

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6321 SENATE JUDICIARY

725

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128

FISCAL NOTE

REQUEST:

Revision Date: _____ Affect Agency Legislative Affairs Agency
 Title: An Act extending the termination BRU: Legislative Council
date of the Alaska Code Revision Commission...
 Sponsor: Senator Sturgulewski Components Legal Services
 Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0	0	0	0	0	0
Travel	23.0	23.0	23.0	23.0	23.0	0
Contractual	17.6	17.6	17.6	17.6	17.6	0
Supplies	1.0	1.0	1.0	1.0	1.0	0
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	41.6	41.6	41.6	41.6	41.6	0

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

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Personal Services funds are not included in this fiscal note. The Legislative Affairs Agency Legal Services Division provides all required staff assistance for the commission.

The current level of funding for the Code Revision Commission is adequate.

Prepared By: Pamela Stoops, Director Phone: 465-3850
 Division: Administrative Services Date: 3/13/89

Approved By: Warren Endicott, Executive Director
 Agency: Legislative Affairs Agency Date: 3/13/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

FISCAL NOTE

REQUEST:

Revision Date: _____ Affect Agency Legislative Affairs Agency
 Title: An Act extending the termination
date of the Alaska Code Revision Commission... BRU: Legislative Council
 Sponsor: Senate Judiciary Components Legal Services
 Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0.0	53.0	53.0	53.0	53.0	0.0
Travel	0.0	*0.0	23.0	23.0	23.0	0.0
Contractual	0.0	*5.0	8.6	8.6	8.6	0.0
Supplies	0.0	*0.0	1.0	1.0	1.0	0.0
Equipment	0.0	5.6	0.0	0.0	0.0	0.0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	63.6	85.6	85.6	85.6	0.0

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

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	63.6	85.6	85.6	85.6	0
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	63.6	85.6	85.6	85.6	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	2	2	2	2	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

*41.6 of FY 90 funding has already been requested. This fiscal note for FY 90 reflects additional funding requested to add 2 staff members to the Code Revision Commission.

Prepared By: Pamela Stoops, Director *Pamela Stoops* Phone: 465-3850
 Division: Administrative Services Date: 3/15/89

Approved By: Warren Endicott, Executive Director *Warren Endicott*
 Agency: Legislative Affairs Agency Date: 3/15/89

DISTRIBUTION (BY PREPARER)
 LEGISLATIVE FINANCE
 LEGISLATIVE SPONSOR

REQUESTOR
 OFFICE OF MANAGEMENT & BUDGET
 AGENCY (IES)

CONTINUATION OF FISCAL NOTE - CSSB 128 (Jud)

Funding for the Code Revision Commission has been under the Legal Services Division since FY 87.

Current FY 89 funding is as follows:

23.0 Travel	
17.6 Contractual (3.6 contractual--phones, advertising, etc., 14.0 Title 2 rewrite)	
<u>1.0 Supplies</u>	
41.6	

Senate Bill 128 extends the termination date of the Alaska Code Revision Commission.

A recent audit found the funding level of the Code Revision Commission to be inadequate to carry out their function.

Staffing is requested as follows:

Personal Services:

6 months at 12A Admin Asst	18.0
6 months at 23A Attorney	<u>35.0</u>
	53.0

Travel: Travel of 23.0 has already been requested in the FY 90 budget request.

Contractual: Contractual of 17.6 has already been requested in the FY 90 budget request. For FY 91, 92 and 93, 14.0 is reduced from contractual for rewrite of Title 2. Additional funding for office space would be required for 2 staff-- 5.0 office space rental.

Supplies: Supplies of 1.0 has already been requested in the FY 90 budget request.

Equipment:

Equipment would be needed for 2 staff:

Computer	2.5
Laser Printer	2.0
Chair	0.5
File Cabinet	<u>0.6</u>
	5.6

BOARD: CODE REVISION COMMISSION, ALASKA

TITLE: Alaska Code Revision Commission

DEPT: Legislature

AUTHORITY: AS 24.20.075

STATUS: 89/06/30

REQUIREMENTS:

PROHIBITIONS: Public members may not be employees of state government.

TERM: 6 years (public members and Bar Association member); terms of public members and Board of Governor's designee begin July 1 and end June 30 six years later (even-numbered years).

DESCRIPTION: 8 members - 1 attorney employed by Executive Branch appointed by Governor; 3 public (not state government employees) appointed by Legislative Council; 1 legislator, appointed by each house's presiding officer; a designee of the Chief Justice of the Supreme Court, and a designee of the Alaska Bar Association Board of Governors appointed by the Board of Governors of the Alaska Bar; members may be reappointed or redesignated; commission selects chair.

SPECIAL FACTS: Serve at pleasure of appointing authority except 3 public members and designee of Alaska Bar Association who serve 6-year terms; quorum - 4 members; summary report to each Legislative Council, the Governor, all legislators, and the Chief Justice; commission selects chair and vice-chair.

FUNCTION: Reviews/recommends changes in statutes, judicial decisions for defects/anachronisms of the law; reviews/considers proposed changes in the law; receives/considers suggestions to review/remedy the law; may hold public hearings and other meetings throughout the state.

COMPENSATION: Standard travel/per diem for legislators.

MEETINGS: As determined by chair 10 times per year; 27 days maximum.

*FOR FURTHER INFORMATION CONTACT: Executive Secretary, Alaska Code Revision Commission, P.O. Box Y, Juneau, AK 99811 PHONE: 465-2450

ALASKA CODE REVISION COMMISSION

MEMBER	APPT	TERM
John W. Abbott P.O. Box 100588 Anchorage 99510 346-1039 Public - Chair	88/11/28	94/06/30
Dick L. Madson 712 8th Avenue Fairbanks 99701 (W) 452-4215 (H) 452-4254 Leg/Public	88/04/26	92/06/30
Wilson L. Condon 1121 Hillcrest Drive Anchorage 99503 (W) 276-2713 (H) 277-6137 Public	84/10/23	90/06/30
Peter Froehlich P.O. Box K Juneau 99811 (W) 465-3600 (CAP 412) Attorney/Executive	86/07/01	
Pat Rodey P.O. Box V Juneau 99811 (Cap. 113) (W) 465-3793 Legis/S	89/01/23	
Mary K. Hughes 509 West 3rd Ave. Anchorage 99501 (W) 274-7522 Bar Asscciation	86/07/01	92/06/30
Thomas B. Stewart Pouch U Juneau 99811 (W) 463-4747 Supreme Court		
Fran Ulmer P.O. Box V Juneau 99811 (Cap. 421) (W) 465-4947 Legis/H	89/01/30	

A PERFORMANCE REVIEW
OF THE
ALASKA CODE REVISION COMMISSION

conducted by

ELGEE & REHFELD
Certified Public Accountants

Audit Control Number

30-1349-89-R

Members of the Alaska
Code Revision Commission

John W. Abbott, Chairman
Dick L. Madson
Wilson L. Condon
Peter Froehlich
Senator Rick Halford
Mary K. Hughes
Honorable Thomas B. Stewart
Representative John Sund

STATE OF ALASKA

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

October 25, 1988

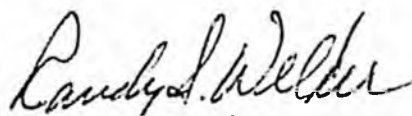
Members of the Legislative Budget
and Audit Committee:

According to the provisions of Titles 24 and 44 of the Alaska Statutes, the Division of Legislative Audit is required to conduct a "sunset" review of the Alaska Code Revision Commission.

Since this Division is part of the Legislative branch of the State, as is the Commission, we lack the apparent independence necessary to perform the review.

As a result, the audit of the Alaska Code Revision Commission was conducted, and this report has been prepared by Elgee & Rehfeld, Certified Public Accountants.

We feel this report discharges our responsibility under Titles 24 and 44. The report is submitted for your review.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

ELGEE & REHFELD

CERTIFIED PUBLIC ACCOUNTANTS

9220 Lee Smith Drive, Juneau, Alaska 99801 (907) 789-1692

September 26, 1988

LEGISLATIVE AUDIT DIVISION
State of Alaska
P.O. Box W
Juneau, Alaska 99811-3300

SEP 27 1988

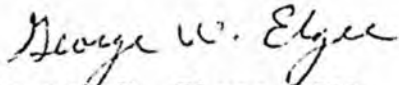
Att: Randy S. Welker, Legislative Auditor

Dear Mr. Welker:

In accordance with the Contract for Services between the Legislative Audit Division and our firm, we have completed a performance review of the Alaska Code Revision Commission using guidelines and standards established in Alaska Statutes for such "sunset" reviews.

