation insurance. If after three years, the physician wishes to remain on the list of independent medical examiners, the documents required under (5) of this subsection must be resubmitted to the board.

(7) If the physician does not comply with (5) of this subsection, the physician's name will not be listed, and the physician will not be selected to perform second independent medical examinations.

(c) A physician's name will, in the board's discretion, be removed from the list before the expiration of three years for

(1) the physician's repeated failure to

(A) timely file medical reports for treatment of injured workers;

(B) timely file written treatment plans when required by AS 23.30.095(c); or

(C) provide medical services and examinations to injured workers;

(2) the physician's failure to comply with an order of the board;

(3) revocation by the appropriate licensing agency of the physician's license to provide services;

(4) decertification of or disciplinary action against the physician by an applicable certifying agency or professional organization;

(5) disciplinary action taken against the physician by the State Medical Board, a representative of Medicare or Medicaid, or a hospital, for fraud, abuse, or the quality of care provided;

(6) fraudulent billing or reporting by the physician;

(7) knowingly falsifying information on the physician's application;

(8) conviction of the physician in a state or federal court of any offense involving moral turpitude or drug abuse, including excessive prescription of drugs;

(9) unprofessional conduct or discriminatory treatment by the physician in the care and examination of patients;

(10) use of treatment by the physician which is not sanctioned by the physician's peers or national provider associations as beneficial for the injury or disease under treatment;

(11) declaration of the physician's mental incompetency by a court of competent jurisdiction;

(12) failure by the physician to maintain professional liability insurance or, if required, workers' compensation insurance; or

(13) failure by the physician to annually submit a certificate of insurance for professional liability insurance and, if required, workers' compensation insurance.

(d) Before removing a physician's name from the list,

(1) the board will notify the physician, in writing, either by personal service or by certified mail of the proposed removal and the reason for it;

(2) a physician who receives a notification under (1) of this subsection may, within 30 days after the receipt of the notice, file a written request with the board for a hearing in accordance with AS 23.30.110;

(3) the board will issue a written decision within 30 days after the hearing, or, if no hearing is requested, the board will issue a written decision within 45 days after the written notice of proposed removal; the board's decision will be served on the physician personally or by certified mail, and will state whether the physician's name was removed from the list and the reason for the removal.

(e) In selecting an independent medical examiner to perform an examination under AS 23.30.095(k), the board or its designee will consider these factors in the following order:

(1) the nature and extent of the employee's injuries;

(2) the physician's specialty and qualifications;

(3) the physician's experience in treating injured workers in this state or another state;

(4) the physician's impartiality; and

(5) the proximity of the physician to the employee's geographic location.

(f) If the board or its designee determines that the list of independent medical examiners does not include an impartial physician with the specialty, qualifications, and experience to examine the employee, the board or its designee will notify the employee and employer that a physician not named on the list will be selected to perform the examination. The notice will state the board's preferred physician's specialty to examine the employee. Within 10 days after notice by the board or its designee, the employer and employee may each submit the names, addresses, and specialties of no more than three physicians. If both the employee and the employer recommend the same physician, that physician will be selected to perform the examination. If no names are recommended by the employer or employee or if the employee and employer do not recommend the same physician, the board or its designee will select a physician, but the selection need not be from the recommendations by the employee or employer. (Eff. 7/1/88, Register 107; am / / , Register)

Authority: AS 23.30.005
AS 23.30.095(k)

8 AAC 45.138. COST-OF-LIVING ADJUSTMENT. (a) The cost-of-living adjustment provided in AS 23.30.175 applies only to payments related to injuries occurring on or after July 1, 1988.

(b) At the board's direction, the commissioner will contract, in accordance with AS 36.30, with an organization to perform the cost-of-living surveys. The name and address of the contractor awarded the contract will be published annually in a bulletin for the "Workers' Compensation Manual," published by the department, and will be available upon request from the State of Alaska, Workers' Compensation Division, P.O. Box 21149, Juneau, Alaska 99802-1149.

