

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6277 SENATE HEALTH, EDUCATION AND SOCIAL SERVICES

681

LAW OFFICES  
**BALL, SKELLY, MURREN & CONNELL**

SIX N SECOND STREET  
P O BOX 1108  
HARRISBURG, PENNSYLVANIA 17108  
17171-232-8731

WILLIAM BENTLEY BALL

May 4, 1989

Hon. Barney Gottstein  
President  
State Board of Education  
P.O. Box F  
Juneau, AK 99811

Re: Draft Regulations on Corporal Punishment  
Our File No. 605.88

Dear Mr. Gottstein:

I write you today as national counsel to Association of Christian Schools International (ACSI). ACSI embraces in its membership 2,471 evangelical Protestant schools throughout the United States. Its members in Alaska are deeply concerned over the proposed regulations pertaining to corporal punishment which have been proposed by the Alaska Department of Education. They have sought my legal opinion as to these. Having reviewed the draft regulations in light of applicable legal considerations, I thought I should send my opinion on to you and your Board members. Because you and I are total strangers one to another, I have enclosed a brief summary statement of my legal background.

Before attempting to explore the legal issues which may have bearing on the proposal, I feel it important to assure you that my clients deeply appreciate the humane interests which lie behind our state and federal laws for the protection of children. In no sense do ACSI schools deny the right of society to enact reasonable laws for the common good.

Hon. Barney Gottstein  
May 4, 1989

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Having studied the draft changes to the Administrative Code, I believe them to overstep what is legally permissible. First, the proposed 4 AAC 42.200 is clearly in conflict with relevant Alaskan statutory law. Second, irrespective of Alaskan statutes, it would unconstitutionally infringe on the religious rights of those non-tax-aided religious schools whose doctrinal principles govern school discipline.

As to my first point: Alaska's private school enactment of 1984 contains a provision exempting all religious or other private schools from provisions of law except such as pertain to physical health, fire safety, sanitation, immunization and physical examinations. The legislative purpose of the Act is clearly stated, that "the state shall not control or interfere with the rights of conscience and religious liberty." The "religious liberty" thus protected by the Act is, of course, the liberty of a particular religious body to observe and practice its religious teachings in their full integrity. Obviously this liberty does not extend to religious practices which pose significant threats to people. But neither is it limited so as to bar religious groups from the observance of practices required by the teachings of their faith and which do not pose such threats. Obviously whole classes of persons and activities in our society are not to be governmentally regulated on the ground that there occur exceptions to good conduct by some within those classes.

ACSI's schools are pervasively religious entities. They would not exist except for their religious mission to children. A critically important area of the religious life of the ACSI school is that of discipline. The ACSI schools, as an absolute requirement of religious faith, must adhere to Biblical principles of discipline. These are founded on love. They include the allowance of corporal punishment. They hence are inherently an aspect of the exercise of religion protected by the 1984 Act. In no way, I should add, is the "physical health" exception provided for in that Act applicable to the ACSI schools in their disciplinary practices. No general health problem whatever has been posed by private schools in Alaska and, in particular, none by religious schools, insofar as discipline is concerned. Should any individual instance of child abuse arise in any public or private school, or elsewhere, legal safeguards relevant thereto already exist for the protection of children.

Hon. Barney Gottstein  
May 4, 1989

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As to my second point: the proposed regulation would plainly be violative of rights of ACSI's schools protected by the Religion Clauses of the First Amendment to the Constitution of the United States. I have stated above the essential fact that the exercise of discipline within an ACSI school is part of the school's exercise of its religion. That being so, it is familiar law that government may not interfere with the exercise of religion without proof that its interference is justified by a "compelling state interest." Hobbie v. Unemployment Appeals Commission, 480 U.S. 130, 141 (1987). Proof of some mere "public interest" will not suffice. The courts have many times stated that, to interfere with the First Amendment liberties of speech, press or religion, government must prove a supreme societal interest as its justification - indeed one that cannot be realized by any less restrictive means. Wisconsin v. Yoder, 406 U.S. 205 (1972); Callahan v. Woods, 736 F.2d 1269, 1272 (9th Cir. 1984).

Coming now to examine 4 AAC 42.200 in light of those requirements, it is apparent that it would be unconstitutional as applied to non-state-aided religious schools:

1. There is no evidence that any supreme societal interest supports the proposed regulation. I do not express any opinion as to regulating the public schools in the administration of corporal discipline. What is totally clear is that no general threat to the health of children has ever arisen in Alaska resulting from disciplinary practices of Alaska's religious schools.

2. It is clear that AAC 42.200, if adopted, would create excessive governmental entanglements with religious schools in violation of the requirements of the Establishment Clause of the First Amendment. The Supreme Court has many times stated that the church-state separation principle precludes government involvement with religious bodies which involvement produces "a kind of continuing day-to-day relationship which the policy of [religious] neutrality seeks to minimize." Walz v. Tax Commission, 397 U.S. 664, 674 (1970). The Court, in Lemon v. Kurtzman, 403 U.S. 602, 618 (1971), warned of the dangers of "sustained and detailed administrative relationships [between government and religious schools] for enforcement of statutory or administrative standards."

Hon. Barney Gottstein  
May 4, 1989

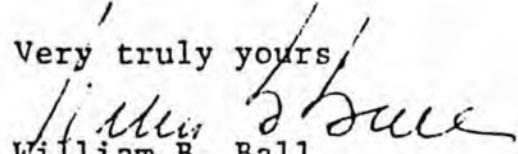
- 4 -

4 AAC 42.200 calls for the kind of involvements of the State in the affairs of religious schools which is constitutionally forbidden. There is no point to having those schools submit the "policy" unless the State can pass upon the policy and supervise performance under the policy. The clear implication is that the State will review whether the person who "may administer corporal punishment" is a person or class of persons of whom the State approves. Otherwise why ask who the person is to be? As to "type of corporal punishment permitted," "the circumstance under which it is permitted," "requirements governing privacy and the presence of witnesses," it is plainly pointless to require the submission of that information unless the State considers that its function is to approve or disapprove these specific parts of the "policy."

It is further noted that 4 ACC 42.200 states: "Corporal punishment may only be administered in accordance with the policy on file with the department." This means either that the Department must assure that the policy is so administered or it means nothing. If the Department is not going to take steps to correct the school when it deviates from its stated policy, what point is there in requiring the school to submit its policy? It appears obvious that it is the intention of 4 AAC 42.200 to give the Department power to police the schools in the observance of their corporal punishment policies.

Considering that 4 AAC 42.200 calls for intrusion by the State into a central area of the religious administration of religious schools, and that such intrusion is not justifiable under the heading of compelling state interest, it is my considered opinion that, in spite of the undoubted good motivations which may have given rise to its being proposed, it is an unconstitutional measure insofar as it would be made applicable to such schools.

Very truly yours,

  
William B. Ball

WBB:dh  
Enc.

cc: Commissioner Bill Demmert  
Mr. Burt Carney  
Dr. Paul A. Kienel

WILLIAM BENTLEY BALL

In the private practice of law in the Harrisburg firm of Ball, Skelly, Murren & Connell.

A constitutional lawyer who has been lead counsel in litigations in 22 states and in 19 cases in the Supreme Court of the United States, including the landmark decision in the Amish case, Wisconsin v. Yoder. Life Member, American Law Institute. 1982 Clarence Darrow Award. Member, National Committee, The Human Life Foundation, Inc. Messiah College Distinguished Public Service Award, 1985.

Lectures and debates on constitutional law issues at University of Sydney (Australia), University of Minnesota, University of Chicago, Amherst College, Harvard Graduate School of Education, University of Pennsylvania. Keynote speaker National Conference on Governmental Intervention in Religious Affairs, 1981 (Natl. Council of Churches, Synagogue Council of America, U.S. Catholic Conference).

Member, bars of New York, Pennsylvania, Supreme Court of the United States; U.S. Court of Appeals, 7th Circuit; U.S. Court of Appeals, 3rd Circuit; U.S. Court of Appeals, 5th Circuit; U.S. Court of Appeals, 6th Circuit; U.S. Court of Appeals, 9th Circuit; U.S. Court of Appeals for the District of Columbia.

LAW OFFICES  
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311 N. SECOND STREET  
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HARRISBURG, PENNSYLVANIA 17108  
(717) 232-6731

WILLIAM BENTLEY BALL

May 26, 1989

Thomas E. Wagner, Esq.  
Deputy Attorney General  
State of Alaska  
P.O. Box K  
Juneau, AK 99811

Dear Mr. Wagner:

Before leaving for the Memorial Day weekend, I wanted to get this letter off to you. Thank you for accepting my call. I tried to reach my clients in Alaska this afternoon but without success.

In our conversation, you stated that the State, under 4 AAC 42.200, is seeking only to make a survey of disciplinary policies, and that its request to know who is to administer punishment is not a request for names, but merely whether the "who" is a staff person or the parent. You further stated that the State would not, and legally could not, on the basis of the responses, regulate any particular school.

If the foregoing is the State's firm opinion, then I respectfully suggest that language be added to 4 AAC 42.200 expressly stating that, or, as a less desirable alternative, that the Attorney General issue a concurrent opinion stating that. Then my clients would be able to react. One additional thought about the above suggested amendment. It should specifically provide the confidentiality of all responses.


I do see a significant difference between a regulation which is, and is intended to be, solely a statewide survey of practices and one which is a fishing expedition intended to set up religious schools for intrusive surveillance and enforcement or punitive actions.

Thomas E. Wagner, Esq.  
May 26, 1989

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My clients will of course have to follow their conscientious conclusion in their reaction to the proposal as above interpreted by you. They have told me, prior to our talk, that they would risk jail rather than permit the State to make them abandon policies which are religiously required but which are safe and reasonable.