The report, entitled A PERFORMANCE REVIEW OF THE ALASKA CODE REVISION COMMISSION, is hereby submitted.

Respectfully,



George W. Elgee, CPA
Partner

GWE/jb

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- (2) Minutes of the commission from August 2, 1984 to June 17, 1988 (with exception of missing minutes).
- (3) Sunset review dated November 6, 1981.
- (4) Sunset review dated November 8, 1984.
- (5) Records and documents of the commission,
- (6) Contracts between the commission and its consultants,
- (7) Commission budgets for FY 86, FY 87 and FY 88,
- (8) Interviews conducted with:
Director of Legal Services, Legislative Affairs
Agency
Members of the commission
- (9) Financial records
- (10) Relevant legislative intent and bill history.

The commission is empowered to:

- (1) hold public hearings and other meetings as necessary throughout the state, and to determine an appropriate quorum for conducting business;
- (2) establish one or more subcommissions to assist it in the performance of its duties.

The staff of the Legislative Affairs Agency serves as staff for the commission, and (subject to appropriations for the purpose) contracts with other agencies or persons for the performance of necessary services for the commission.

Funds considered necessary for the commission (per diem, travel, contract expenses) are to be sought in a formal budget request to the legislative council. (Appropriated funds are dispersed and accounted for under procedures required by the Legislative Affairs Agency).

All branches of state government are directed to provide information and documents required by the commission necessary to the accomplishment of its work.

The commission is directed to submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council, and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court.

In 1977, membership on the commission was broadened to include a "designee of the governor who is an attorney employed by the executive branch of the state government." (CH 57 SLA 1977).

(3) a requirement that the commission's recommendations as to revisions of Alaska law shall be accompanied by a sectional analysis "using language that is understandable to a layman."

In 1986 AS 24.20.074 (b) was amended to have the three public members appointed by the Legislative Council instead of by the governor. An additional change was also made to continue the terms of commission members until a member's successor is appointed.

*

*

CORRECTION

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

- (2) Minutes of the commission from August 2, 1984 to June 17, 1988 (with exception of missing minutes).
- (3) Sunset review dated November 6, 1981.
- (4) Sunset review dated November 8, 1984.
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- (8) Interviews conducted with:
Director of Legal Services, Legislative Affairs
Agency
Members of the commission
- (9) Financial records
- (10) Relevant legislative intent and bill history.

PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with AS 24.20.271(1) and AS 44.66 (Sunset Legislation), a review of the Alaska Code Revision Commission was conducted to examine the commission's activities, operation, policies and accomplishments. The purpose of the review is to determine if the subject commission has operated in a fair, effective, efficient and economical manner in the performance of its statutory functions, duties and responsibilities.

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Alaska Code Revision Commission should be continued or reestablished with changes. As currently specified in AS 44.66.010(a), this commission will terminate on June 30, 1989.

Scope

The major areas studied were the commission's operations, policies, administration and procedures; and the effectiveness of the commission in accomplishing its mandated objective of recommending changes needed to bring "the law into harmony with current needs and conditions." (AS 24.20.075(c)(4)).

The review consisted of examination, research, analysis and evaluation of the following:

- (1) Applicable Alaska Statutes and amendments thereto:

The commission is empowered to:

- (1) hold public hearings and other meetings as necessary throughout the state, and to determine an appropriate quorum for conducting business;
- (2) establish one or more subcommissions to assist it in the performance of its duties.

The staff of the Legislative Affairs Agency serves as staff for the commission, and (subject to appropriations for the purpose) contracts with other agencies or persons for the performance of necessary services for the commission.

Funds considered necessary for the commission (per diem, travel, contract expenses) are to be sought in a formal budget request to the legislative council. (Appropriated funds are dispersed and accounted for under procedures required by the Legislative Affairs Agency).

All branches of state government are directed to provide information and documents required by the commission necessary to the accomplishment of its work.

The commission is directed to submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council, and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court.

In 1977, membership on the commission was broadened to include a "designee of the governor who is an attorney employed by the executive branch of the state government." (CH 57 SLA 1977).

HISTORY, ORGANIZATION AND FUNCTION

The Code Revision Commission was established as a permanent commission of the legislature by an act of that body (CH 114 SLA-1976). The act creating the commission established its membership as consisting of two legislators (one from each house appointed by the presiding officer); a public member appointed by the governor; a designee of the chief justice of the supreme court, and a designee of the board of governors of the Alaska Bar Association. The director of legal services for the Legislative Affairs Agency or his designee serves as executive secretary for the commission.

The commission was created to:

- (1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;
- (2) review and consider proposed changes in the law recommended by the National Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Supreme Court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch;
- (3) receive and consider suggestions from the Alaska bench and bar, public officials, organizations and individuals as to areas of the law needing revision and remedy;
- (4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

(3) a requirement that the commission's recommendations as to revisions of Alaska law shall be accompanied by a sectional analysis "using language that is understandable to a layman."

In 1986 AS 24.20.074 (b) was amended to have the three public members appointed by the Legislative Council instead of by the governor. An additional change was also made to continue the terms of commission members until a member's successor is appointed.

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The enabling legislation was further amended by CH 44 SLA 1980 to:

- (1) clarify the name of the commission as the Alaska Code Revision Commission;
- (2) establish 6 year terms for the public members and the designee of the Alaska Bar Association Board of Governors , and prescribe the manner in which vacancies are filled;
- (3) clarify the per diem and travel allowances provided members of the commission;
- (4) prescribe the manner in which the public members and the designee of the Board of Governors shall determine the length of their respective terms of office;
- (5) bring the Alaska Code Revision Commission within the purview of the sunset law (AS 44.66.101)

In 1982, following consideration of the performance review of the Alaska Code Revision Commission conducted in accordance with the requirements of AS 44.66, the commission was continued until June 30, 1985. The enabling legislation was further amended by ch 65 SLA 1982 which provided for:

- (1) three public members (bringing total commission membership to eight), and specified the length of terms for the additional public members;
- (2) addition of the Alaska Legislative Council and the American Law Institute (formerly National Law Institute) to those organizations whose proposed changes in the law are to be reviewed and considered by the commission;

(3)The commission conducts a continuing forum where interested parties are welcome to provide testimony and to participate in debate with respect to areas of the law in need of amendment or reform.

(4)The commission provides a valuable service to the legislature by its study, hearings and resulting recommendations to the legislative council concerning improvement of state statutes.

The conclusion recommending increases to the commission's budget and changes to the statutes regarding membership and attendance is supported by the following findings:

The budget of the Commission is not adequate to properly conduct its affairs. This is evidenced by the fact that the commission has not kept adequate minutes of its meetings and has not taken on any significant new legislative tasks in four years.

Attendance at meetings of the commission by specific members of the commission was as low as 25% over the period under review.

REPORT CONCLUSION

Policy Issues

This review discusses issues raised as a result of our analysis and evaluation of the commission's organization and structure, responsibilities, operations and procedures. Resolution of these policy matters will require legislative action. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decision.

Report Conclusion

In our opinion, the Alaska Legislature should continue the Alaska Code Revision Commission as a permanent commission of the legislature subject, however, to an increase in the commissioner's operating budget. Additionally some changes should be made to the statutes regarding commission membership and attendance.

The conclusion recommending continuation of the commission is supported by the following rationale:

- (1) The commission serves an important function that is not duplicated by any other agency; i.e. substantive review of entire bodies of state law.
- (2) The commission has the time, objectivity, experience and expertise to conduct research into the often complex areas of law that it seeks to improve.

FAIRNESS

The commission's work is conducted under the open meetings act. The commission accepts public testimony at all of its meetings. The nature of the commission's work does not attract public attention and the work performed by the commission is such that the average lay person would not comprehend the significance of many of the changes recommended by the commission to modify the specific statutes under review. Additionally, it may be perceived by many that the need to testify before the commission is not urgent in that all work done by the commission is then submitted to the Legislature for further review at which time those concerned may testify.