(c) The results of the cost-of-living survey for this state, various areas in other states and the District of Columbia will be published annually in the "Workers' Compensation Manual." The cost of living for this state will be the averaged cost-of-living for Anchorage, Juneau, and Fairbanks. The results of the cost-of-living surveys are available upon request from the State of Alaska, Workers' Compensation Division, P.O. Box 21149, Juneau, Alaska 99802-1149.

(d) If the cost-of-living adjustment under AS 23.30.175 and this section results in a compensation rate that exceeds the maximum weekly rate provided in AS 23.30.175, the recipient's

compensation rate must be reduced to the maximum weekly rate in effect under AS 23.30.175 at the time of injury.

(e) If the recipient does not reside in this state but resides in the United States, the cost-of-living ratio must be determined by using the ratio of the published cost of living for the area nearest where the recipient resides and the cost of living for this state. If the recipient resides an equal distance between two areas for which cost-of-living surveys have been published, the ratio that results in the highest compensation rate must be used.

(f) Upon request, the commissioner will obtain a cost-of-living survey for the largest city in the country in which the recipient resides if the recipient does not reside in the United States. The cost of living for that city must be used to obtain the ratio for purposes of this section and AS 23.20.175.

(g) The cost-of-living ratio obtained under this section is presumed to fairly reflect the cost-of-living difference between this state and the area where the recipient resides. In accordance with AS 23.30.110 and 8 AAC 45.070, a hearing may be requested for board review of the cost-of-living ratio for a particular recipient. If a hearing is requested,

(1) the issue at hearing will be limited to whether there is a substantial difference between the actual cost of living in the area where the recipient resides and the cost of living published by the commissioner for that area;

(2) the board will refuse to accept, at the hearing, evidence of a particular recipient's actual cost of living;

(3) if a party presents evidence of a substantial difference between the cost of living for a particular recipient's area and the cost of living determined by the board's survey, the board will, in its discretion, adjust the ratio accordingly. (Eff 7/1/88, Register 107; am / / , Register)

Authority: AS 23.30.005
AS 23.30.175

8 AAC 45.400. LIST OF REHABILITATION SPECIALISTS. (a) This section applies to the rehabilitation specialists' list to be maintained by the administrator for injuries that occur on or after July 1, 1988. The list is available upon request from the State of Alaska, Worker's Compensation Division, P.O. Box 21149, Juneau, Alaska 99802-1149.

(b) The list of rehabilitation specialists will be divided into two sections. One section will contain the names and address of rehabilitation specialists whose business addresses are

in this state. The other section will contain names and addresses of rehabilitation specialists whose business addresses are in other states or countries. The list

(1) for this state will be further subdivided into three geographical areas based on the senate districts for southeastern and southcentral Alaska, and an area comprised by combining the central and northwestern Alaska senate districts, as those districts are described in art. XIV, sec. 2, of the Constitution of the State of Alaska; a rehabilitation specialist's name will be placed on the list only once for this state by matching the rehabilitation specialist's primary business address to the senate district that contains that address;

(2) for other states or countries will be subdivided by city and state, or country; a rehabilitation specialist's name will be placed on the list by matching the rehabilitation specialist's business address to the appropriate city and state, or country. (Eff. 7/1/88, Register 107)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 45.410. ELIGIBILITY OF REHABILITATION SPECIALIST.

(a) To be included on the administrator's rehabilitation specialists' list under 8 AAC 45.400, a person must be a

(1) certified insurance rehabilitation specialist as defined in 8 AAC 45.415(1);

(2) certified rehabilitation counselor as defined in 8 AAC 45.415(2); or

(3) person who has equivalent or better qualifications as defined in 8 AAC 45.415(3).

(b) If a person was actively employed providing rehabilitation services under AS 23.30 for at least one year immediately before June 30, 1988, the requirements of (a) of this section do not apply until June 30, 1989. To be considered "actively employed providing rehabilitation services" the person must have the education, experience, and skills to make judgments, administer and interpret tests, counsel and make recommendations concerning the medical, intellectual, emotional, physical, or motivational capacity of an employee to accept and perform employment, and to design, implement, and supervise programs that tend to enhance a person's medical, intellectual, emotional, physical, or motivational capacity to accept employment.