Very truly yours,

  
William B. Ball

WBB:dh

cc: Mr. Burt Carney  
Mr. Mac Culver  
Dr. Paul A. Kienel

child study team, the test results would not be a valid estimate of the student's current achievement level. If the student's current individualized education program (IEP) under 4 AAC 52.140 contains recommendations regarding group standardized testing, then those recommendations should be applied, making a special meeting unnecessary.

(c) Bilingual students who are identified in language proficiency categories A or B under 4 AAC 34.050 may be excluded from testing if they have been in U.S. schools for less than three full school years. All students with three or more full school years in U.S. schools must be tested. (Eff. 3/15/89, Register 109)

Authority: AS 14.07.020  
AS 14.07.060

## CHAPTER 07. STUDENT RIGHTS AND RESPONSIBILITIES

Section	Section
10. Establishment of district guidelines and procedures; prohibited discipline	900. Definition

**4 AAC 07.010. ESTABLISHMENT OF DISTRICT GUIDELINES AND PROCEDURES; PROHIBITED DISCIPLINE.** (a) Each school district shall develop and adopt policies regarding student rights and responsibilities. These policies must address both substantive and procedural matters relating to standards of student behavior, treatment, and discipline. A uniform discipline policy must be in effect throughout the district for the purpose of establishing standards and procedures in matters relating to student discipline. The procedures, at a minimum, must address the following:

- (1) routine discipline case procedure; and
- (2) chronic or serious discipline case procedure.

(b) All district policies must be consistent with the federal and state constitutions, state statutes and regulations as written or construed by courts of competent jurisdiction.

(c) The use of corporal punishment in Alaska public schools is prohibited. (Eff. 8/30/75, Register 55; am 3/1/78, Register 65; am 8/25/89, Register 111)

Authority: AS 14.07.020(a)  
AS 14.07.060

**4 AAC 07.900. DEFINITION.** As used in this chapter, "corporal punishment" means the application of physical force to the body of a student for disciplinary purposes. It does not include the use of reasonable and necessary physical restraint of a student to protect the stu-

dent, or others, from physical injury, to obtain possession of a weapon or other dangerous object from a student, to maintain reasonable order in the classroom, or on school grounds, or to protect property from serious damage or destruction. (Eff. 8/25/89, Register 111)

Authority: AS 14.07.020(e)  
AS 14.07.060

## CHAPTER 12. CERTIFICATION OF PROFESSIONAL PERSONNEL

Section	Section
25. Certification for teachers providing special education	41. Certification for related services providers
26. Certification for teachers of gifted children	53. Vocational education personnel qualifications
35. Certification for administrators of special education	60. Endorsements

**4 AAC 12.025. CERTIFICATION FOR TEACHERS PROVIDING SPECIAL EDUCATION.** (a) A person employed by or on behalf of a school district to teach special education to handicapped children must possess a Type A teacher certificate issued under 4 AAC 12.020 with an endorsement based upon completion of an approved teacher training program in special education.

(b) A person who has the primary responsibility for the evaluation of, the planning of educational programs for, or the teaching of or training of staff to teach children who are visually impaired or deaf must have an endorsement in the education of children with the relevant impairment.

(c) A person employed by or on behalf of a school district to teach special education to preschool handicapped children, who does not hold an endorsement in preschool handicapped education must, in addition to the requirements in (a) of this section, complete 7½ hours of inservice training in early childhood special education before or during the first year of employment in teaching preschool handicapped children. This subsection is repealed July 1, 1993.

(d) Effective July 1, 1993, a person employed by or on behalf of a school district to teach special education to preschool handicapped children, who does not hold an endorsement in preschool handicapped education, must have completed six semester hours in early childhood special education in addition to the requirements in (a) of this section. (Eff. 7/16/89, Register 111)

Authority: AS 14.07.060  
AS 14.20.020  
AS 14.30.250

**S B**

**444**

Patrick M. Rodey  
Senator

# Alaska State Legislature



## Senate

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618

During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

DATE: March 26, 1990

TO: Senator Paul Fischer, Chair  
Senate-HESS Committee

FROM: Senator Patrick Rodey

SUBJECT: Scheduling Senate Bill 444

I respectfully request that you please schedule the above-mentioned bill in the Senate HESS Committee as soon as possible.

The bill is strongly supported by the education support staff throughout the state, and I believe brings needed equity for computing state service for school district employees.

Attached is a copy of the fiscal note and fiscal analysis.

Thank you for your consideration of this request for scheduling SB 444.

February 16, 1990

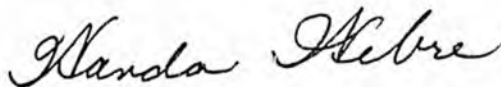
Mr. Paul Fischer  
House State of Affairs Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Mr. Fischer,

I am an Anchorage School District employee and my bargaining group is Totem. Currently, people in this group get credit toward PERS retirement for the actual months worked. Our work year is based on the school year. We can no longer draw unemployment for the months we do not work because we do have a job and will be returning to our job. Some people work nine months, some ten months others work eleven and twelve months. Without receiving credit for the full year like TRS employees we will be very, very old before we accrue enough years to retire from our jobs with a fair retirement income.

Please give us the equality and fairness long overdue by supporting SB444 and HB 515. Please give a copy of this letter to all the members of the committee.

Sincerely,



Wanda Webre

Patrick M. Rodey  
Senator

# Alaska State Legislature



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FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
Title: An Act relating to credited BRU: Retirement and Benefits  
services in the PERS  
Sponsor: Rodev Components: Retirement and Benefits  
Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	50.0	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	50.0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	50.0	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	50.0	0	0	0	0	0
TOTAL	50.0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary) THIS IS ANTICIPATED TO INCREASE SCHOOL DISTRICT PERS CONTRIBUTION RATES BY 1.46 PERCENT AND PERSONAL SERVICES COSTS BY \$1,1961.6. SINCE THIS BILL ONLY AFFECTS NONCERTIFICATED SCHOOL DISTRICT EMPLOYEES, THE STATE'S CONTRIBUTION WILL NOT BE INCREASED.

Please refer to page 2 for a discussion of the fiscal implications.

Prepared by: Sally Smith *Sally Smith* Phone: 465-4470  
Division: Retirement and Benefits Date: 02/23/90  
Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 2/27/90  
Agency: Department of Administration

Distribution (by preparer):

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

*School district cost \$1,961,600. + 50,000.*  
DEPT OF ADMIN FISCAL NOTE

Senate Bill 444  
Fiscal Note Analysis  
Prepared by Division of Retirement & Benefits  
Department of Administration  
February 23, 1990

**Analysis:** This bill would allow non-certificated employees of school districts to receive credited service in the PERS on the same basis as teachers under the TRS. A two-tiered system would then exist in the PERS for credited service. Some school district employees would be required to work for 9 months and earn a full year of credited service and others may be required to work for 12 months while earning the same year of service.

The total estimated administrative cost to the division of \$50.0 for FY 91 is for contractual services to implement necessary changes to the TRS automated system. Current staff would not be able to absorb this increased workload.

Senate Bill 444  
Analysis of Financial Impact to the Retirement Fund  
Prepared by Division of Retirement & Benefits  
Department of Administration  
February 23, 1990

**Analysis:** To fund this bill the school district Public Employees' Retirement System (PERS) contribution rate would increase by 1.46% in FY 91. The school district PERS payroll is estimated to be \$134,357,016 in FY 91 and remain stable thereafter.

The school districts' cost of \$1,961,600 is calculated as follows:

School district FY 91 estimated PERS salaries	\$134,357.0
Increase in PERS rate	X <u>1.46%</u>
<b>TOTAL SCHOOL DISTRICT COST...</b>	<b><u>\$ 1,961.6</u></b>

Passage of this bill will result in an increase in the PERS unfunded liability of \$20,968,000. It will also result in a decrease in the PERS funding ratio of .9%.

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Credited service in the Public Employees Retirement System  
 Sponsor: Rodey  
 Requestor: Rodey  
 Agency Affected: Education  
 BRU: Mt. Edgcumbe  
 Components: Residential Program

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	3.9	3.9	3.9	3.9	3.9	3.9
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>3.9</b>	<b>3.9</b>	<b>3.9</b>	<b>3.9</b>	<b>3.9</b>	<b>3.9</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	3.9	3.9	3.9	3.9	3.9	3.9
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This estimate is based upon the projected increase in employer cost for non-certified employees of Mt. Edgcumbe's residential program. The Department of Administration estimates this increase at 1.46% of each employees' base salary.

Prepared by: Mary Hakala Phone: 465-2800  
 Division: Commissioner's Office Date: 3/1/90  
 Approved by Commissioner: William G. Demmert Date: 3/1/90  
 Agency: Education

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

DEPT. OF ED Fiscal note - MT. EDGE-  
CUMBE

school year means the 12 month period beginning July 1 of each year and ending June 30 of the following year.