EFFECTIVENESS

The effectiveness of the commission is not impressive for the period under review. In the four years since the last review, the commission has had only two recommended changes enacted into law (see Appendix A). These two bills were issues which had been before the commission for almost ten years. This lackluster accomplishment can be viewed in both

Discussion

The Alaska Code Revision Commission is a dedicated organization. The members of the commission for the most part are not paid to serve on the commission. The commission's membership is such that the State of Alaska receives thousands of hours of free legal advice and consultation from some of the best legal minds available. The individual members are so dedicated to their mission that even though the commission's budget was eliminated in FY86 they still made themselves available to testify before the legislature on statute changes they had recommended.

It would not be equitable to use the same criteria in judging the performance of the Code Revision Commission, whose job is to make recommendations to the legislature, as would be employed in the audit of an agency or board directly serving the citizens of Alaska. Thus, the focus of this review is not the number or importance of the commission's recommendations that have actually been enacted by the legislature. Rather, the fairness, effectiveness and efficiency of the commission's procedures in arriving at its recommendations for improvement of Alaska's laws.

a positive and a negative light. The fact that the recommendations were eventually enacted after ten years of effort lends credence to the importance of the legislation as well as the diligence of the commission. Probably no other formal body could have maintained the continuity and determination to pursue passage of these bills. The downside is that it took the commission ten years to get legislation approved and that the conditions under which the commission operates are such that only two bills passed in a four year period.

EFFICIENCY

Since its last sunset review, the commission incurred a substantial reduction to its operating budget. From 1982 until 1985, the commission had an attorney with substantial state government experience as its research director and a secretary. This staff provided the commission with an ability to conduct its business in what appears to have been an extremely efficient and effective manner.

There appears to be a direct correlation between the commission's budget reduction and the amount of work produced by the commission. During the period from 1982 to 1984, when the commission had full funding, eight major

pieces of commission legislation were enacted by the legislature. From the period 1985 to 1988, only two pieces of commission legislation have been enacted. It is important to note that, the work on these two pieces of legislation had been substantially completed by the commission before 1985. It appears the lack of commission staff has dramatically affected its ability to efficiently deal with its work load.

Per statute, the staff of the Legislative Affairs Agency serves as staff for the commission. In practice, however, the staff of the Legislative Affairs Agency has only infrequently been able to serve as staff for the commission; and contracting with consultants has not been possible since the commissions budget has been reduced.

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The findings and recommendations contained in the following section of this review are designed to improve the fairness, effectiveness and efficiency with which the commission conducts its service to the legislature.

FINDINGS AND RECOMMENDATIONS

Recommendation No.1

The commission's budget should be increased. If the commission's budget is not adequately funded then the commission should not be continued.

The drastic reduction of the commission's budget appears to have had a substantial affect on the committee's ability to perform its function. The commission presently appears to be dealing only with legislation which it had substantially completed before its budget was cut. There is no indication that the commission has taken on or completed and sent to the legislature any new legislation which was not already substantially completed from prior years.

The commission's budget appears to be below even that of a maintenance level. The commission no longer has funds for personal services and insufficient funds to contract for any significant professional services. The funds available to the commission are basically for travel and per diem. During the period reviewed, the commission did not have staff for basic duties such as keeping the minutes of their meetings, these duties being assigned to individual commission members on a meeting by meeting basis.

Consequently, some minutes were not kept and were not available for review.

It is recommended that the commission be funded at a level sufficient to enable the commission to properly function. It is suggested that at least a half time position in both the administrative and legal research areas be made available to the commission. These positions might best be placed in the, legal services section of the Legislative Affairs Division and be made available to the commission on an as needed basis.

If the commission does not receive adequate funding then it is suggested that the commission not be continued. An alternative to the commission would be to appoint a special commission with adequate funding to work on legislation on an as needed basis as the legislature determines necessary.

Recommendation No. 2

Commission members who are excessively absent from commission meetings should be replaced.

In a review of the attendance by individual members of the commission, it was discovered that in some instances attendance was below 50%. The Legislature has recognized the importance of a commission whose makeup represents a broad range of legal and public interests. If a commission member is not able to attend meetings, then it is possible the commission is not getting sufficient input from the realm of legal and public areas of interests as envisioned by the legislature.

It is recommended that if attendance by an individual commission member falls below an acceptable level, that the member be replaced.

Recommendation No. 3

Legislative members of the commission should be allowed to designate a person to represent them at commission meetings should they not be able to attend.

A review of attendance by legislative members of the commission indicated that they attended less than 25% of commission meetings.

In interviews with commission members, it was agreed that participation by legislative members was both desirable and beneficial. Legislative members that have been actively involved in specific commission legislation have apparently been quite helpful in getting the commission's work enacted into law.

It is suggested that instead of replacing legislative members who have poor attendance, that they be allowed to designate a person to represent them at commission meetings. These designees should have full voting powers.

ANALYSIS OF PUBLIC NEED

The public need factors defined in the "Sunset" law pertain primarily to regulatory bodies, or to commissions, boards and agencies directly serving the public.

The following analysis of the Alaska Code Revision Commission addresses those factors deemed applicable to a permanent commission of the legislature that we were able to cover within the scope of our review.

A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors.

I. The extent to which the board, commission or program has operated in the public interest;

1. The commission has recommended revisions to Alaska law which in its judgement were in the general public interest.

II. The extent to which the operation of the board, ccmmission or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

1. The commission's budget has dramatically decreased since its last sunset review. In FY86, the commission's budget was completely eliminated. (see Budget Information Appendix B). Yet despite reduced funding the commission has continued to operate. However, if the legislature is not going to appropriate adequate funding the commission should be eliminated (See Recommendation No.1).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

1. The commission has recommended statutory changes which in its judgement was of benefit to the public interest.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

1. The commission has accepted and encouraged testimony on its recommendations.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

1. The commission has consistently attempted to notify all parties of interest in topics that it was studying, and has encouraged their participation in its meetings.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. No complaints have been filed with the ombudsman's office in a four year period.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

Not applicable to this commission.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest;and

Not applicable to this commission.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to FINDINGS AND RECOMMENDATIONS section of this report.

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APPENDIX A

LEGISLATIVE ENACTMENT OF THE
RECOMMENDATIONS OF THE ALASKA
CODE REVISION COMMISSION 1985, 1986, 1987, 1988

APPENDIX A

LEGISLATIVE ENACTMENT OF COMMISSION RECOMMENDATIONS 1985,
1986, 1987, AND 1988

1985

NO COMMISSION LEGISLATION WAS ENACTED

1986

NO COMMISSION LEGISLATION WAS ENACTED

1987

NO COMMISSION LEGISLATION WAS ENACTED

1988

CORPORATION CODE
CH 166 - SLA88

DOCUMENT RECORDING
CH 161 - SLA 88

APPENDIX B

SCHEDULE OF

ALASKA CODE REVISION COMMISSION

LEGISLATION SUBMITTED TO THE LEGISLATURE

AND

WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

APPENDIX B

LEGISLATION SUBMITTED TO THE LEGISLATURE AND WORK IN PROCESS
BUT NOT SUBMITTED TO THE LEGISLATURE 1985, 1986, 1987,
1988.

14TH LEGISLATURE 1985-86.

LEGISLATION SUBMITTED TO THE LEGISLATURE

CORPORATION CODE
RECORDABLE DOCUMENTS (1)
SECURITY INTEREST IN REAL PROPERTY (2)

WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

ADMINISTRATIVE PROCEDURE ACT
COOPERATIVE CORPORATION CODE REVISION

15TH LEGISLATURE 1987-88

LEGISLATION SUBMITTED TO LEGISLATURE

DOCUMENT RECORDING (1)
REAL PROPERTY SECURITY INTEREST (2)
CORPORATIONS CODE

WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

ADMINISTRATIVE PROCEDURE ACT
REVISION OF TITLE 8 (BUSINESS & PROFESSIONS)
OCCUPATIONAL LICENSING

- (1) Same bill, different titles
(2) Same bill, different titles

APPENDIX C

BUDGET OF THE ALASKA
CODE REVISION COMMISSION
FY84, FY85, FY86, FY87, FY88

APPENDIX C

Budgets of the Alaska Code Revision Commission; FY84, FY85,
FY86, FY87, and FY88.