(c) A person who wishes to be added to the administrator's rehabilitation specialists' list under (a) or (b) of this section

must file an application that meets the requirements of 8 AAC 45.420. (Eff. 7/1/88, Register 107; am / / , Register).

Authority: AS 23.30.005
AS 23.30.041

8 AAC 45.415. DEFINITION OF REHABILITATION SPECIALIST. For purposes of 8 AAC 45.400, 8 AAC 45.410, and AS 23.30.041(p)(6),

(1) a "certified insurance rehabilitation specialist" means a person currently certified by the Certification of Insurance Rehabilitation Specialists Commission; the address of this commission is available upon request from the administrator;

(2) a "certified rehabilitation counselor" means a person currently certified by the Commission on Rehabilitation Counselor Certification; the address of this commission is available upon request from the administrator;

(3) a "person who has equivalent or better qualifications" means a person in another country who has at least a bachelor's degree from an accredited college and a minimum of four years of full-time, paid employment providing vocational rehabilitation services to disabled persons receiving benefits from a disability compensation system. (Eff. 7/1/88, Register 107; am / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 45.420. REHABILITATION SPECIALIST'S APPLICATION. (a) To be added to the administrator's rehabilitation specialists' list under 8 AAC 45.400, a person who qualifies under 8 AAC 45.410(a) must file a completed application that includes

(1) a signed statement listing the person's name and primary business address; the name, address, and telephone number of the firm for which the person works, if any; and the geographic areas in which the person is willing to provide services;

(2) a certified copy of the person's college transcripts; and

(3) a certificate of workers' compensation insurance if the person has employees; the certificate of insurance must provide for 30-day prior notice to the board of cancellation, nonrenewal, or material change of the policy; and

(4) a resume stating the person's education, training, work experience, and the names and addresses of the professional

organizations that have certified the person or in which the person is an active member.

(b) To be included on the administrator's rehabilitation specialists' list, a person who qualifies under 8 AAC 45.410(b) must

(1) comply with the application requirements of (a) of this section; and

(2) file an affidavit from the person's employer, or from the person if the person was self-employed, which states that the person provided rehabilitation services under AS 23.30 during the year immediately preceding June 30, 1988.

(c) Names will be added to the geographical listing in order of the receipt date of the completed application. If more than one completed application is received in a day, the names for that day will be placed on the list in alphabetical order. If a person's name is not added to the list, the administrator will notify the person and state the reason for exclusion. Reasons for exclusion include an incomplete or illegible application or accompanying documents, or not meeting the requirements of AS 23.30.041(p)(6). (Eff. 7/1/88, Register 107)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 45.430. ASSIGNMENT OF REHABILITATION SPECIALISTS. For an injury occurring on or after July 1, 1988, and if required under AS 23.30.041, the administrator shall assign a rehabilitation specialist as follows:

(1) If the employee lives in this state, the first rehabilitation specialist on the list in the employee's senate district shall be assigned. If there is no rehabilitation specialist on the list or if refusals under AS 23.30.041(g) eliminate all the rehabilitation specialists on the list for that senate district, the administrator shall assign a specialist from another senate district. To minimize expenses and delay, the assignment from another senate district must be based on the rehabilitation specialist's proximity to the employee, and not necessarily to placement on the list.

(2) If the employee lives in another state or country, the administrator shall assign the first certified insurance rehabilitation specialist or certified rehabilitation counselor on the list from the city nearest the employee. If the nearest certified insurance rehabilitation specialist or certified rehabilitation counselor on the list is more than 100 miles from where the employee lives, the administrator may locate a rehabilitation specialist nearer the employee to assign. If the administrator

is unable to locate a rehabilitation specialist nearer the employee, the administrator shall select the first certified insurance rehabilitation specialist or certified rehabilitation counselor on the list from the city nearest the employee. To reduce expenses and delay in providing services, the administrator's primary consideration in assigning a rehabilitation specialist must be the specialist's proximity to the employee. The administrator may assign a rehabilitation specialist in this state to oversee the providing of reemployment services under this paragraph.