§ 14.25.220

ALASKA STATUTES SUPPLEMENT

§ 14.25.220

(43) "year of service" means service, except for military and territorial service, during the dates set for a school year; partial-year service credit is given for membership and BIA service as follows:

(A) before July 1, 1969, during any school year,

- (i) less than 20 days, no credit;
- (ii) 20 days or more but less than 35 days, 0.2 years;
- (iii) 35 days or more but less than 49 days, 0.3 years;
- (iv) 49 days or more but less than 63 days, 0.4 years;
- (v) 63 days or more but less than 77 days, 0.5 years;
- (vi) 77 days or more but less than 91 days, 0.6 years;
- (vii) 91 days or more but less than 105 days, 0.7 years;
- (viii) 105 days or more but less than 119 days, 0.8 years;
- (ix) 119 days or more but less than 133 days, 0.9 years;
- (x) 133 days or more, 1.0 years;

(B) on or after July 1, 1969, during any school year,

- (i) less than nine days, no credit;
- (ii) nine days or more but less than 27 days, 0.1 years;
- (iii) 27 days or more but less than 45 days, 0.2 years;
- (iv) 45 days or more but less than 63 days, 0.3 years;
- (v) 63 days or more but less than 81 days, 0.4 years;
- (vi) 81 days or more but less than 100 days, 0.5 years;
- (vii) 100 days or more but less than 118 days, 0.6 years;
- (viii) 118 days or more but less than 136 days, 0.7 years;
- (ix) 136 days or more but less than 154 days, 0.8 years;
- (x) 154 days or more but less than 172 days, 0.9 years;
- (xi) 172 days or more, 1.0 years;

(C) service performed on a part-time basis will be credited with one-half credit for each day of service. (§ 2 ch 145 SLA 1955; am § 1 ch 142 SLA 1957; am § 2 ch 89 SLA 1960; am § 7 ch 179 SLA 1960; am §§ 1, 2 ch 78 SLA 1962; am §§ 8 — 12 ch 86 SLA 1963; am § 1 ch 76 SLA 1968; am §§ 15 — 19 ch 84 SLA 1969; am § 21 ch 46 SLA 1970; am §§ 13 — 18 ch 138 SLA 1970; am §§ 3 — 5 ch 229 SLA 1970; am §§ 16 — 18 ch 32 SLA 1971; am §§ 6 — 8 ch 86 SLA 1971; am §§ 30 — 33 ch 66 SLA 1973; am § 3 ch 57 SLA 1974; am § 21 ch 127 SLA 1974; am §§ 12, 13 ch 173 SLA 1975; am §§ 1, 6 ch 155 SLA 1976; am § 5 ch 169 SLA 1976; am §§ 12, 13 ch 128 SLA 1977; am §§ 4, 5 ch 174 SLA 1978; am §§ 4 — 7 ch 82 SLA 1979; am § 24 ch 13 SLA 1980; am §§ 25 — 28 ch 137 SLA 1982; am § 1 ch 55 SLA 1985; am §§ 4 — 7 ch 82 SLA 1986; am § 4 ch 112 SLA 1986; am § 19 ch 117 SLA 1986; am §§ 18, 19 ch 106 SLA 1988; am § 31 ch 50 SLA 1989; am § 3 ch 104 SLA 1989)

**Effect of amendments.** — The 1988 amendment, effective June 5, 1988, in paragraph (21), deleted "or" at the end of subparagraph (D), added "or" at the end of subparagraph (E), and added subpara-

graph (F); and repealed and reenacted paragraph (35) which formerly related to the same subject matter.

The first 1989 amendment, effective May 27, 1989, in paragraph (20), substi-

§ 14.30.010

EDUCATION

§ 14.30.010

tuted "payments" for "contributions" and "AS 14.25.173" for "AS 14.25.170."

The second 1989 amendment, effective July 1, 1989, added the language begin-

ning "however, a teacher or administrative person at the university" to the end of subparagraph (40)(C).

## NOTES TO DECISIONS

Cited in *Lain; v. Laing*, 741 P.2d 649 (Alaska 1987).

## Chapter 30. Pupils and Educational Programs for Pupils.

### Article

1. Compulsory Education (§§ 14.30.010, 14.30.030)
2. Physical Examinations and Screening Examinations (§§ 14.30.070, 14.30.120)

### Article 1. Compulsory Education.

#### Section

10. When attendance compulsory
30. Report of violations and procedures

**Sec. 14.30.010. When attendance compulsory.** (a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall maintain the child in attendance at a public school in the district in which the child resides during the entire school term, except as provided in (b) of this section.

(b) This section does not apply if a child

- (1) is provided an academic education comparable to that offered by the public schools in the area, either by
  - (A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;
  - (B) tutoring by personnel certificated according to AS 14.20.020; or
  - (C) attendance at an educational program operated in compliance with AS 14.45.100 — 14.45.200 by a religious or other private school;
- (2) attends a school operated by the federal government;
- (3) has a physical or mental condition which a competent medical authority determines will make attendance impractical;
- (4) is in the custody of a court or law enforcement authorities;
- (5) is temporarily ill or injured;
- (6) has been suspended or denied admittance according to AS 14.30.045;
- (7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this subsection does not apply if the child resides within

*Marilyn Halstead*

ROSALIND SANDERS  
President



**TOTEM**

---

ASSOCIATION OF EDUCATION SUPPORT PERSONNEL

801 West Fireweed Lane  
Anchorage, Alaska 99503

Suite 201  
Phone: (907) 274-2133

**S B**

**445**

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 2/7/90

FURTHER: Judiciary

Date of 5-Day Notice: 3/8/90  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/19/90

H E S S

Committee considered

SB 445

"An Act relating to subsidized guardianship; and providing for an effective date."

and recommended:

- replace with \_\_\_\_\_ CS SB 445 (HESS)  same title  
[ ] attached amendment(s) [ ] new title
- [ ] \_\_\_\_\_ letter of intent adopted

do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

[ ] fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) CS  
\_\_\_\_\_  
\_\_\_\_\_

[ ] appropriation-no al note

Governor's bill w/fiscal note

SIGNING DO PASS:

Handwritten signatures  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Handwritten signature  
Chair: Signature and Recommendation

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 2/7/90

FURTHER: Judiciary

Date of 5-Day Notice: 3/8/90  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: 3/14/90

H E S S                      Committee considered                      SB 445

"An Act relating to subsidized guardianship; and providing for an effective date."

and recommended:

- replace with \_\_\_\_\_ CS SB 445 (HESS)  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] V. Chair - Do Pass  
Chair: Signature and Recommendation

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 445

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

9 \* Section 1. AS 25.23.200 is amended to read:

10 Sec. 25.23.200. INVESTIGATION. Persons who are caring for a  
11 hard-to-place child on a foster parent basis and who have applied to  
12 adopt the hard-to-place child and to receive payments for the care and  
13 support of the hard-to-place child shall be evaluated as to their  
14 suitability as adoptive parents by means of an adoptive home study.  
15 Persons who are caring for a hard-to-place child in the state's  
16 custody and who wish to be appointed legal guardians of the child, and  
17 to receive payments for the care and support of the child, shall be  
18 evaluated as to their suitability as guardians by means of a  
19 guardianship study. This home study or guardianship study shall be  
20 made by the commissioner's adoption staff or on the commissioner's  
21 behalf by an authorized agency that [WHICH] provides adoption  
22 services.

23 \* Sec. 2. AS 25.23.220 is amended to read:

24 Sec. 25.23.220. ANNUAL REEVALUATION. After an adoption with  
25 subsidy is final or a guardianship with subsidy has been ordered by  
26 the court and the court has released the child from the state's legal  
27 custody, the family is independent of the department except for an  
28 annual evaluation by the department of the need for continued subsidy  
29 and the amount of the subsidy.

1 \* Sec. 3. AS 25.23.240(5) is amended to read:

2 (5) "court" means the superior court of this state, and,  
3 when the context requires, the court of another state empowered to  
4 grant petitions for adoption or guardianship or to terminate parental  
5 rights;

6 \* Sec. 4. AS 25.23.240(7) is amended to read:

7 (7) "hard-to-place child" means a minor who is not likely  
8 to be adopted or to obtain a guardian by reason of physical or mental  
9 disability, emotional disturbance, recognized high risk of physical or  
10 mental disease, age, membership in a sibling group, racial or ethnic  
11 factors, or any combination of these conditions;

12 \* Sec. 5. AS 47.10.230(d) is amended to read:

13 (d) In addition to money [FUNDS] paid for the maintenance of  
14 foster children under (b) of this section, the department

15 (1) shall pay the costs of caring for physically or mental-  
16 ly handicapped foster children, including the additional costs of  
17 medical care, habilitative and rehabilitative treatment, services and  
18 equipment, special clothing, and the indirect costs of medical care,  
19 including child care and transportation expenses; [AND]

20 (2) may pay for respite care; in this paragraph "respite  
21 care" means child care for the purpose of providing

22 (A) temporary relief from the stresses of caring for a  
23 foster child who has a physical or mental disability or a phys-  
24 ical or mental impairment; in this subparagraph

25 (i) "physical or mental disability" has the  
26 meaning given in AS 18.80.300(2)(A), (B), and (D); and

27 (ii) "physical or mental impairment" has the  
28 meaning given in AS 18.80.300; and

29 (B) protection for the child when the foster parent is

1 (i) away from the home because of an emergency  
2 and other care is not available for the child; or

3 (ii) on vacation and the child, because of age or  
4 infirmity, cannot be placed in any other type of temporary  
5 care facility; and

6 (3) may pay a subsidized guardianship payment under  
7 AS 25.23.210 when a foster child's foster parents or other persons  
8 approved by the department become court-appointed legal guardians of  
9 the child.

10 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

STEVE COWPER, GOVERNOR

**DEPT. OF HEALTH AND SOCIAL SERVICES**

**OFFICE OF THE COMMISSIONER**

P.O. BOX H  
JUNEAU, ALASKA 99801-0601  
PHONE: (907) 465-3030

February 16, 1990

Senator Paul Fischer  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Fischer:

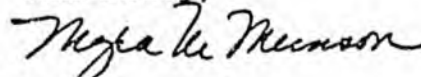
Senate Bill 445, an Act relating to subsidized guardianship, has recently been referred to the Senate HESS committee.

This legislation will offer this department an alternate method of assisting children who require long-term foster placement. In cases in which adoption is not appropriate, a family may be willing to become the long-term legal guardian of the child. This legislation offers the statutory change necessary so that this department can continue to pay for the child's care while in the guardianship relationship.

It should be noted that SB 445 carries a "0" fiscal note. This is possible because the dollars that make up the subsidy for the guardianship would have been paid for foster care in the absence of a guardianship option.

I respectfully request that this legislation be scheduled in the Senate HESS committee as soon as possible. If you require additional information, please let me know.