FISCAL YEAR 84

Appropriation received.	<u>\$245,600</u>
Personal Services	111,258
Travel and Per Diem	37,539
Contractual Services	91,345
Material and Supplies	<u>5,488</u>
	<u>\$245,600</u>

FISCAL YEAR 85

Appropriation received	<u>\$180,100</u>
Personal Services	115,175
Travel and Per Diem	20,080
Contractual Services	39,025
Material and Supplies	<u>5,820</u>
	<u>\$180,100</u>

FISCAL YEAR 86

Appropriation received.	<u>\$ -0-</u>
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FISCAL YEAR 87

Appropriation received.	<u>\$ 27,600</u>
Personal Services	\$ -0-
Travel and Per Diem	23,000
Contractual Services	5,600
Materials and Supplies	<u>1,000</u>
	<u>\$ 27,600</u>

APPENDIX C (continued)

FISCAL YEAR 88

Appropriation received.	<u>\$ 27,600</u>
Personal Services	\$ -0-
Travel and Per Diem	23,000
Contractual Services	5,600
Materials and Supplies	<u>1,000</u>
	<u>\$ 27,600</u>

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
WILSON L. CONDON
PETER FROEHLICH
RICK HALFORD
MARY HUGHES
DICK MADSON
JUDGE (RET.) THOMAS B. STEWART
JOHN SUND

ALASKA STATE LEGISLATURE
P.O. BOX Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-2450

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

December 19, 1988

DEC 22 1988

Randy S. Welker
Legislative Auditor
Division of Legislative Audit
State of Alaska
Budget and Audit Committee
P.O. Box W
Juneau, Alaska 99811-3300

Re: A Performance Review of the Alaska Code Revision Commission
for the years 1985 through 1988; Response of the Commission

Dear Mr. Welker:

This letter will constitute the response of the Alaska Code Revision Commission pursuant to your letter request under date of November 28, 1988. The Commission met in formal session on December 16, 1988 and the following response represents the consensus of the Commission following its review of the performance review performed by Elgee & Rehfeld.

The Commission agrees with most of the matters contained in the performance review. However, it is felt that some clarifications should be made and disagreement with certain conclusions should be stated. The following are clarifications to the report:

1) At page 8 (Report Conclusion), the review states that no new significant legislative projects have been taken under consideration by the Commission.

In fact, the Commission is currently preparing a draft bill on Occupational Licensing. This project was dropped by the Commission during the Sheffield administration when a representative of the governor's office requested that the Commission draft bill and work product be forwarded to the Governor so that the executive branch could pursue legislative updating Title 8. No

such action was undertaken and the Commission again took under consideration the complete overhaul of this title. Because of a new administration, a new director of Occupational Licensing and numerous changes enacted into law by the Legislature, a complete review of the Occupational Licensing draft bill has become necessary. Substantial work will be necessary to provide a draft bill that reflects recent changes by the Legislature. Such a review has been in process since 1987.

The same is true of the Administrative Procedures Act which was exposed to hours of public hearings and considerable written responses from agencies of the executive branch. Because of the new administration, it has been necessary to again solicit responses from all agencies affected by a new APA title. This fresh review of the APA began in 1987 and is expected to conclude with a draft bill within the next six months.

During the last legislative session, the Senate requested that the Commission review Title 2 in its entirety, providing additional funding (\$14,000.00) for the hiring of a consultant to assist the Commission in its review. The Commission will be providing the Legislature with its review and recommendations for changes to this title.

2) The audit report recognizes that the focus of the review should not be the "number or importance of the commission's recommendations that have actually been enacted by the legislature - but rather, the fairness, effectiveness and efficiency of the commission's procedures in arriving at its recommendations for improvement of Alaska's laws". (Page 9 of audit report). However, the report goes on to state at page 10 that the effectiveness of the commission is not impressive because only two recommended changes were enacted into law.

The Commission agrees that the number of bills passed should not be used to determine the effectiveness of its operation. It is important to note that other states that have concluded major overhauls of their statutes have taken from 10 to 15 years from consideration of a topic to enactment by the legislature. Ten years is probably an average amount of time to enact a bill such as the for-profit corporations code. Additionally, the Commission during the last legislative session worked on changes to the Security Interests bill and the Cooperative Corporations Code. Because it is necessary to prioritize the importance of its draft bills, emphasis was placed on those bills most likely to be given consideration by the Legislature. As such, the Commission expended most of its efforts on the for-profit corporations code and the recording act.

3) On page 12 of the report (Efficiency), the report states that "[t]here appears to be a direct correlation between the commission's budget reduction and the amount of work produced by the commission". While the Commission agrees with this proposition, it should also be understood that changes in the membership of the Legislature and the Executive branch of the government necessitate additional changes in the draft bill product of the Commission. This is true of all bills submitted for Legislative consideration and is unavoidable. Also, as previously stated, the scope of legislative change encompassed by the Commission's draft bills will always be reflected in the amount of time needed for enactment of such legislation. What work is not reflected in the "bill passage rate" includes work on Occupational Licensing, Administrative Procedures Act, the non-profit and cooperative corporations codes and updating the Security Interests in Real Property bill. Relatively minor legislative changes have been made in the past on a number of Commission bills which tend to distort the "bill passage rate". As such, it should be understood that the subject matter of the bill plays a significant role in how much time is spent in changes until enactment and how much time is required to get a bill passed into law.

Finally, it is necessary to focus on changes to any draft bill necessitated by a change in administration or recent changes in law enacted by the Legislature. Before a Commission draft bill can be introduced, it is always necessary to "update" the draft to correspond with legislative changes made since the bill was last considered. As such, it is misleading to speak of completion of "legislation" prior to its enactment by the Legislature. Any draft bill is actually complete when considered and enacted by the Legislature.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

First Paragraph: The Commission agrees that there is a relationship between the size of its budget and the time frame within which a particular draft bill is ready for introduction into the legislative process. The Commission disagrees with the analysis concerning completion of a particular draft bill. For the reasons previously stated, and because the laws of the State are continually changing, it will always be necessary to "update" draft legislation, regardless of the size of the budget. It is true, however, that an increase in the budget would allow this "updating" process to be speeded up considerably. It should also

be noted that the Commission has been provided with a substantial amount of assistance by the Legal Division of LAA, with the understanding that work must be prioritized by Legal Division to carry out its main function of serving the Legislature. Every effort has been made by Legal Division to provide the Commission with assistance in performing its function.

Second Paragraph: The Commission generally agrees with this paragraph with the following comments. First, the Commission has in the past operated at a maintenance level budget and has performed its statutory mandate. It is correct to state that not all minutes of the meetings have been kept (although there are few lapses in the minute records). All of the meetings have been recorded on tape so that the actions of the Commission have been memorialized. The recent practice of having personnel from Legal Division attend meetings and keep the minutes has helped the Commission considerably memorializing its actions.

Third Paragraph: The Commission agrees that a half time position in both administrative and legal research areas be made available to the Commission. It also agrees that these positions should be included in the Legal Division (LAA) rather than creating these positions in the Commission.

Fourth Paragraph: The Commission disagrees that it should be discontinued if a budget increase is not forthcoming. It believes that it can continue to provide a service not presently performed in any other sector of State government. It also believes that it can continue to provide draft legislation of high quality for consideration by the Legislature even with a maintenance level budget and assistance such as is currently available from Legal Division.

RESPONSE TO RECOMMENDATION NO. 1

The Commission agrees that its budget should be increased; that two half-time positions should be added to Legal Division for further assistance to the Commission. The Commission disagrees with that part of the recommendation that holds that it should be discontinued if additional funding is unavailable. It also disagrees with that part of the recommendation relating to the appointment of a special commission to work on legislation on an as needed basis.

The Commission has developed a particular expertise in reviewing existing laws and drafting new laws. Its composition is such that it represents the views of all three branches of State government. Furthermore, as the audit report recognizes,

the mandate of the Commission includes much more than just responding to specific legislative requests. The value of the Commission (and other similar commissions in other states) is the ability of the body to determine on its own areas of the law that require review. This is particularly true in Alaska where much of its statutory law was borrowed from other states in 1959. The Legislature does not normally perform a review of existing law except within the context of drafting an amendment to a particular statute. With the exception of Title 11 (the criminal code) and Title 29 (Municipal Government), the Legislature has never undertaken a wholesale review of a particular title. Performance of this function was one of the main reasons for the creation of the Commission in 1976. Additionally, the Legislature does not normally consider or review the many additional sources for change enumerated in AS 24.20.075 et seq. A special commission appointed to just consider a specific legislative request would not be in a position to perform the additional functions outlined in the enabling legislation nor would it maintain the continuity that a permanent commission enjoys. It is the Commission's belief that without a permanent commission, there will be little likelihood that the work presently performed by the Commission will be undertaken by the Legislature or by a special commission. The ability to continually review existing laws to determine a need for change or amendment is a function particularly unique to a permanent commission and is not something that will be done by the Legislature except in rare instances.