(3) Except as otherwise provided in this section, once a rehabilitation specialist receives an assignment, the administrator may not make another assignment to that rehabilitation specialist until assignments have been made to all other rehabilitation specialists listed from the same senate district if the rehabilitation specialist business address is in this state, or from the same city if the rehabilitation specialist's business address is not in this state. (Eff. 7/1/88, Register 107)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 45.440 REMOVAL OF REHABILITATION SPECIALISTS. (a) The name of a person who qualified only under 8 AAC 45.410(b) will be removed from the rehabilitation specialists' list effective July 1, 1989. No notice of the removal will be given to the person.

(b) The administrator may disqualify a rehabilitation specialist from providing services under AS 23.30.041 for

(1) repeated failure by the rehabilitation specialist to demonstrate suitable rehabilitation skills;

(2) repeated failure by the rehabilitation specialist to timely file rehabilitation reports or provide rehabilitation services;

(3) significant failure by the rehabilitation specialist to adhere to statutory or regulatory requirements;

(4) unethical conduct by the rehabilitation specialist as defined by the ethics committee of the Alaska Rehabilitation Association or other appropriate professional rehabilitation organization;

(5) the rehabilitation specialist's knowingly falsifying information provided in connection with the rehabilitation specialist's application;

(6) disciplinary action against or decertification of the rehabilitation specialist by an appropriate certifying agency or professional organization;

(7) failure by the rehabilitation specialist to maintain workers' compensation insurance if the rehabilitation specialist has employees;

(8) fraudulent billing or reporting by the rehabilitation specialist;

(9) conviction of the rehabilitation specialist in a state or federal court of any offense involving moral turpitude; or

(10) declaration of the rehabilitation specialist's mental incompetency by a court of competent jurisdiction.

(c) If the administrator is considering disqualifying a rehabilitation specialist under (b)(1)--(3) of this section, the administrator may meet with the rehabilitation specialist and develop a plan of corrective action.

(d) If the administrator believes that a rehabilitation specialist has engaged in unethical practices or activity, after written notification to the rehabilitation specialist, the administrator may refer the issue to the ethics committee of the Alaska Rehabilitation Association or other appropriate professional rehabilitation organization for recommendations.

(e) Before disqualifying a rehabilitation specialist, the administrator shall notify the rehabilitation specialist in writing, served either personally or by certified mail, of the proposed disqualification. A rehabilitation specialist who has been notified of proposed disqualification may, within 30 days after receipt of the notice, file a written request with the administrator for an opportunity to meet with the administrator to discuss the proposed disqualification.

(f) The administrator shall issue a written decision within 30 days after a meeting requested under (e) of this section. If no meeting is requested, the administrator shall issue a written decision within 45 days after the written notice of proposed disqualification was served under (e) of this section.

(g) The administrator's written decision under (f) of this section must

(1) require the rehabilitation specialist to change unsuitable behavior or upgrade skills according to a plan determined by the administrator;

(2) disqualify the rehabilitation specialist and explain the reasons for the action, the duration of the disqualification, and the conditions, if any, under which the rehabilitation specialist may reapply; or

(3) state that no grounds for disqualification or disciplinary action were found.

(h) The administrator's decision must be served upon the rehabilitation specialist or the rehabilitation specialist's representative, either personally or by certified mail. A copy must be sent to the employee or employer, if any, who requested that the administrator consider disqualifying the rehabilitation specialist. A disqualification decision is effective 10 days after the date of the decision unless a written request for board review is filed with the board and is served in accordance with (i) of this section within 10 days after service of the administrator's decision.

(i) A disqualified rehabilitation specialist, an employee, or an employer, may request board review of the administrator's decision. If the

(1) disqualified rehabilitation specialist requests review, the rehabilitation specialist must serve a copy on any other person who the administrator served with a copy of the decision;

(2) employee or employer requests board review, the employee or employer must serve a copy of the review request upon the disqualified rehabilitation specialist.

(j) Upon a request under (i) of this section, the board will schedule and hold a hearing in accordance with AS 23.30.110 and 8 AAC 45.070. The board's decision is final upon filing in accordance with AS 23.30.110. (Eff. 7/1 /88, Register 107; am / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 45.490. GROSS HOURLY WAGES. For purposes of AS 23.30.041, "gross hourly wages at the time of injury" is determined as follows:

(1) If the employee was paid on an hourly basis at the time of injury, gross hourly wages are the actual hourly wage at the time of injury, exclusive of premium time or overtime.