Sincerely,



Myra M. Munson  
Commissioner

Letter from the Commissioner of  
Health and Social Services.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

115

February 7, 1990

The Honorable Tim Kelly  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the establishment of a subsidized guardianship program for hard-to-place children who are in the custody of the Department of Health and Social Services. This bill addresses one facet of permanency planning for foster children.

The purpose of this proposed legislation is to provide the Department of Health and Social Services with another tool to assist children who require long-term foster placement. Many times it is not possible, or not in the child's best interest, to free the child for adoption. Many foster parents who have had a child placed with them on a long-term basis might not wish to adopt the child but are willing to take on legal responsibility beyond foster parenthood for the foster child growing up in their home. However, if assuming guardianship would mean that the state will release the child from state custody and leave the foster parents without needed financial resources to provide for the child, foster parents might reasonably be reluctant to become a hard-to-place child's legal guardian. This proposed legislation will allow the state to continue to subsidize the child's care even though the state no longer has legal custody of the child.

The bill would amend AS 25.23.200, which currently provides that foster parents who are caring for a hard-to-place child and who have applied to adopt the child and receive a subsidy for the care and support of the child, must be evaluated as to their suitability as adoptive parents. The amendment to AS 25.23.200 would require that persons who are caring for a hard-to-place child and who wish to be appointed the child's guardian and receive a subsidy, would, in the same manner, be evaluated as to their suitability as guardians.

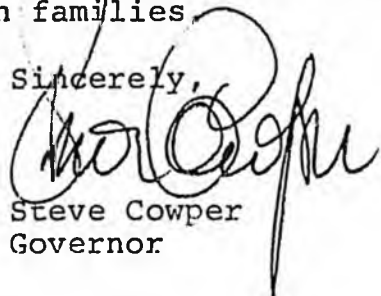
Under existing AS 25.23.210, the amount and duration of a monthly subsidy for a hard-to-place child is left to the discretion of the commissioner of the Department of Health and Social Services, but cannot exceed the existing rate being paid by the department for foster care.

Section 2 of the bill amends AS 25.23.220 to require that when a guardianship with subsidy has been ordered by the court and the court has released the child from the state's legal custody, the guardian will be independent of the department except for an annual evaluation by the department of the need for continued subsidy and the amount of the subsidy.

Sections 3 and 4 of the bill amend the definitions in AS 25.23.240(5) and (7), respectively, to add a reference to guardianships.

The subsidy program proposed in this bill recognizes that not only subsidized adoption but subsidized guardianship will be of benefit to the children of our state who are not able to grow up in their birth families.

Sincerely,



Steve Cowper  
Governor

# FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An Act relating to Subsidized Guardianship . . .  
 Sponsor: Rules Committee  
 Requestor: Governor

Agency Affected: Health & Social Services  
 BRU: \_\_\_\_\_

Components: \_\_\_\_\_

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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<b>REVENUE</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

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

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

FY 90 fiscal impact is "0."

Prepared by: Russ Webb, Director  
 Division: Family and Youth Services  
 Approved by Commissioner: *Myra M. Munson*  
 Agency: Department of Health & Social Services

Phone: 465-3170  
 Date: \_\_\_\_\_  
 Date: Feb 5, 1990

**Distribution (by preparer):**

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

*Adopted*

go0370sE  
Lauterbach  
3/13/90

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE HESS COMMITTEE

2 CS FOR SENATE BILL NO. 445 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to subsidized adoption and guardian-  
7 ship; and providing for an effective date."

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

9 \* Section 1. AS 25.23.200 is amended to read:

10 Sec. 25.23.200. INVESTIGATION. Persons who are caring for a  
11 hard-to-place child on a foster parent basis and who have applied to  
12 adopt the hard-to-place child and to receive payments for the care and  
13 support of the hard-to-place child shall be evaluated as to their  
14 suitability as adoptive parents by means of an adoptive home study.  
15 Persons who are caring for a hard-to-place child in the state's cus-  
16 tody and who wish to be appointed legal guardians of the child, and to  
17 receive payments for the care and support of the child, shall be  
18 evaluated as to their suitability as guardians by means of a guardian-  
19 ship study. A [THIS] home study or guardianship study shall be made  
20 by the commissioner's adoption staff or on the commissioner's behalf  
21 by an authorized agency or individual that [WHICH] provides adoption  
22 services.

23 \* Sec. 2. AS 25.23.220 is amended to read:

24 Sec. 25.23.220. ANNUAL REEVALUATION. After an adoption with  
25 subsidy is final or a guardianship with subsidy has been ordered by  
26 the court and the court has released the child from the state's legal  
27 custody, the family is independent of the department except for an  
28 annual evaluation by the department of the need for continued subsidy  
29 and the amount of the subsidy.

1 \* Sec. 3. AS 25.23.240(5) is amended to read:

2 (5) "court" means the superior court of this state, and,  
3 when the context requires, the court of another state empowered to  
4 grant petitions for adoption or guardianship or to terminate parental  
5 rights;

6 \* Sec. 4. AS 25.23.240(7) is amended to read:

7 (7) "hard-to-place child" means a minor who is not likely  
8 to be adopted or to obtain a guardian by reason of physical or mental  
9 disability, emotional disturbance, recognized high risk of physical or  
10 mental disease, age, membership in a sibling group, racial or ethnic  
11 factors, or any combination of these conditions;

12 \* Sec. 5. AS 47.10.230(d) is amended to read:

13 (d) In addition to money [FUNDS] paid for the maintenance of  
14 foster children under (b) of this section, the department

15 (1) shall pay the costs of caring for physically or men-  
16 tally handicapped foster children, including the additional costs of  
17 medical care, habilitative and rehabilitative treatment, services and  
18 equipment, special clothing, and the indirect costs of medical care,  
19 including child care and transportation expenses; [AND]

20 (2) may pay for respite care; in this paragraph "respite  
21 care" means child care for the purpose of providing

22 (A) temporary relief from the stresses of caring for a  
23 foster child who has a physical or mental disability or a phys-  
24 ical or mental impairment; in this subparagraph

25 (i) "physical or mental disability" has the  
26 meaning given in AS 18.80.300(12)(A), (B), and (D); and

27 (ii) "physical or mental impairment" has the  
28 meaning given in AS 18.80.300; and

29 (B) protection for the child when the foster parent is

1 (i) away from the home because of an emergency  
2 and other care is not available for the child; or

3 (ii) on vacation and the child, because of age or  
4 infirmity, cannot be placed in any other type of temporary  
5 care facility; and

6 (3) may pay a subsidized guardianship payment under AS 25.-  
7 23.210 when a foster child's foster parents or other persons approved  
8 by the department become court-appointed legal guardians of the child.

9 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).  
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**S B**

**458**

STATE OF ALASKA  
THE LEGISLATURE

FEB 27 1990

FOUCH V. STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3610

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1990

SUBJECT: Distribution of Income from National  
Forest Land (SB 458)

TO: Senator Lloyd Jones

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

Here is the sectional summary you requested of SB 458.

Section 1. The formula for distribution of income from national forest land pursuant to the federal National Forest Management Act is modified with respect to income from forest land in the unorganized borough. Under existing law the income is to be used for public schools and roads. This bill adds the requirement that the money be used for schools and roads in the unorganized borough. That portion to be used for schools is to be divided among regional educational attendance areas and city school districts in proportion to the area of the forest located in the district boundaries.

Section 2. The Act takes effect at the beginning of the next fiscal year.

TBC:gc  
G13/107

# ALASKA STATE LEGISLATURE

While in Ketchikan  
352 Front Street  
Ketchikan, AK 99901  
907-225-9675

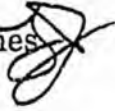


While in Juneau  
P.O. Box V  
Juneau, AK 99811  
907-465-3743

Senator Lloyd Jones

## MEMORANDUM

TO: Senator Paul Fischer, Chairman  
Senate Health, Education, and Social Services Committee

FROM: Senator Lloyd Jones 

DATE: March 21, 1990

SUBJECT: Senate Bill 458

---

Senate Bill 458 remedies a conflict between current federal and State law concerning allocation of National Forest Receipts that are returned to the State. Currently, approximately 31% of the stumpage fees returned to the State of Alaska are paid out to the organized boroughs located within the national forest. This percentage is based on the area of the forest contained within the boundaries of the organized boroughs. The remainder of these funds go directly to the general fund. All areas outside of organized boroughs, but within national forest boundaries receive no direct funding. It is the intent of federal law that these monies go directly to areas within the National Forest.

SB 458 will correct the existing conflict between State and federal law by focusing this national forest income receipt money back to the areas actually within the national forest. I urge the passage of this legislation.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MAR 21 1990

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

M E M O R A N D U M

March 21, 1990

SUBJECT: Distribution of income from national forest  
land (SB 458)

TO: Senator Lloyd Jones

FROM: Tamara Brandt Cook *ABC*  
Director  
Division of Legal Services

You have asked for an explanation of SB 458 and for a comparison between existing law and the changes made in the bill in light of the federal act under which a portion of income from national forest land is distributed to counties.

The federal law states in pertinent part:

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. . . (16 U.S.C. 500)

Discussion of the most recent amendments to National Forest Management Act contains the following explanation for the purpose behind the distribution of federal receipts back to local governments:

The formula for paying a 25 percent share of National Forest revenues to counties in which National Forest System lands are located is adjusted to minimize adverse impacts on the counties. The adjustment will

result in the Forest Service rebating to the counties 25 percent of the total income from timber sales. Presently, deduction is made for collections for reforestation and allowances in timber contracts for permanent roads to be built by timber purchasers. (U.S. Code Congressional and Administrative News, Vol. 5, 1976, Page 6667)

The state statute that implements this federal law is AS 41.15.180 which now provides in full:

Sec. 41.15.180. NATIONAL FOREST INCOME.