The Commission also disagrees with the underlying premises implicit in the recommendations contained in Recommendation No. 1: that is, that the Commission should be discontinued if it is unable to perform at maximum efficiency. It is the Commission's position that it provides a valuable service not provided by any branch of State government, including the Legislature (except in rare instances). Even though the Commission has operated with a drastically scaled-down budget, it has continued to consider needed changes in the law and has in fact gotten two major pieces of legislation considered by the Legislature in the past session. While the Commission would enjoy a return to its 1984 level of funding, such funding is highly unlikely given the present demands for legislative funding and the greatly reduced sources of revenue for the State. The Commission can continue with a maintenance level budget to hold regular meetings and provide testimony to the Legislature during the sessions. With the assistance now available from Legal Division, both administrative and legal duties can be fully performed. In short, the Commission can continue to function and to fully perform its legislative mandate, providing a service not otherwise provided in the State.

Recommendation No. 2

First Paragraph: The Commission agrees with the content of this paragraph.

Second Paragraph: The Commission agrees with the content of this paragraph.

RESPONSE TO RECOMMENDATION NO. 2

The Commission agrees fully with this recommendation and will recommend to the appropriate appointing authority that members whose attendance falls below the 50% level be replaced with a member who will meet the attendance requirements. The Commission will also amend its by-laws (which govern the procedures used by the Commission) to reflect a requirement of 50% attendance at Commission meetings (excluding legislative members who are considered under recommendation no. 3 in this report).

Recommendation No. 3

First Paragraph: The Commission agrees with this paragraph.

Second Paragraph: The Commission agrees with this paragraph.

Third Paragraph: The Commission agrees with this paragraph. Legislative members in the past have designated persons to attend Commission meetings when they were unable to attend. The practice has been helpful to the Commission. It will add considerably to the dialogue established by the Commission if the designees can also vote on the topics under discussion. The Commission will amend its by-laws to reflect the new procedure recommended by this third paragraph.

RESPONSE TO RECOMMENDATION NO. 3

The Commission agrees fully with this recommendation and believes that the designees of legislative members can contribute significantly to the work of the Commission if they are able to vote on matters being considered by the Commission.

Summary of Responses to Recommendations and Action By The Commission.

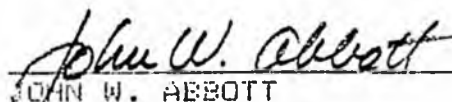
1. The Commission will submit a request for a budget increase to Legislative Council to increase the amount of funds available to contract for professional services. The Commission will also request that Legislative Council provide additional funding for two half-time positions to be included in the Legal Division of the Legislative Affairs Agency. Whether or not additional funding is available will be up to the Legislature. Funding increases would in all likelihood not be available until the next fiscal year. The Legislative Council would probably not request a supplemental appropriation on behalf of the Commission and additional funding would be available for the following fiscal year.

2. The Commission will adopt amendments to its by-laws to require a minimum of 50% attendance at all meetings by the members. The amendments will also require the Commission to notify any appointing authority of the failure of a member to meet this requirement and will request a replacement for the non-performing member. These amendments will be considered by the Commission at its next regularly scheduled meeting in January 1989.

3. The Commission will adopt amendments to its by-laws which will provide that any legislative members can appoint a designee to attend and vote at all Commission meetings. This amendment will be considered by the Commission at its next regularly scheduled meeting in January 1989.

Since the Commission has already agreed with the recommendations as set forth in this report (excepting therefrom those areas of disagreement), it is anticipated that the by-laws changes will be accomplished at the Commission's January 1989 meeting.

Very truly yours,


JOHN W. ABBOTT
Chairman, Alaska Code Revision
Commission

consistent with the policies adopted by the Joint Rules Committee and approved by the house and senate.

(b) *[Repealed, § 11 ch 21 SLA 1987.]* (§ 1 ch 13 SLA 1961; am § 1 ch 45 SLA 1965; am § 1 ch 22 SLA 1969; am §§ 3, 11 ch 21 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "House and senate" for "Session" in the catchline; in subsection (a) substituted "During the legislative session, house and senate employees of the legislature are compensated under the salary schedule set out in AS

39.27.011" for "Temporary session employees of the legislature are compensated for each calendar day of the legislative session" and added the second sentence; and repealed subsection (b), concerning compensation. For the text of former subsection (b) see the main pamphlet.

Sec. 24.10.210. Employees of legislative agencies. Employees of agencies governed by permanent interim committees of the legislature under AS 24.20 and employees of the committees themselves are compensated under AS 39.27.011, the general state salary schedule, at levels budgeted and approved by the governing committees in accordance with law. The governing committees shall coordinate with each other on position levels and salary-related policies to every extent possible consistent with the statutory duties and powers of each permanent committee and its agency. (§ 1 ch 85 SLA 1978; am § 4 ch 21 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "and employees of the committees themselves are compensated under AS 39.27.011, the general state salary schedule" for "are compensated in accordance with the general state

salary schedule, including overtime payment and compensatory time policies" in the first sentence and deleted "overtime and compensatory time" preceding "policies" in the second sentence.

Chapter 20. Agencies of the Legislature.

Article

1. Legislative Council (§ 24.20.075)
2. Legislative Budget and Audit Committee (§§ 24.20.201, 24.20.206)

Article 1. Legislative Council.

Section

75. Alaska Code Revision Commission

Sec. 24.20.075. Alaska Code Revision Commission. (a) The Alaska Code Revision Commission is established as a permanent commission of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer; three public members who are not employees of the state government, appointed by the Legislative Council; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief

justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer; the designee of the governor and the designee of the chief justice serve at the pleasure of the governor and chief justice, respectively; the public members and the designee of the board of governors serve terms of six years each, beginning July 1 and ending on June 30 six years later. Members may be reappointed or redesignated. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment but, with regard to the legislative members, the public members, and the board of governors' designee, for the unexpired term only. The term of a member continues until the member's successor is appointed. Members who are not state employees or legislators are entitled to receive the standard per diem and travel allowance provided for members of independent boards and commissions. Legislative members are entitled to receive the regular legislative per diem and travel allowance for days spent on commission business, and members who are state employees are entitled to receive the regular state employees per diem and travel allowance for days spent on commission business. The commission selects its chairman and vice-chairman. The director of legal services for the Legislative Affairs Agency, or the designee of the director, serves as executive secretary for the commission.

(c) The commission shall

(1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;

(2) review and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Alaska Legislative Council, the supreme court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch;

(3) receive and consider suggestions from the Alaska bench and bar, public officials, organizations, and individuals as to areas of law needing review and remedy;

(4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

(d) The commission may

(1) hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business;

(2) establish one or more subcommissions to assist it in the performance of its duties.

(e) The staff of the Legislative Affairs Agency serves as staff for the commission. Subject to appropriation for the purpose, the commission may request the agency to contract with other agencies or persons for the performance of necessary services.

(f) The commission shall submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court. Each draft of legislation submitted by the commission shall be accompanied by a sectional analysis. The commission shall prepare the sectional analysis using language that is understandable to a layman.

(g) All branches of state government shall provide information and documents requested by the commission necessary to the accomplishment of its work.

(h) The commission shall make a formal request to the Legislative Council for funds it considers necessary for the per diem, travel, and contractual expenses of the commission. Funds appropriated to the commission are to be disbursed and accounted for under procedures required by the Legislative Affairs Agency. The commission chairman shall approve all expenditure documents. (§ 1 ch 114 SLA 1976; am § 1 ch 57 SLA 1977; am §§ 1, 2 ch 44 SLA 1980; am §§ 2 — 4 ch 65 SLA 1982; am § 2 ch 121 SLA 1986)

Cross references. — For transitional provisions related to the 1986 amendments to (b) of this section, see § 3, ch. 121, SLA 1986, in the Temporary and Special Acts.

Effect of amendments. — The 1986 amendment in subsection (b) in the first sentence substituted "Legislative Council" for "governor" and added the present fifth sentence.

Article 2. Legislative Budget and Audit Committee.