(2) If the employee was paid on a weekly or monthly salary basis at the time of injury

(A) the weekly salary must be multiplied by 52 and divided by 2080 to compute gross hourly wages; or

(B) the monthly salary must be multiplied by 12 and divided by 2080 to compute gross hourly wages.

(3) If at the time of injury the employee received bonuses, commissions, gratuities, or room and board during the course of employment, gross hourly wages are computed by dividing the gross weekly earnings, as determined under AS 23.30.220, by 40. (Eff. 7/1/88, Register 107)

Authority: AS 23.30.005
AS 23.30.041

* Sec. 6 AAC 45.900 is amended by adding new subsections to read:

(e) For purposes of this chapter and AS 23.30.041, "administrator" or "reemployment benefits administrator" means the person selected and employed under AS 23.30.041(a) or that person's designee.

(f) For purposes of this chapter and AS 23.30.175, "this state" and "the state" mean the State of Alaska. (Eff 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107)

Authority: AS 23.30.005
AS 23.30.030
AS 23.30.041
AS 23.30.090
AS 23.30.175
AS 23.30.220
AS 23.30.230
AS 23.30.240
AS 23.30.265

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to workers' compensation rehabilitation specialists..."
 Sponsor: Duncan
 Requestor: Senate HESS

Agency Affected: Labor
 BRU: Workers' Compensation
 Components: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--


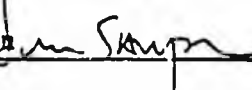
FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jacquelyn McClintock  Phone: 465-2790
 Division: Workers' Compensation Date: 1/19/89
 Approved by Commissioner: Jim Sampson  Date: 1/19/89
 Agency: Department of Labor

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

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

House Labor & Commerce

3/8/88

S B

53



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

March 15, 1990

To: Senator Paul Fischer, Chair
Members, Senate HESS Committee

Re: Senate Bill No. 53
"An Act relating to the teachers' retirement system, and providing for an effective date."

NEA-Alaska strongly supports and encourages your favorable consideration of SB 53. Establishing an annual post retirement pension adjustment is a legislative priority of NEA-Alaska and its 6,000+ members.

It is our understanding that the CS for SB 53 which will be before the Committee makes the annual post retirement pension adjustment (PRPA) revenue neutral and may in fact show a slight savings for the state and school district employers by increasing employee contributions and making some prospective changes in the benefit system.

As evidenced by Section 1 in the CS current active members are willing to share in a portion of the cost increase in order to provide for an annual post retirement pension adjustment and that it will be based on sound actuarial funding.

Provision for an annual adjustment to their fixed retirement income will obviously provide some help to retirees relative to the adverse effects of inflation. It should also be noted that teachers in Alaska do not have access to Social Security or any other supplemental benefit system except as they are able to provide for same on their own initiative.

The CS for SB 53 improves and makes the TRS a better system. As such it will make teaching in Alaska more attractive as a professional career and should mitigate some against excessive employee turnover. This contributes to the overall quality of our collective effort in public education.

In 1986 similar legislation was passed relative to the Public Employee's Retirement System. It is time to do the same for the TRS.

Thank you for your consideration of our position.

Respectfully submitted,

Bob Manners
Executive Director

Don Oberg
President

cc: Senator Jim Duncan

DRAFT

POSITION PAPER CS SB 53

SB 53 provides a tremendous opportunity to guarantee teachers that retirement benefits will keep pace with cost-of-living increases, and at the same time, guarantee employers of a related reduction in employer contributions.

With thanks to Senator Duncan and Bob Manners of NEA, this Committee Substitute was developed to provide retired teachers with an automatic, pre-funded, post retirement pension adjustment (PRPA) and an increased benefit multiplier. Cost containment provisions are included to off-set the pre-funding expense.