(a) When the commissioner of administration receives national forest income under 16 U.S.C. 500, the commissioner shall immediately pay to every organized borough in which national forest land is located a share of the income from that forest. A borough's share of income from a national forest shall be proportional to the area of the national forest located within its boundaries. The payments shall be made under an appropriation made for that purpose.

(b) The national forest income paid to an organized borough under this section shall be expended for public schools or roads.

(c) The commissioner shall deposit income from national forest land outside of organized boroughs in the general fund of the state, 25 percent to be used for public schools and 75 percent for roads.

Note that the current statute treats boroughs as though they were counties and treats the unorganized borough as though it were a county for purposes of accounting for federal receipts from forest land located in the unorganized borough. However, under existing subsection (c) the portion of income from forest land in the unorganized borough is placed in the general fund to be used for schools and roads. There is no requirement that this use be for schools and roads in the unorganized borough, although such a requirement seems necessary to satisfy the purpose behind the federal law -- that the money be used in the impacted area.

SB 458 adds the requirement that money generated from forests in the unorganized borough be used in the unorganized borough. In this respect, the bill more closely tracks with

Senator Lloyd Jones

Page 3

March 21, 1990

the federal law by treating the unorganized borough as though it were a county for purposes of applying the federal distribution requirement. In addition, SB 458 apportions the money to be used for schools among the schools in the unorganized borough based on the area of the national forest located within the school districts' boundaries. Once a distribution is set aside for a county, the federal law specifically permits the legislature to prescribe how the money will be expended to benefit public schools in that county, so this distribution system would appear to be acceptable under the federal law.

Note that the only way the state can qualify for a distribution based upon income received from national forest land in the unorganized borough is by treating the unorganized borough as a county for purposes of applying 16 U.S.C. 500. Current law does this to the extent of separately accounting for receipts due from forests within the unorganized borough. SB 458 goes further in preserving the money generated from forests located in the unorganized borough for use in the unorganized borough, more closely conforming to the federal law.

TBC:pl  
WKP3/065

16 § 500  
Note 3

authorize inclusion in the base the deposits made pursuant to section 576b of this title requiring purchaser of timber from national forest to make deposits for reforestation. State of Ala. v. U.S., 1972, 461 F.2d 1324, 198 Ct.Cl. 683, certiorari denied 93 S.Ct. 464, 409 U.S. 1023, 34 L.Ed.2d 315.

4. Purpose

This section for distribution to states of portion of federal forest reserve revenues to be spent for public roads and schools as prescribed by state law, and West's Ann. Education Code, § 20251, directing distribution of such revenues among counties, were not designed to provide money in lieu of local taxes. Anderson Union High School Dist. v. Schreder, 1976, 128 Cal.Rptr. 529, 56 C.A.3d 453.

Receipt by county of 25 percent of all monies received by National Forest Service for stumpage payments made in accordance with contract between log purchaser and the Service was not in lieu of taxes but was in nature of an assistance grant. Tree Farmers, Inc. v. Goeckner, 1963, 385 P.2d 649, 86 Idaho 290.

Payments made by United States under this section are not in lieu of taxes. Bartlett v. Collector of Revenue, La.App.1973, 285 So.2d 346.

This section does not evidence intention of Congress to make payments in lieu of taxes, but rather friendly purpose to create trusts for benefit of counties in which national forests are located in recognition of national interest in education and road building. Trinity Independent School Dist. v. Walker County, Tex.Civ.App.1956, 287 S.W.2d 717, ref. n.r.e.

5. Questions for Congress

Assuming that this section creates a trust fund to be expended annually, one-half for schools and one-half for roads, Congress alone can inquire into the manner in which the state executes the trust. King County, Wash. v. Seattle School Dist. No. 1, Wash. 1923, 44 S.Ct. 127, 263 U.S. 361, 68 L.Ed. 339.

Question of beneficial use of funds received from national forest by federal government and granted for purpose of providing and maintaining schools and roads is left to discretion of state legislature. Goodin v. Board of Ed. of Independent School Dist. No. 14 of McCurtain County, Okl.1979, 601 P.2d 88

6. Moneys received

Only when deposits made pursuant to section 576b of this title for estimated cost of

only \$ in excess of Reforestation costs gets counted.

CONSERVATION Ch. 2

reforestation of national forest land are in excess of actual costs can they be considered moneys received during any fiscal year from national forest within this section, requiring that such moneys be shared with states. State of Ala. v. U.S., 1972, 461 F.2d 1324, 198 Ct.Cl. 683, certiorari denied 93 S.Ct. 464, 409 U.S. 1023, 34 L.Ed.2d 315.

7. Apportionment of funds

This section does not require an equal apportionment between schools and roads, neither does this section prescribe how the moneys shall be divided as between the two purposes named, but leaves this to the state. King County, Wash. v. Seattle School Dist. No. 1, Wash.1923, 44 S.Ct. 127, 263 U.S. 361, 68 L.Ed. 339.

Under this section creating a trust fund from the income derived from forest reserves to be expended under direction of the state legislature for the benefit of the public schools and public roads of the county in which the reserve is situated, and Laws Wash.1907, p. 406, directing payment of the fund to the county treasurer, and directing the county commissioners to expend the same "for the benefit of the public schools and public roads," the schools and roads of the county are entitled to share equally in the fund. Everett School Dist. No. 24, Snohomish County, Wash. v. Pearson, D.C.Wash.1918, 261 F. 631.

Trial court erred in substituting its own eligibility determination for that of county school authorities without inquiry into abuse of administrative discretion as to whether or not school districts qualified for certain federal forest reserve revenues. Anderson Union High School Dist. v. Schreder, 1976, 128 Cal.Rptr. 529, 56 C.A.3d 453.

School district having properties of forest reserve, forest reserve employees and school children of those employees in its district was entitled to share forest reserve money with school district having forest reserve within its boundary although school district having no federal employees residing there or facilities and 19 miles from nearest part of forest reserve was not entitled to any forest reserve funds. Oro Madre Unified School Dist. v. Amador County Bd. of Ed., 1970, 87 Cal. Rptr. 250, 8 C.A.3d 408.

In treating 85 percent of forest funds paid over to affected school districts by federal government as part of state general scheme of equalization, Superintendent of Public Instruction complied with law. Carroll v. Bruno, 1972, 499 P.2d 876, 81 Wash.2d 82.

Findings & Intent of Congress.

SENATE COMMITTEE REPORT

DATE: 3/12/90

FURTHER: Finance

DATE TURNED INTO OFFICE: \_\_\_\_\_

H E S S

Committee considered

SB 458

"An Act relating to distribution of income from national forest land in the unorganized borough; and providing for an effective date."

and recommended:

[ ] replace with \_\_\_\_\_ CS \_\_\_\_\_  
[ ] or adopt \_\_\_\_\_ CS \_\_\_\_\_

[ ] same title  
[ ] new title  
[ ] technical title change (HB only)

[ ] attached amendment(s)  
[ ] \_\_\_\_\_ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

[ ] fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_  
\_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_  
\_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signatures]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Twin Kelly - No Rec*  
*Al Adams - NEEDS Amendment*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Paul Fish (Do Pass)*  
Chair: Signature and Recommendation

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Revenue  
 Title: Distribution of Income from  
National Forest Land BRU: Treasury  
 Sponsor: Jones Components: \_\_\_\_\_  
 Requestor: Senate C & RA

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
CTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

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

**ANALYSIS:** Fiscal year 1990 effect is zero. That portion of federal revenue sharing received by the General Fund, and subsequently available for appropriation for public schools (25%) and roads (75%) in the unorganized borough currently amounts to \$4 million. A breakdown of eligible regional educational attendance areas may be obtained from the Department of Community and Regional Affairs.

Prepared By: Bob Elliott *Milt Barber for*  
 Division: Treasury

Phone: 465-2350  
 Date: March 6, 1990

Approved by Commissioner: *Milt Barber for*  
 Agency: Department of Revenue

Date: \_\_\_\_\_

Distribution (by preparer):

Legislative Finance  
 Legislative Sponsor  
 Requestor

Office of Management and Budget  
 Impacted Agency(ies)

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL  
March 5, 1990

MAR 05 1990

REPLY TO:

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 276-3697

1st NATIONAL CENTER  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

PO BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

465-3603

The Honorable Lloyd Jones  
Alaska State Senator  
P.O. Box V  
Juneau, Alaska 99811

Re: Impact on school funding of 1990  
SB 458 (distribution of income  
from national forest lands)

Dear Senator Jones:

I. Introduction

Ray Matiashowski of your staff has asked whether receipt of income from national forest lands under the above bill by a Regional Educational Attendance Area ("REAA") or city school district would have an impact on the state's ability to meet equalization criteria under the federal impact aid program. We conclude that federal regulations require the inclusion of that income when conducting the disparity test. The department of education should therefore be asked to analyze the results of that inclusion.

Mr. Matiashowski also asked whether the receipt of income from national forest lands under the bill would affect the state aid for which a school district is eligible. We conclude that it would not.

II. Discussion

A. Federal Forest Reserve funds must be included in the disparity test.

The federal impact aid program, at Sec. 5(d)(2) of P.L. 81-874 as amended (20 U.S.C. 240(d)(2)), requires that a state may not consider the federal payments received by school districts under that program as local resources when distributing state aid to districts, unless the state has in place a school funding program that meets certain equalization criteria outlined in federal regulations. Alaska has structured its school funding program to meet those criteria.

Honorable Lloyd Jones  
Re: SB 458

March 5, 1990  
Page 2

In particular, the state attempts to meet the "disparity test," found at 34 C.F.R. 222.63, which measures the disparity in revenues or expenditures between local educational agencies within a state. That test requires the inclusion for each local educational agency, among other things, of

"(4) Any other Federal funds received by the agency for which the agency is not accountable to the Federal Government for their use such as Federal Forest Reserve funds (16 U.S.C. 500)."