Section

201. Powers

206. Duties

Sec. 24.20.201. Powers. (a) The Legislative Budget and Audit Committee has the power to:

(1) organize, adopt rules for the conduct of its business and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

CODE REVISION RESPONSIBILITY

Legislative

Other

	<u>Legislative</u>	<u>Other</u>
	X	
ALABAMA	X	
ALASKA	X	
ARIZONA	X	
ARKANSAS		Statute Revision Commission
CALIFORNIA	X	Law Revision Commission
COLORADO	X	
CONNECTICUT	X	
DELAWARE	X	
FLORIDA	X	
GEORGIA	X	
HAWAII	X	
IDAHO	X	
ILLINOIS	X	
INDIANA	X	
IOWA	X	
KANSAS	X	
KENTUCKY	X	
LOUISIANA		State Law Institute
MAINE	X	
MARYLAND	X	
MASSACHUSETTS	X	
MICHIGAN	X	
MINNESOTA	X	
MISSISSIPPI		Attorney General's Office
MISSOURI	X	
MONTANA	X	
NEBRASKA	X	
NEVADA	X	
NEW HAMPSHIRE	X	
NEW JERSEY	X	
NEW MEXICO		Compiler's Office, Executive Branch
NEW YORK	X	Law Revision Commission
NORTH CAROLINA		Attorney General's Office
NORTH DAKOTA	X	
OHIO	X	
OKLAHOMA	X	
OREGON	X	
PENNSYLVANIA	X	
PUERTO RICO	X	
RHODE ISLAND	X	
SOUTH CAROLINA	X	
SOUTH DAKOTA	X	
TENNESSEE	X	
TEXAS	X	
UTAH	X	
VERMONT	X	Statutory Revision Commission
VIRGINIA	X	
WASHINGTON	X	
WEST VIRGINIA		
WISCONSIN	X	
WYOMING	X	

S B

133



Alaska State Legislature

SENATE

Official Business

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

TO: Members of the Senate Judiciary Committee

FROM: Senator Al Adams, Chair ^{ADA}
Community and Regional Affairs Committee

DATE: January 30, 1989

RE: SB 133 "An Act repealing the authority of the Alaska Court System to impose and of state agencies to collect a probation fee; and providing for an effective date."

My gratitude for the Senate Judiciary Committee's swift scheduling of the aforementioned legislation. The situation this bill will correct is one that was first brought to my attention by a probation officer in Kotzebue. Current law requires that those on probation pay a \$45 per month fee to their probation officers. This bill would remove that requirement from state law.

Probation officers, particularly those in rural areas, have been encumbered in their attempts to enforce a statute that neither pays for itself or results in any positive change in behavior by those subject to paying the fees. In addition, the time spent by probation officers as fee agents is a useless expenditure when their efforts could be better spent at other tasks.

The situation of highly seasonal employment in rural areas creates a situation where those on probation often have no regular income, and frequently a meager amount when they do. The desire to enforce this statute is often met with frustration by both those on probation and those responsible for fee collection in areas on the edge of a cash economy. The option of community work service in lieu of cash is also unsuitable in that the probation officer is then required to supervise that work service has been completed.

This bill is supported by the Department of Corrections and received verbal endorsement from the Criminal Justice Working group during their meeting in Kotzebue this summer. In your packet is a letter of support from the Department of Corrections and another letter of support from a public defender in Nome.

Also enclosed is a listing of those on probation (first name only) and a summary of individual probation fee payment status. Referenced statutes are also enclosed.

Section 1 repeals the authority to require the defendant to pay a probation fee. Accomplishes this by removal from A.S. 12.55.100 (a) under the "Conditions of Probation" a subsection (5) referencing AS 12.55.105 that dictates the probation fee requirements.

Section 2 accomplishes a technical change referencing defaulted loans and the authority to revoke permanent fund dividends.

Section 3 removes court ordered probation fees from AS 43.23.065, section (b) (3) regarding exemptions of permanent fund dividends.

Section 4 is the meat of the bill in removing the probation fee requirement.

Section 5 an applicability section that pertains to how the bill would affect court ordered fees or outstanding debts since June 30, 1986 and before the effective date of this act.

Section 6 makes the bill effective immediately.

My aide Martha Stewart will be present to testify on this bill and perform initial bill introduction. John Cook, a probation officer in Kotzebue, will also be available to testify via teleconference. I understand Susan Humphrey Barnett, the Commissioner of the Department of Corrections may also be present to answer member questions.

Thank you for your consideration of this legislation.

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

STEVE COWPER, GOVERNOR

REPLY TO:

P.O. BOX 7
JUNEAU, ALASKA 99811-2000
PHONE (907) 465-3376

October 10, 1988

The Honorable Al Adams
Alaska State Legislature
P.O. Box 333
Kotzebue, Alaska 99752

Dear Representative Adams:

This letter is in support of your proposed legislation to repeal the statute requiring Alaska probationers to pay a monthly fee-for-service.

When the program was started two years ago, the Department of Corrections saw it as an opportunity to instill responsibility in the probationers and to raise revenues to offset the cost of their supervision. However, our experience in this endeavor has proved otherwise.

In FY 88, we collected \$126,200 under the program statewide: \$26,900 in the Northern Region; \$72,900 in the Southcentral Region; and \$26,100 in the Southeast Region. The work required by our Probation Officers to enforce this program has been considerable.

The Probation Officers enforce the court orders that include this \$45.00 monthly fee-for-service. Probationers in extreme financial hardship can substitute community work service in lieu of payment at the rate of \$5.00 per hour or nine hours per month. This, too, must be scheduled and then supervised by the Probation Officer.

When probationers fail to pay or perform community work service, they are in technical violation of their court order and the Probation Officer can then return the probationer to court. The Probation Officer must prove to the court that the probationer is able to pay or perform work but refuses to do so. The Probation Officer is then subject to cross-examination by the probationer's attorney. In fact, no Alaska judge has revoked probation for failure to pay or perform work because the dollar amount is so low (returning a probationer to an \$86.00 per day cell for failing to pay a \$45.00 per month fee).

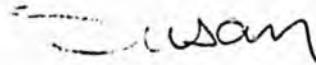
It is estimated that the three to four workdays per month required of each supervising field Probation Officer statewide is the equivalent of four fulltime officers per year. Add to that the equivalent of two fulltime clerks to handle correspondence, accounting and depositing of the fees balanced against the amount of \$126,200 raised statewide, the program is not cost effective.

The Honorable Al Adams
October 10, 1988
Page Two

Finally, as you know from your own region, requiring regular monthly payments discriminates against those on subsistence or seasonal employment. In the villages, where there is no supervised community work service option, the program makes no sense at all.

The current law applies to those probationers placed on probation after January 1987. Because the number grows each year, these problems will continue to grow. The Department of Corrections supports your efforts to repeal the fee-for-service for probationers' statute.

Sincerely



Susan Humphrey-Barnett
Commissioner

SHB:BP:dlh

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act repealing the authority of
the Alaska Court System to impose."
Sponsor: Senator Adams
Requestor: _____

Agency Affected: Department of Corrections
BRU: Statewide Operations

Components: Northern Region Probation
Southcentral Region Probation
Southeast Region Probation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	-126.2	-126.2	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	62.0	62.0				
FEDERAL FUNDS						
OTHER	-62.0	-62.0				
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This legislation will not result in additional operating costs, but the funding sources for FY89 and FY90 must be changed from program receipts to general fund.

Prepared by: Susan E. Knighton, Director Phone: 465-3376
Division: Administrative Services Date: 1-27-89

Approved by Commissioner: S. Humphrey-Barnett Date: 1-27-89
Agency: Department of Corrections

Distribution (by preparer):

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

P.O. Box 1402
Nome, AK 99762
January 24, 1989

Senator Al Adams
P.O. Box V
Juneau, AK 99811

Dear Senator Adams:

I support your efforts to repeal A.S. 12.55.105 which requires probationers to pay a probationary fee to the Department of Corrections. My experience in Northwest Alaska indicates that the probationary fee requirement creates an undue hardship on persons engaged in the predominately subsistence lifestyle of this region.

The major problem with the present statute is that imposition of the probationary fee is mandatory, that is, the sentencing court has no discretion to consider the probationer's ability to pay and determine whether the fee should be required. Thus, even if a probationer has no income except for the permanent fund dividend, the fee is still ordered. This approach is distinct from the procedures set out for determining the amount, if any, of restitution or a fine.