The current ad hoc PRPA was established on a pay-as-you-go basis. Every time an ad hoc PRPA is issued, the system's unfunded liability is increased, which, in turn, increases the employers' contribution rate--after the fact. The most important aspect of this bill is that it provides for prefunding the PRPAs. The funding of future PRPAs would be incorporated into the plan, with monies set aside in advance. Employer contribution rates would no longer have to "react" to a pension adjustment, and retirees could enjoy some retirement security.

If passed, effective January 1, 1991 teachers' contributions would increase from 7% to 8.65% of salary. These contributions would be with pre-tax, instead of the current after-tax, dollars. Additionally, for those teachers first hired after this bill's effective date, the following provisions would apply:

1. depending on age, each will share in the cost of the health premium after retirement. (For those already hired, the premium is fully paid);
2. none will be eligible for the Alaska cost of living allowance (COLA) until age 65. If the retiree is an Alaska resident, the COLA is an additional 10% of the retirement benefit; and
3. normal retirement age will be 60 instead of 55.

There are administrative costs to implement the provisions of the bill. These costs would be funded by an appropriation from the

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Teachers' Retirement System; no general fund monies are needed. On the other hand, employer contributions are made with the support of general fund dollars. Under this legislation the employer contribution rate would be REDUCED by .05%, saving an estimated \$200 thousand each year.

The Department of Administration and the Division of Retirement and Benefits fully support this legislation. It responsibly adjusts the priorities to ensure an automatic pension adjustment for living cost increases. This enhancement should serve well to attract and retain the best of the teaching profession.

_____ Date _____
Sally Smith, Director, Division of Retirement and Benefits

_____ Date _____
Frank Baxter, CPA, Commissioner, Department of Administration

DRAFT

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 2, 1990

SUBJECT: Sectional analysis of CSSB 53 ()
(Teachers' retirement system)

TO: Senator Jim Duncan

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 increases the contribution rate for members of the Teachers' Retirement System from seven percent to 8.65 percent beginning on January 1, 1991 and directs that contributions be deducted before federal taxes are computed.

Secs. 2 and 3 change the contribution rate by which members of the Teachers' Retirement System first hired on or after July 1, 1990, may buy in military service or Alaska Bureau of Indian Affairs service from seven percent to 8.65 percent.

Sec. 4 requires that a member have received an honorable discharge to be entitled to claim military service in TRS. The section also prohibits a member from receiving TRS retirement benefits for military service for which the member is entitled to receive retirement benefits from the United States government.

Secs. 5 and 6 change the retirement age for members of TRS. Eligibility for normal retirement is changed from 55 years to 60 years, and eligibility for early retirement is changed from 50 years to 55 years.

Sec. 7 increases the multiplier for computing certain benefits payable to TRS members. Benefits for years of service greater than 20 which were earned after July 1, 1990, will be figured by multiplying by two and one-half percent instead of by two percent. Benefits for all service earned before July 1, 1990, and for that part of the benefits that are figured on fewer than 20 years of service are figured at two percent.

Sec. 8 restores language to AS 14.25.110 that was removed from AS 14.25.110(d) by sec. 7.

Secs. 9 and 10 repeat the changes in eligibility for normal and early retirement made by secs. 5 and 6. AS 14.25.125 is the section that grants members eligible to retire under the Public Employees' Retirement System the right to retire under TRS with only two years of membership service in TRS.

Sec. 11 limits eligibility for the cost-of-living allowance (COLA) to retired members of TRS who are state residents and at least 65 years of age or disabled. The COLA is currently payable to retirees of any age who are living in the state.

Sec. 12 changes the post retirement pension adjustment (PRPA) statute to parallel the provisions of PERS, found at AS 39.35.475. Subsection (a) makes the PRPA mandatory if the cost of living, as determined under (f) of the section, has increased during the previous calendar year and limits eligibility to receive the PRPA. Subsections (b) and (c) set out the formula for determining the amount of the PRPA and for figuring fractional benefits for those not retired for the full year. Subsection (d) retains the amount of PRPA's granted while a member was receiving disability benefits for the member's retirement benefit. Subsection (e) includes adjustments granted to deceased members or survivors when figuring death benefits or survivor's benefits under TRS.