34 C.F.R. 222.63(d)(4). Your staff has indicated to us that most or all of the money to be paid to REAA's and city school districts under proposed SB 458 would fall within that language.

Accordingly, we conclude those payments would need to be included when measuring the disparity in revenues. We understand that your office has consulted with the department of education to determine the probable impact of such payments on the disparity test.

B. Receipt of forest lands income would not affect a school district's state aid entitlement under AS 14.17.021.

Under section (a) of AS 14.17.021, a school district's entitlement to state foundation aid is computed by subtracting from the district's "basic need," as defined in (b) of that section, in addition to the required local contributions under AS 14.17.025, 90 percent of the district's "eligible federal impact aid" for that fiscal year. "Eligible federal impact aid" is defined in AS 14.17.250(5) to include only certain payments received by the district under sections 2,3, and 4 of P.L. 81-874 (20 U.S.C. 237 - 239), as amended, the federal impact aid program. Federal Forest Reserve funds and other income from national forest lands would not come within the meaning of that definition, and would therefore not be a basis for reduction of state aid under AS 14.17.021.

III. Conclusion

For the above reasons, we conclude that federal regulations require that a school district's income from national forest lands, at least insofar as it constitutes Federal Forest Reserve funds under 16 U.S.C. 500, would need to be included in the disparity test to determine whether Alaska's school finance program meets federal equalization standards. However, receipt of such income would not be the basis for a reduction in the district's entitlement to state aid under current AS 14.17.021.

Honorable Lloyd Jones  
Re: SB 458

March 5, 1990  
Page 3

Please contact me if you have further questions regarding  
this matter.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:

*LuAnn E. Bailey*  
LuAnn E. Bailey  
Assistant Attorney General

TEW:LEB:ade

cc: Arthur Peterson

# STATE OF ALASKA

## DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

GOLDBELT PLACE  
801 WEST 10TH STREET  
P.O. BOX F  
JUNEAU, ALASKA 99811-0500

MAR 02 1990

March 2, 1990

The Honorable Lloyd Jones  
Alaska State Senator  
P.O. Box V  
Juneau, Alaska 99811

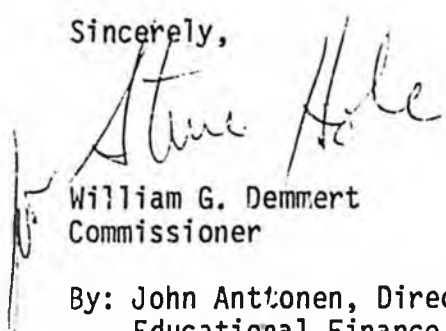
Dear Senator Jones:

The following is the maximum additional funds for FY91 the Chatham and Southeast Island school districts could receive and still maintain the federal disparity standards:

Chatham	779,838
Southeast Island	1,354,884

If you have any questions or need further information, please call John Anttonen, Director of Educational Finance and Support Services (465-2865).

Sincerely,

  
William G. Demmert  
Commissioner

By: John Anttonen, Director  
Educational Finance and  
Support Services



United States  
Department of  
Agriculture

Forest  
Service

Region 10

Tongass National Forest  
Ketchikan Area  
Federal Building  
Ketchikan, AK 99901

Reply To: 1390

Date: February 27, 1990

Mr. Bob Weinstein  
Southeast Island School District  
P.O. Box 8340  
Ketchikan, Ak. 99901

Dear Bob:

The National Forest acreage figures which you requested from our Geographic Information System (GIS) show that the Southeast Island School District has 8,368,010 acres (13,075 Sq Mi) of National Forest land. The Chatham School District contains 2,832,618 acres (4,426 Sq Mi) of National Forest land.

Our calculations are based on using our Geozone line on the mainland to separate the two districts rather than the straight line indicated on your map. This approximation places a couple thousand acres of Chatham District land in the Southeast Island district, but amounts to less than a one percent deviation.

We are also enclosing our computation sheets and maps as agreed, so that should the need arise, you will be able to make adjustments for areas like Duke Island.

Sincerely,

WALTER A. DORTCH  
Planning Officer, Ketchikan Area

022790 1330 pl 1390 dke



# MEMORANDUM

## State of Alaska Community and Regional Affairs

TO: Marty Rutherford  
Director, MRAD

DATE: March 1, 1990

FILE NO: 0175C/P.6

THRU: Jim Plasman  
Deputy Director  
MRAD

TELEPHONE NO: 465-4814

SUBJECT: SB 458

FROM: Peter K. Freese  
SERO Supervisor  
Southeast Regional Office

SB 458, introduced by Senators Jones, Eliason and Coghill, would make REAA's and city school districts within national forests in the unorganized borough eligible to receive National Forest Receipts funds. The bill amends AS 41.15.180 by adding language to section (c), specifying that national forest receipts funds deposited in the general fund are for use in the unorganized borough, 25% for schools and 75% for roads. Each qualifying city school district and REAA would receive funding in proportion to the area of national forest located within their boundaries. The Southeast Islands School District (REAA 19) would qualify for the largest share of funds, since approximately 50% of the Tongass is within REAA 19. This year, with the formula in the statute, REAA 19 would have received, roughly speaking, about \$625,000 in national forest receipt funds.

AS 41.15.180 currently authorizes the payment of national forest receipts funds to organized boroughs, based on the 1908 federal law that authorizes these payments to counties. Evidently, the term "county" can be interpreted broadly to include the unorganized borough as well as the organized borough, according to legislative attorney Tam Cook. Tam also says the amended bill may actually be closer to the intent of the federal enabling legislation than existing law. This is because the legislation directs funds back to local schools on a proportional basis rather than allowing funds outside organized boroughs simply to go into the general fund. REAA superintendent Bob Weinstein claims that passage of the bill

Marty Rutherford  
March 1, 1990  
Page 2

would upset neither the school funding formula nor the federal disparity rule. Weinstein says if the bill is not signed into law, REAA 19 will sue the state for what he regards as the REAA's share of national forest receipt funds over the last ten years.

We will probably have to take a position on the bill, since we are administrators of the funds and have been regarded as knowledgeable about the program. The major issues which will require some examination are:

1. Effects on the school funding formula;
2. Conflict with the federal disparity rule, which places limits on the differences between costs per student between school districts;
3. The effect this might have as a dis-incentive for borough formation (In the Chatham Borough Feasibility Study, for example, the ability to capture these funds was regarded as an incentive for borough formation), and;
4. Whether the term "county", as it is used in federal law, can indeed be interpreted broadly enough to include state-sponsored service areas such as REAA's.

Three of these issues are legal in nature and will require some determination from the Attorney General's office. The fourth, possible effects on borough formation, is a policy issue which needs to be addressed by the Local Boundary Commission staff. If they have no objection, and if the legal concerns cited above are not problematic, then it would be politic for us to consider supporting the legislation. It implements a longstanding desire to capture national forest receipts funds at the local level, though it will probably not fully satisfy communities such as Thorne Bay and the Ketchikan Borough, both of which have expressed strong feelings about channeling these funds to affected local communities.

The bill has three committee referrals, C and RA, HESS and Finance, and will be heard in C and RA March 6th.

4. Income Tax Law Impact: The League supports the tax exemption of municipal bonds for public purposes and federal legislation to remove restrictions placed on municipal bonds by tax reform legislation. The League opposes changes to federal tax laws that place additional burdens on local governments.

5. National Forest Receipts Shared Revenue: The League supports the full funding and distribution of National Forest Receipts to communities affected by timber harvest and urges amendment to federal and state laws to require distribution of these funds to harvest-impacted incorporated cities located in the unorganized boroughs.

Currently federal law (U.S. Code, Title 16, Section 200) restricts state distribution of these funds to counties, boroughs, and unified municipalities. Several communities throughout Alaska, although greatly impacted by timber harvest, are part of the state's unorganized borough and are not receiving their proportionate share of these funds. This situation is inequitable and federal and state law should be amended to require the State to distribute National Forest Receipts Shared Revenue to timber-harvest-impacted, incorporated cities located in the unorganized borough.

#### H. LOCAL DEBT

1. Debt Limits: The League opposes the imposition of limits on municipal debt other than those imposed by the Alaska Constitution and by the bond market because there are great differences between municipalities in Alaska with respect to revenue sources, number and levels of functions performed, and needs for infrastructure development.

The local government structure in Alaska is quite different from that in other states. First, all local government power resides in cities and boroughs; there are no independent special districts with independent debt issuing and taxing authority as there are in other states. For this reason, there are relatively few municipal issuers in the State of Alaska. Those issuers are financially stable and have a good bond-repayment track record. The growth pattern in Alaska is erratic and various areas have experienced extremely rapid growth, which places very heavy demands on the ability of the municipality to respond with the heavy capital investment required to meet infrastructure expansion needs. The tried and traditional assessed value-based methods of limiting local debt do not take into account such unpredictable demands and would make such limits unworkable in Alaska. The constitution prohibits general obligation debt except for capital improvements that have been approved by the voters. In most situations the voters will probably say "no" to new debt before debt limits are reached. Additionally, the bond market is sensitive to the amount of debt assumed by an issuer and its ability to repay such debt. These two mechanisms together should serve to establish a practical limit on local debt. Artificial limits that cannot take into account the varying needs of municipalities should be avoided.



SOUTHEAST  
ISLAND  
SCHOOL  
DISTRICT

1621 TONGASS AVENUE SUITE 301  
POST OFFICE BOX 8340  
KETCHIKAN, ALASKA 99901  
(907) 225-3659 OF 225-3659

Robert Weinstein  
SUPERINTENDENT

March 20, 1990

Senator Paul Fischer, Chairman  
Health, Education, & Social Services Committee  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Fischer:

This letter is to ask for your support of SB 458, proposed legislation addressing distribution of National Forest receipts.