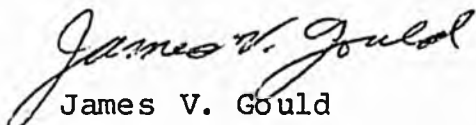
The second major problem is that the Department of Corrections, without statutory authorizaiton, requires a probationer who cannot pay the fee to perform community work service in lieu thereof. Probation officers are collecting supervision fees and enforcing unlawful community work service requirements instead of providing necessary services to probationers.

It may be that probationers who are able to pay should pay a reasonable probationary fee. However, under the present statute, the judge is not allowed to consider ability to pay. The result is that probationers who truly need their permanent fund dividends to provide family necessities in Northwest Alaska are required to assign their dividends to the Department of Corrections. This is unfair. In the preceeding 16 months I am unaware of even one probationer who was excused by the Department of Corrections from either paying the fee or doing community work service in lieu thereof.

Senator Al Adams
Page 2
January 24, 1989

I am enclosing a copy of the legal memoranda filed by the parties in a case in which the probationary fee was challenged. The issue became moot after the probationer committed a subsequent burglary, so was never fully litigated.

Sincerely,


James V. Gould
Attorney at Law

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT NOME

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
ALEX I. ASHENFELTER,)
)
Defendant.)

CLERK OF COURT
State of Alaska
Second Judicial District

APR - 1 1988

Deputy

Case No. 2NO-S86-531Cr.

MOTION TO DISMISS PROBATION REVOCATION

Alex Ashenfelter was convicted of second degree burglary. He was given a suspended imposition of sentence. He is back before the court on a petition to revoke probation which alleges solely that he "has failed to pay the periodic probation supervision fee required by AS 12.55.105 to the Department of Corrections as directed by his probation officer." (petition to revoke p. 2).

Mr. Ashfenfelter's position is that the statutory requirement that he pay a probation supervision fee is facially unconstitutional (in violation of both the U.S. and Alaska constitutions) in that it does not take into account a probationer's ability to pay. AS 12.55.105 provides that:

A court granting probation shall require a periodic probation fee to be paid to the Department of Corrections as a condition of probation.

The amount of that fee has been set by the Department of Corrections at \$45.00 per month. 22 AAC 10.050(b).

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1 Mr. Ashenfelter contends that the statute is facially
2 unconstitutional in that it provides that a condition of
3 probation shall be the payment of a periodic probation fee. In
4 effect then, the statute limits probation to only those able to
5 pay a probation fee. The result of that statute is to
6 discriminate against indigents when no valid basis for that
7 discrimination exists.

8 The SIS statute under which Mr. Ashenfelter was
9 'sentenced' provides that a court may, in its discretion,
10 suspend imposition of sentence and thereby place a person on
11 probation "if it appears that there are circumstances in
12 mitigation of the punishment or that the ends of justice will be
13 served." AS 12.55.085. Mr. Ashenfelter was found to be an
14 appropriate candidate under that qualification for an SIS. But,
15 per the probation fee statute, an SIS in a felony case is
16 further limited in its applicability, to only those defendants
17 who can qualify by an ability to pay a probation fee. Mr.
18 Ashenfelter is not able to pay a probation fee and is thus
19 before the court on a petition to revoke probation. To deny him
20 the benefits of the SIS statute because he does not have money
21 to pay for supervised probation is an unconstitutional
22 limitation.

23 Such a limitation has been struck down in a number of
24 analogous contexts.

25 In Hood v. Smedley, 498 P.2d 120 (Alaska 1972) the
26 Alaska Supreme Court struck down, as violative of equal

1 protection, a statute (former AS 12.55.010) which provided that
2 a defendant who fails to pay a fine could be imprisoned until
3 the fine is satisfied with a dollar amount credit per day in
4 jail. The court said:

5 Because imprisonment stemmed solely from the
6 indigency of the defendant, it was held to
7 work the same invidious discrimination which
8 was held unconstitutional in Williams v.
9 Illinois, 399 U.S. 235 (1970).

10
11 We must, therefore, hold that [AS
12 12.55.010], when applied to an indigent
13 defendant is unconstitutional.

14 Id, at 121. To allow the SIS statute and the other statutes
15 providing for probationary sentences to be limited in
16 applicability to only non-indigents, is to imprison defendants
17 based on ability to pay. Those that can pay can be given
18 probation, those that cannot pay will have probation revoked and
19 be imprisoned (or at the least be given a permanent record of
20 conviction). That result was disallowed in Hood v. Smedley and
21 it must be disallowed here.

22 Lominac v. Anchorage, 658 P.2d 792 (Alaska App. 1983)
23 considered a similar issue to the one presented by Ashenfelter's
24 case. In Lominac, the defendant was given an SIS on condition
25 of monthly payments toward restitution. The payments were not
26 made and the state petitioned to revoke Lominac's SIS. At a
hearing on Lominac's failure to pay, the trial judge found that
the failure was not wilful - that Lominac had not been shown to
have an ability to pay. but the trial judge nevertheless revoked

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1 her probation and sentenced her to jail. The court of appeals
2 did not reach the constitutional issue presented but did reverse
3 the trial court's decision and reinstated Lominac's SIS. The
4 court of appeals opinion was based on AS 12.55.051 which
5 disallows imprisonment as a consequence of failure to pay a fine
6 or restitution unless the failure to pay is intentional - in
7 other words unless there is an ability to pay proven. That
8 statute does not refer to probationary fees - only to fines and
9 restitution.

10 Karr v. State, 686 P.2d 1192 (Alaska 1984) dealt with
11 the question of ordering a defendant to pay restitution. Karr's
12 appeal alleged that the restitution order was invalid as she was
13 ordered to pay \$300,000 in restitution without the judge first
14 making a serious inquiry into her (Karr's) ability to pay that
15 amount. The Supreme Court agreed with Karr, vacated the
16 restitution order, and remanded for an ability to pay hearing.
17 In the course of reaching that result, the court makes some
18 comments which are applicable to Mr. Ashenfelter's case. The
19 court said:

20 Restitution should not only compensate the
21 victim for the harm inflicted by the
22 offender, but should further the rehabili-
23 tation of the offender. If restitution is
24 ordered in an amount that is clearly
25 impossible for the offender to pay, the
26 offender's rehabilitation will be inhibited
and not furthered. If the offender is haled
into court for nonpayment of restitution
under AS 12.55.051(a), or if the offender
petitions the court under AS 12.55.051(c) to
avoid this sanction, his reintegration into
society will be disrupted. Also, an

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1 offender might simply give up and make no
2 payments at all if the restitution ordered
3 is clearly impossible to pay. This could
4 result in the offender's incarceration under
5 AS 12.55.051(a), or in his fleeing the
6 jurisdiction to avoid this sanction, neither
7 of which further the dual goals behind
8 restitution.

9 Id, at 1197. (footnote omitted). To order M. Ashenfelter to
10 pay a probationary fee when he is financially unable to pay that
11 fee suffers from all the same problems that the court noted
12 would result where an impossible amount of restitution was
13 ordered.

14 A situation similar to Mr. Ashenfelter's was presented
15 to the New Jersey courts in State v. DeVatt, 413 A.2d 973, a
16 case in which the lower court had allowed terminating DeVatt's
17 participation in a pretrial intervention program and permitted
18 the state to proceed to prosecute the criminal charges, on the
19 grounds that he had failed to make restitution. The appellate
20 court reversed the lower court and held that the mere failure to
21 make restitution was insufficient, in the absence of a
22 consideration of the surrounding circumstances, to support the
23 court's termination of pretrial intervention.

24 Although the appellate court's primary concern in
25 DeVatt was that a defendant be given a full due process hearing
26 before terminating the pretrial intervention, the lower court
was further directed to "determine whether a factual basis
exists for the conclusion that defendants have wilfully violated
Pretrial Intervention conditions in a manner or under such

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1 circumstances as to justify termination of their right to
2 further participation in the program." DeVatt, 413 A.2d 973 at
3 976 (emphasis added). Mr. Ashenfelter here has the same
4 opportunities under his suspended imposition of sentence as the
5 defendants in DeVatt had under their pretrial intervention
6 program, i.e., the opportunity to avoid incarceration and the
7 opportunity to avoid having a permanent record of conviction.
8 Before Mr. Ashenfelter can be deprived of those opportunities,
9 this court should require, as the DeVatt court required, a
10 wilfull violation of probationary conditions.