Secs. 13 - 15 change eligibility for major medical insurance coverage. Under sec. 15, benefit recipients who choose to be covered and who are younger than 60 must pay the full cost of the insurance premium, benefit recipients between the ages of 60 and 65 must pay one-half the cost, and disabled members and persons 65 years of age or older receive coverage without paying for the premium.

20 80
32,000
Post Retirement

93

2.

Senator Jim Duncan
Page 3
March 2, 1990

Sec. 16 applies the changes that reduce the value of TRS benefits or limit eligibility for TRS benefits to employees first hired on or after the effective date of the Act. The increase in the contribution rate and the corresponding increase in benefit calculations, including the post retirement pension adjustment, apply to all employees.

Sec. 17 gives the Act an effective date of July 1, 1990.

If I may be of further assistance, please advise.

TC:mi
wkmi6/050

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 3/15/90
IN ACCORDANCE WITH UNIFORM RULE 2

FURTHER SA
FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035
1/9/89

DATE TURNED INTO OFFICE 3/21/90

Mr. President:

HESS Committee considered SB 53
post-retirement pension adjustments in the teachers' retirement
system; efd.

and recommended:

- replace with CS SB 53 (HESS) same title new title
- attached amendment(s) and
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

*CS SB 53 (HESS)
Fiscal
Forthcoming
Dept. Admin.*

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DC PASS

OTHER RECOMMENDATIONS

Tom DeLoach
Tim Kell

Paul Thurman (Do Pass)
Chairman signature and recommendation

Committee backup attached

plied by the total number of years of creditable outside, military, and Alaska BIA service. The administrator shall add compound interest at the rate prescribed by regulation to the arrearage indebtedness beginning July 1, 1963, or at the time the member first becomes

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to Post Retirement Pension Adjustment in TRS
 BRU: Retirement and Benefits
 Sponsor: Duncan Components: Retirement and Benefits
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	18.6	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	18.6	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 1034	18.6	0	0	0	0	0
TOTAL	18.6	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See page 2 for fiscal note analysis.

THIS BILL IS ESTIMATED TO COST THE DEPARTMENT OF EDUCATION(DOE) AND THE UNIVERSITY OF ALASKA (U OF A) \$3,873.4 IN INCREASED PERSONAL SERVICES FOR FY 91 AND EACH YEAR THEREAFTER. THIS BILL IS ESTIMATED TO COST SCHOOL DISTRICTS \$22,926.3 IN INCREASED PERSONAL SERVICES FOR FY 91 AND EACH YEAR THEREAFTER.

Please refer to page 3 for a detailed discussion of these costs.

Prepared by: Sally Smith, Director Phone: 465-4470
 Division: Retirement and Benefits Date: 10 Jan 90

Approved by Commissioner: Frank S. Baxter Date: 1/16/90
 Agency: Department of Administration

Distribution (by preparer):

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

Senate Bill 53
Fiscal Note Analysis
Prepared by Division of Retirement & Benefits
Department of Administration
December 20, 1989

Analysis: This bill would establish a post retirement pension adjustment in the Teachers' Retirement Systems (TRS) which automatically would be granted from July 1 of each year if the Consumer Price Index for Anchorage (CPI-W) increased during the previous calendar year. This provision would be effective for all active members, inactive members, and retired members of the TRS.

The total estimated administrative cost to the division of \$18.6 for FY 91 is for personal services costs to hire a nonpermanent DP Analyst Programmer IV for a period of five months. This programmer would be required to implement necessary changes to the TRS automated system. Current staff would not be able to absorb this increased workload.

Senate Bill 53
 Analysis of Financial Impact to the Retirement Fund
 Prepared by Division of Retirement & Benefits
 Department of Administration
 January 4, 1990

Analysis: To fund this bill the state Teachers' Retirement System (TRS) the contribution rate would increase by 6.66% in FY 90. The state TRS payroll is estimated to be \$58,159,258 in FY 90 and remain stable thereafter.