At the beginning of this century, the United States Congress passed legislation which provided that 25 per cent of timber receipts from national forests would be paid to the state in which the forest was located, to be distributed by the state to benefit schools and roads of the area in which the national forest is situated. Federal law provided that each state could determine the proportion of funds between schools and roads, and also provided that the funds would be prorated on a geographical area basis if a national forest crossed state or local boundaries. Under existing state statute, AS 41.15.180, income from national forest land within borough boundaries is distributed to boroughs. However, income from national forest land outside of organized boroughs is deposited into the general fund, with 25 per cent earmarked for public schools and 75 per cent earmarked for roads.

It should be noted that the state statute was passed by the 1949 Legislature, with amendments in 1965 and 1969. In our review of the implementation of the legislation, apparently the Department of Community and Regional Affairs receives the funds, distributes the boroughs' share, and simply retains the remaining funds until the end of a fiscal year whereupon it lapses into the general fund. It is not

March 20, 1990

Page two

only not spent in the manner intended by Congress; it is also not spent in the manner already prescribed by state statute.

The above dates are important in that, prior to 1975, the state was directly responsible for the operation of schools in the unorganized borough. In 1975, with the passage of SB 35, the Legislature delegated its responsibilities for the operation of schools to R.E.A.A. school boards in the unorganized borough. However, the current statute for distribution of funds was not amended to take this change into account.

We believe that SB 458 will bring the state distribution method into compliance with federal statutes. It is our position that current state statute does not meet federal intent, in that income generated by national forest located within unorganized areas of the state is not expended on schools and roads of the area in which the national forest is situated. We also believe that the current practice of the Department of Community and Regional Affairs to withhold funds until they "lapse" at the end of the fiscal year is not appropriate as well.

For your information, over 50 per cent of the Tongass National Forest is located within Southeast Island School District boundaries. Eleven of the nineteen communities in which we have schools are logging related, with significant direct impacts by the logging industry on our schools and school district. We have a very high turnover of children, with various adverse impacts upon educational programs, creating special needs and at-risk situations for a significant number of students. For a number of reasons, the Southeast Island School District is not eligible for most of the federal financial assistance programs which provide supplemental monies to many other school districts in Alaska to address special educational needs of children. In addition, we have communities which move, which means that we have some extreme impacts by the logging industry in that we have to move school buildings and teacher housing for which we receive no special state support.

March 20, 1990

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It should be noted that, under the proposed legislation, 25 per cent of the income would go to R.E.A.A.s for which the state receives national forest income, while 75 per cent would be retained by the state for roads in the appropriate area. We believe that these funds are necessary to offset the direct impacts which the logging industry has upon our schools, and we believe that such funds were intended by Congress for exactly this type of situation. I therefore urge your support of SB 458.

Sincerely,

A handwritten signature in cursive script that reads "Bob Weinstein".

Robert Weinstein  
Superintendent

NATIONAL FOREST INCOME

**MOST RECENT PAYMENT**

SITKA	\$546,628
JUNEAU	\$498,750
HAINES	\$275,508
KETCHIKAN	\$225,387
UNORGANIZED BOROUGH	\$3,498,510

**MOST RECENT PAYMENT**

ANCHORAGE	\$2,906
KENAI PENNINSULA	\$12,080
KODIAK	\$2,276
MAT-SU	\$470
UNORGANIZED	\$42,505

**ACREAGE**

**ACRES**

HAINES	918,072
JUNEAU	1,656,042
KETCHIKAN	748,662
SITKA	1,815,925
UNORGANIZED BOROUGH	11,622,771
THE UNORGANIZED BOROUGH CONSISTS OF	
THE SOUTHEAST ISLAND AND CHATHAM	
SCHOOL DISTRICTS REAA #'s 19 & 20	

**ACREAGE**

**ACRES**

ANCHORAGE	274,290
KENAI PEN.	1,160,653
KODIAK	215,217
MATSU	44,411
UNORGANIZED	4,027,708
THE UNORGANIZED BOROUGH CONSISTS	
OF THE CHUGACH SCHOOL DISTRICT	
REAA #21	

NATIONAL FOREST INCOME

UNDER SB458 FY 1989

SOUTHEAST ISLAND SCHOOL DISTRICT	\$579,003
CHATHAM	\$295,623
CHUGACH	\$10,606

PAYMENTS TO STATE OF ALASKA FROM NATIONAL FOREST RECEIPTS

Fiscal Year 1959 to 1988 (1)

<u>FEDERAL FISCAL YEAR</u>	<u>CHUGACH NF</u>	<u>TONGASS NF</u>	<u>TOTAL R-10</u>
1959	\$ 8,225.	\$ 150,038.	\$ 158,263.
1960	8,466.	189,665.	198,131.
1961	10,425.	202,006.	212,431.
1962	10,455.	161,137.	171,592.
1963	4,842.	208,332.	213,174.
1964	5,476.	231,512.	236,988.
1965	4,656.	212,576.	217,232.
1966	7,323.	276,162.	283,485.
1967	5,044.	399,923.	404,967.
1968	7,435.	510,123.	517,558.
1969	17,678.	557,097.	574,775.
1970	23,283.	1,057,638.	1,080,921.
1971	20,993.	1,031,200.	1,052,193.
1972	30,806.	851,337.	882,143.
1973	47,692.	926,223.	973,915.
1974	44,811.	643,322.	688,133.
1975	31,630.	1,014,448.	1,046,078.
1976	29,081.	279,570.	308,651.
1976	2,768.	158,119.	160,887.
1977	90,066.	2,465,222.	2,555,288.
1978	139,820.	2,970,500.	3,110,320.
1979	112,596.	3,461,103.	3,573,699.
1980	21,957.	6,506,123.	6,528,080.
1981	23,208.	3,751,986.	3,775,194.
1982	24,681.	5,405,691.	5,430,372.
1983	33,589.	1,341,479.	1,375,068.
1984	36,299.	1,015,797.	1,052,096.
1985	37,154.	52,308.	89,462.
1986	53,719.	491,810.	545,529.
1987	0.	0.	0.
1988	101,989.	308,167.	410,156.

1) This table of payments to the State of Alaska from National Forest receipts indicates the final payment derived from the National Forests in Alaska for the period requested (16 U.S.C. 500 as amended by P.L. 94-588).

relating to the subject matter of AS 41.15.010 — 41.15.170, the escape of a fire is presumptive evidence of negligence by the person responsible for starting the fire and unless rebutted is sufficient to sustain the recovery. (§ 12 ch 138 SLA 1961)

**Sec. 41.15.170. Definitions.** In AS 41.15.010 — 41.15.170

(1) *[Repealed, § 43 ch 85 SLA 1988.]*

(2) "damages" includes costs incurred in suppressing, controlling or extinguishing a fire;

(3) "forested land" includes all land on which grass, brush, timber and other natural vegetative material grows;

(4) "forest fire" includes the uncontrolled burning of grass, brush, timber and other natural vegetative material. (§ 1 ch 138 SLA 1961; am § 3 ch 179 SLA 1970; am § 43 ch 85 SLA 1988)

**Revisor's notes.** — In 1983 this section was reorganized to place the terms defined in alphabetical order.

**Effect of amendments.** — The 1988 amendment repealed former paragraph (1), which defined "commissioner."

## Article 2. Forest Reserve Fund.

### Section

#### 180. National forest income

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**Collateral references.** — 52 Am. Jur. 2d, Logs and Timber, § 65.

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**Sec. 41.15.180. National forest income.** (a) When the commissioner of administration receives national forest income under 16 U.S.C. 500, the commissioner shall immediately pay to every organized borough in which national forest land is located a share of the income from that forest. A borough's share of income from a national forest shall be proportional to the area of the national forest located within its boundaries. The payments shall be made under an appropriation made for that purpose.

(b) The national forest income paid to an organized borough under this section shall be expended for public schools or roads.

(c) The commissioner shall deposit income from national forest land outside of organized boroughs in the general fund of the state, 25 percent to be used for public schools and 75 percent for roads. (§ 47-5-1 ACLA 1949; am § 1 ch 106 SLA 1965; am § 1 ch 32 SLA 1969)

ered into the Treasury and shall appropriated and made available until e may direct, for the payment of the on, or improvements by the Forest tributors of amounts heretofore or of their share of the cost of said ents.

9, 1928, c. 901, § 1(99), 45 Stat. 993.)

Note

ports be made to Congress of moneys received as contributions for cooperative work.

rences

bursement of funds appearing on books of "Service", see section 1321 of Title 31, Money

administration or protection of lands within tute special fund which may be appropriat- section 572 of this title.

Regulations

tation system, see 36 CFR 212.1 et seq.

ed by or on account of Forest and moneys erroneously collect-

of the Forest Service for timber, or revenue, including moneys received e of lands in national forests created moneys received on account of permits lands acquired under authority of , shall be covered into the Treasury receipt, and except as provided in is appropriated and made available, ct, out of any funds in the Treasury may be necessary to make refunds reafter deposited by them to secure oducts or for the use of any land or ess of amounts found actually due so so much as may be necessary to ants such sums as may be found by en erroneously collected for the use resources sold from lands located rests, or for alleged illegal acts done quently found to have been proper

4, 1911, c. 238, 36 Stat. 1253; Mar. 4, 348, § 9, 43 Stat. 655; May 29, 1928, c.

Historical Note

References in Text. Section 471(b) of this title, referred to in text, was repealed by section 704(a) of Pub.L. 94-579, Title VII, Oct. 21, 1976, 90 Stat. 2792. For further details, see Codification note below.

Codification. Section is a combination provision the basis for which is Act Mar. 4, 1907, which superseded previous provisions relating to the disposal of money received from sale of products or use of any land or resources of the forest reserves, contained in Act Feb. 1, 1905, c. 288, § 5, 33 Stat. 628.