The state cost of \$3,873,406 is calculated as follows:

Department of Education FY 91 estimated salary		\$5,673,729
Increase in TRS rate	X <u>6.66%</u>	
Total cost.....		\$377,870

University of Alaska FY 91 estimated salary		\$52,485,529
Increase in TRS rate	X <u>6.66%</u>	
Total cost.....		<u>3,495,536</u>

TOTAL STATE COST...		<u>\$3,873,406</u>
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In addition to these state costs, the school districts' contribution rates would also be estimated to increase by 6.66% in FY 91. The school districts' salaries are estimated to be \$ 344,238,828 in FY 91 and remain stable each year thereafter.

The school districts' cost of \$22,926,306 is calculated as follows:

School district FY 91 estimated salaries		\$344,238,828
Increase in TRS rate	X <u>6.66%</u>	
TOTAL SCHOOL DISTRICT COST...		<u>\$22,926,306</u>

Passage of this bill will result in an increase in the TRS unfunded liability of \$225,000,000. It will also result in a decrease in the TRS funding ratio of 10.87%.

Position Title Analyst/Programmer IV		No. of Positions 1	Range/Step 19A	Barg. Unit GGU	
Time Status FT Nonperm	Staff Months 5.0	Location AWA		Election District 4	
Type of Expenditure		Justification			
Amount		<p>This position would provide the effort for the analysis, design, testing and debugging of the necessary enhancements to the TRS computer system. It would also be responsible for the initial production running of modifications and enhancements to the current Post Retirement Pension Adjustment (PRPA) system and its interfaces to the PERS, TRS, IBCS, EIS and AKSAS systems.</p>			
1	2				3
Salary	16,680				
Benefits	1,940				
Premium Pay	0				
Other	0				
Total Personal Services					18,620
Travel					0
Contractual					0
Commodities					0
Equipment		0			
Other		0			
Total Cost		18,620			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
I-A Receipts	1006				
CIP Receipts	1061				
Other	TRS 1034	18,620			

8/6K2/012702-9

**Request For
New Position**

Agency Administration
 BRU Retirement and Benefits
 Component Retirement and Benefits

Page 4 of 4
 Revised Date

FY 91

Committee Substitute for Senate Bill 53
Analysis of Financial Impact to the Retirement Fund
Prepared by Division of Retirement & Benefits
Department of Administration
March 9, 1990

DRAFT

Analysis: This bill would decrease the state Teachers' Retirement System (TRS) contribution rate by 0.05% in FY 91. The state TRS payroll is estimated to be \$58,159,258 in FY 91 and remain stable thereafter.

The state savings of \$29,080 are calculated as follows:

Department of Education FY 91 estimated salary	\$5,673,729
Decrease in TRS rate	X <u>0.05%</u>
Total savings.....	\$ 2,837

University of Alaska FY 91 estimated salary	\$52,485,529
Decrease in TRS rate	X <u>0.05%</u>
Total savings.....	\$ 26,243

TOTAL STATE SAVINGS... \$29,080

In addition to these state savings, the school districts' contribution rates would likely decrease by 0.05% in FY 91. The school districts' salaries are estimated to be \$ 344,238,828 in FY 91 and remain stable each year thereafter.

The school districts' savings of \$103,272 are calculated as follows:

School district FY 91 estimated salaries	\$344,238,828
Decrease in TRS rate	X <u>0.05%</u>

TOTAL SCHOOL DISTRICT SAVINGS... \$172,119

Passage of this bill will have no measurable impact on the TRS unfunded liability. It will not affect the TRS funding ratio.

DRAFT

3. normal retirement age will be 60 instead of 55.

There are administrative costs to implement the provisions of the bill. These costs would be funded by an appropriation from the Teachers' Retirement System; no general fund monies are needed. On the other hand, employer contributions are made with the support of general fund dollars. Under this legislation the employer contribution rate would be REDUCED by .05%, saving an estimated \$200 thousand each year.

The Department of Administration and the Division of Retirement and Benefits fully support this legislation. It responsibly adjusts the priorities to ensure an automatic pension adjustment for living cost increases. This enhancement should serve well to attract and retain the best of the teaching profession.

APPROVED:

Director Sally Smith Division Retirement and Benefits

Signature Sally Smith Date 3/23/90

Commissioner Frank S. Baxter

Signature Frank S. Baxter Date 3/23/90

(For more information, call Sioux Plummer 465-2200)

Rev. 12/89