Act Mar. 4, 1911 is the source of the last portion of the section beginning with the words, "and also so much as may be necessary," etc. That Act provides that so much of the former Act "which provides for refunds by the Secretary of Agriculture to depositors of moneys to secure the purchase price of timber or the use of lands or resources of the national forests such sums as may be found to be in excess of the amounts found actually due the United States, be, and is hereby, amended hereafter to appropriate and to include so much;".

The words of this section reading, "including moneys received from sale of products from or use of lands in national forests created under section 471(b) of this title" were derived from the fourth sentence of section 9 of Act of June 7, 1924, which reads as follows: "All receipts from the sale of products from or for the use of lands in such national

forests shall be covered into the Treasury as miscellaneous receipts, forest reserve fund, and shall be disposed of in like manner as the receipts from other national forests as provided by existing law." Section 471(b) of this title, referred to in text, was based on the first and fifth sentences of section 9 of the 1924 Act, and was repealed by section 704(a) of Pub.L. 94-579. Section 505 of this title is based on the second and third sentences of section 9 of the 1924 Act.

The words "and moneys received on account of permits for hunting, fishing, or camping on lands acquired under authority of sections 513 to 517 and 521 of this title," are from a provision of Act Mar. 4, 1917, which reads, "Hereafter, all moneys received on account of permits for hunting, fishing, or camping, on lands acquired under authority of said Act [Act Mar. 1, 1911, c. 186, 36 Stat. 961] or any Amendment or extension thereof, shall be disposed of as is provided by existing law for the disposition of receipts from national forests."

The words of this section reading, "except as provided in sections 500 and 501 of this title" are intended to relate this section to the apparent exceptions contained in later law.

1928 Amendment. Act May 29, 1928 deleted provision which required the Secretary of Agriculture to make an annual report to Congress of the amounts refunded under this section.

Cross References

- Conservation programs on military reservations, inapplicability to forest lands administered pursuant to this section, see section 670e of this title.
- Deposit in "Oregon and California land-grant fund" of proceeds of sale of timber added to Siskiyou National Forest, see section 487 of this title.
- Payments from account for refund of moneys erroneously received and covered and authorization of appropriation of sums necessary, see section 1322 of Title 31, Money and Finance.

Notes of Decisions

1. Scope of review  
The discretion of the Secretary of Agriculture in making refunds under this section is absolute only on questions of fact; his rulings on questions of law are reviewable in the court of claims [now Claims Court] *Utah Power & Light Co. v. U. S.*, 1929, 67 Ct.Cl. 602.

§ 500. Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of

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such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

May 23, 1908, c. 192, 35 Stat. 260; Mar. 1, 1911, c. 186, § 13, 36 Stat. 963; June 30, 1914, c. 131, 38 Stat. 441; Sept. 21, 1944, c. 412, Title II, § 212, 58 Stat. 737; Apr. 24, 1950, c. 97, § 17(b), 64 Stat. 87; Oct. 22, 1976, Pub.L. 94-588, § 16, 90 Stat. 2961.)

#### Historical Note

**References in Text.** The Act of June 9, 1930, referred to in text, is Act June 9, 1930, c. 416, 46 Stat. 527, as amended, popularly known as the Knutson-Vandenberg Act, which is classified generally to sections 576, 576a, and 576b of this title. For complete classification of this Act to the Code, see Short Title note set out under section 576 of this title and Tables volume.

The Act of May 23, 1908, referred to in text, is Act May 23, 1908, c. 192, 35 Stat. 251, as amended. A portion of that Act appearing at 35 Stat. 260 is classified to this section. For complete classification of this Act to the Code, see Tables volume.

**Codification.** "National forest" was substituted for "forest reserve" the first, third and fourth time appearing, and for "reserve" the second time appearing, and "forest" was substituted for "reserve", on authority of Act Mar. 4, 1907, c. 2907, 34 Stat. 1269, which provided that forest reserves shall hereafter be known as national forests.

Section is a combination of Acts May 23, 1908, as amended, and Mar. 1, 1911, as amended.

**1976 Amendment.** Pub.L. 94-588 added provision that beginning Oct. 1, 1976, the term "moneys received" would include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract, and that the Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

**1950 Amendment.** Act Apr. 24, 1950 deleted second proviso relating to limitation paid county.

**1944 Amendment.** Act Sept. 21, 1944 added sentence relating to stumpage value of the timber.

Collateral references. — 68 Am. Jur. 2d School, §§ 14-36.  
78 C.J.S. Schools and School Districts, §§ 23-81.

Grounds for ousting educational corporation of its franchise. 46 ALR 1478.

Incorporated educational body as an institution belonging to the state. 65 ALR 1394.

Discretion of administrative officers as to changing boundaries of school district. 65 ALR 1523; 135 ALR 1096.

Constitutionality and construction of statute which leaves to determination of

private individuals the boundaries of territory to be erected into a school district or other political subdivision, or to be added to or detached from an existing district or subdivision. 70 ALR 1062.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

Propriety, under First Amendment, of school board's censorship of public school libraries or course books. 64 ALR Fed. 771.

**Sec. 14.12.010. Districts of state public school system.** The districts of the state public school system are as follows:

(1) each first class city in the unorganized borough is a city school district;

(2) each organized borough is a borough school district;

(3) the area outside organized boroughs and outside first class cities is divided into regional educational attendance areas. (§ 1 ch 98 SLA 1966; am § 3 ch 124 SLA 1975; am § 7 ch 208 SLA 1975)

**NOTES TO DECISIONS**

**Regional educational attendance areas are school districts.** — Although this title does not specifically provide that regional educational attendance areas are to be considered "school districts," implicit in the statute is the notion that they are in fact school districts. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71. Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Quoted in Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968).

Stated in Hootch v. Alaska State-Operated School Sys., Sup. Ct. Op. No. 1154 (File No. 2157), 536 P.2d 793 (1975).

Cited in Alaska State-Operated School Sys. v. Mueller, Sup. Ct. Op. No. 1157 (File No. 2138), 536 P.2d 99 (1975).

**Sec. 14.12.020. Support, management, and control.** (a) Each regional educational attendance area shall be operated on an area-wide basis under the management and control of a regional school board. The regional school board manages and controls schools on military reservations within its regional educational attendance area until the military mission is terminated or so long as management and control by the regional educational attendance area is approved by the department. However, operation of the military reservation schools by a city or borough school district may be required by the department under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by the regional educational attendance area is disapproved by the depart-

*Sec. 14.08.010. [Repealed, § 1 ch 124 SLA 1975.]*

**Sec. 14.08.011. Purpose.** (a) It is the purpose of this chapter to provide for public education in the unorganized borough and the military reservations in the state.

(b) Nothing in this chapter prohibits an organized borough, city, village, community or settlement in an unorganized area of the state from becoming part of or being formed into an organized political subdivision authorized under AS 29. (§ 2 ch 124 SLA 1975)

#### NOTES TO DECISIONS

History of public education in Alaska. — See *Hootch v. Alaska State-Operated School Sys.*, Sup. Ct. Op. No. 1154 (File No. 2157), 536 P.2d 793 (1975) decided under former Chapter 08.

*Sec. 14.08.020. [Repealed, § 1 ch 124 SLA 1975.]*

**Sec. 14.08.021. Authority.** The legislature delegates to school boards for each regional educational attendance area the authority to operate the public schools in those areas in accordance with the provisions of this chapter, subject to the provisions of this title and the regulations adopted under it that apply to all school districts in the state. (§ 2 ch 124 SLA 1975)

#### NOTES TO DECISIONS

As to absence of duty on regional educational attendance areas to bargain collectively with noncertificated employees, see note following chapter analysis. *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Applied in *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

*Sec. 14.08.030. [Repealed, § 1 ch 124 SLA 1975.]*

**Sec. 14.08.031. Regional educational attendance areas.** (a) The Department of Community and Regional Affairs in consultation with the Department of Education and local communities shall divide the unorganized borough into educational service areas using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Claims Settlement Act, unless by referendum a community votes to merge with another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation.

(b) An educational service area established in the unorganized borough under (a) of this section constitutes a regional educational atten-

PAYMENTS TO STATES FROM THE NATIONAL FOREST RECEIPTS

Fiscal Year 1988  
October 1, 1987 to September 30, 1988  
--National Forest Summary--

<u>NATIONAL FOREST</u>	<u>BOROUGH</u> S	<u>FY 88 ACRES</u>	<u>TOTAL PAYMENTS</u>
<u>CHUGACH</u>	ANCHORAGE	274,290	\$ 4,888.74.
	KENAI PEN.	1,160,653	20,686.63
	KODIAK	215,217	3,835.87
	MAT-SU	44,411	791.55
	UNORGANIZED	4,027,708	71,786.92
NF TOTAL:		5,722,279	\$101,989.71
TONGASS	HAINES	918,072	\$ 16,879.21
	JUNEAU	1,656,042	30,447.15
	KETCHIKAN	748,662	13,764.52
	SITKA	1,815,925	33,386.68
	UNORGANIZED	11,622,771	213,690.37
NF TOTAL:		16,761,472	\$308,167.93
REGIONAL TOTAL:		22,483,751	\$410,157.64

**S B**

**464**

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 2/9/90

FURTHER: Finance

Date of 5-Day Notice: 3/1/90  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: 3/12/90

H E S S

Committee considered

SB 464

"An Act requiring new public schools built in certain communities to have sloped roofs; and providing for an effective date."

and recommended:

replace with \_\_\_\_\_ CS SB #464 (HESS)  same title  
 attached amendment(s)  new title  
 \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Signature]  
[Signature]  
Tom Kelly  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] (No Rec)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Paul Fitch (Do Pass)

Chair: Signature and Recommendation