11 Mr. Ashenfelter is not asking this court to find that
12 supervised probationers can never be required to pay a probation
13 fee - he is only asking this court to construe the statute to
14 require such payment only from those with an ability to pay.
15 Other states requiring the payment of a probation fee have
16 explicitly written ability to pay into their statutes. (See
17 Oregon ORS § 423.570 and Florida Fla. Stat. § 945.30.). This
18 court has only to construe the Alaska Statute to have implicitly
19 included such a qualification into AS 12.55.105 to save its
20 constitutionality.

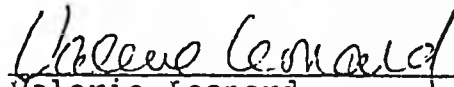
21 In the absence of a finding of ability to pay and
22 therefore a wilful violation of the order to pay the probation
23 fee, Mr. Ashenfelter's probation should not be revoked. To
24 revoke it without such a finding is violative of the equal
25 protection clauses of the U.S. and Alaska constiutions and is
26 further in violation of the Alaska constitutional provision

1 which limits sentencing considerations in criminal cases to the
2 two valid penological purposes of reformation and protecting the
3 public. (Alaska Constitution, Art. I § 12).

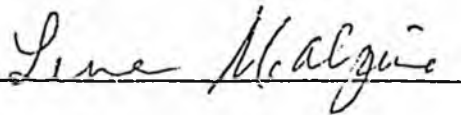
4 CONCLUSION

6 For the foregoing reasons the probation revocation
8 petition must be dismissed.

7 DATED this 31 day of March, 1988.

9 
10 Valerie Leonard
11 Assistant Public Defender

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17 I certify that a true and
18 correct copy of the Motion
19 to Dismiss Probation Revo-
20 cation was served to the
21 District Attorney's office
22 and the Probation Office
23 this 1st day of April, 1988.

24 

25 Alex I. Ashenfelter, 2NO-S86-531Cr.
26 Motion to Dismiss Probation Revocation

Page 2

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

SECOND JUDICIAL DISTRICT AT NOME

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 ALEX I. ASHENFELTER,)
)
 DOB: 11/06/66)
)
 Defendant.)

Case No. 2NO-S86-531 CR

OPPOSITION TO MOTION TO DISMISS
PROBATION REVOCATION PETITION

The State has brought a petition to revoke Alex Ashenfelter's probation, alleging that he has not made any effort to pay the probation supervision fee required by AS 12.55.105. Defendant contends that the statute is unconstitutional in that it discriminates against individuals unable to afford the probation supervision fee.

The statute, AS 12.55.105, was enacted in 1986 as part of a larger measure designed to enhance state revenues. 1986 SLA. Ch. 138. AS 12.55.105(a) provides:

A court granting probation shall require a periodic probation fee to be paid to the Department of Corrections as a condition of probation. The fee amount shall be established by regulation adopted by the commissioner of corrections.

Section (b) of the statute authorizes assignment of permanent fund dividends to meet the probation fee obligation. The amount

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1 of the probation fee has been established by regulation as being
2 \$45 per month. 22 AAC 10.050(b). The regulations also,
3 however, recognize that there may be probationers who are
4 unable to pay that amount:

5 The regional administrator of probation may
6 temporarily defer, excuse, or authorize an
7 alternate form of probation fee payment in a
8 form and by procedures established by the
9 commissioner if justified by a probationer's
10 verified inability to pay.

11 22 AAC 10.050(d). As part of the regulatory framework, the
12 Department of Corrections has specifically authorized community
13 work service where a probationer has a demonstrated inability to
14 pay the required fee. See Exhibit "A" -- Department of
15 Corrections, Policies and Procedures, Section 902.09 (VI)(E).
16 Mr. Ashenfelter's probation officer, Steve Korenek, has
17 testified that Mr. Ashenfelter, apparently having an inability
18 to pay the fee (and failing to file for his permanent fund
19 dividend), has been offered the community work service option
20 and has made no effort towards compliance.

21 Defendant makes much of the cases dealing with failure
22 to make restitution and the requirement that such a failure be
23 shown to be "willful" before probation may be revoked. See Karr
24 v. State, 686 P.2d 1192 (Alaska 1984). Defendant's
25 constitutional argument need not be addressed by the court. The
26 court has the obligation to construe statutory provisions to
avoid the dangers of unconstitutionality. State v. Rice, 626
P.2d 104, 108 (Alaska 1981); Keith v. State, 612 P.2d 977
(Alaska 1980). Thus legislation will be read, if possible, such

1 as to imply matters requisite to constitutional validity. See
2 Kimoktoak v. State, 584 P.2d 25 (Alaska 1978). Assuming
3 defendant to be correct in his assertion that determination of
4 ability to pay or "willfulness" is somehow a constitutional
5 requirement of the probation fee statute, the court may construe
6 the statute accordingly without a determination of its
7 constitutionality. With this-in mind, it is apparent that the
8 statute and its regulations adequately account for a person's
9 ability to pay. If a person is unable to pay, alternatives are
10 available. If a person is unable to perform any of the
11 alternatives, for a legitimate reason, the fee may be waived.
12 There simply is no danger that a person might be incarcerated
13 simply because he is poor.

14 What the court really must address is not a
15 constitutional question, but a factual question: is Mr.
16 Ashenfelter in non-compliance with the terms of his probation
17 and is that non-compliance willful? Mr. Korenek has testified
18 that Mr. Ashenfelter has not complied with the conditions or
19 alternatives that have been offered to him. Ashenfelter states
20 that he has a "lack of interest" in certain available jobs.
21 (Exhibit "B" - Ashenfelter's monthly report for January). He
22 apparently has a lack of interest in anything resembling work.
23 Anybody who neglects to apply for their permanent fund dividend
24 can be said to be truly lazy. Mr. Ashenfelter should obviously
25 be given an opportunity to explain himself (should he manage to
26 bestir himself long enough to acknowledge the current court

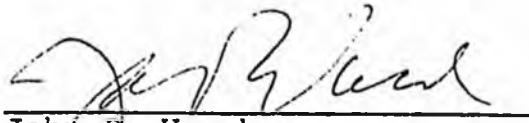
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proceedings), but, absent some compelling explanation, the factual question before the court must be resolved against Mr. Ashenfelter.

DATED this 20 day of April, 1988, at Nome, Alaska.

GRACE BERG SCHAIBLE
ATTORNEY GENERAL



John R. Vacek
District Attorney

True copy to
James Gould, Public
Defender's court box
at the Nome trial court.

LB 4/20/88

DISTRICT ATTORNEY, STATE OF ALASKA
P. O. BOX 160, NOME, ALASKA 99762
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Subject: PROBATION SUPERVISION FEE

- interstate transfer of probation supervision. The investigating/supervising officer shall enter the probation fee obligation into the interstate documentation and ensure that it is accepted by the sending state and the probationer as a condition of probation prior to accepting the case for supervision in Alaska; and
2. A probationer transferred out of Alaska for interstate transfer of supervision will pay the probation fee of the receiving state, if there is one, as a condition of the transfer of supervision. If the receiving state does not have a probation fee, the probationer will not be required to pay the probation fee obligation while supervised outside of Alaska and/or in a state that does not have a probation fee.
- E. An alternate form of probation fee payment may be authorized, as follows:
1. A probationer may choose to assign his or her permanent fund dividend received under AS 43.23.005 to the Department as credit toward or payment of the probation fee. This option may be exercised in coordination with the supervising probation officer in accordance with procedures established for this purpose. A permanent fund dividend received per this section will be receipted, recorded and transmitted as outlined under B.4. above;
 2. A probationer's permanent fund dividend may be attached for non-payment of probation fees in accordance with AS 12.55.105(c). The Probation Officer shall prepare the paperwork in conformance with procedures established in coordination with the Department of Revenue. The dividend must be considered as a source of payment ahead of any alternate form or excused payment authorization. A dividend received under these circumstances will be receipted, recorded and transmitted as outlined under B.4. above;
 3. For a probationer who is unemployed, the probation fee may be excused for up to 30 days. A probationer who remains unemployed for more than 30 days shall be assigned to a community work service project by or through his or her probation officer. The probationer shall perform unpaid community service and will be credited with \$5.00 for each hour of community service work toward his or her probation fee. Community service performed in lieu of payment of probation fees must be worked during the month for which the probation fee is due. This alternate form of probation fee payment is an exception and may not be routinely applied to any probation case for longer than three months during the term of probation. However, upon the recommendation of the District or Unit Supervisor, the Regional Administrator may, at his or her discretion, extend this alternative form of payment on a month-to-month basis beyond the three month limit on a case-by-case basis;

EXHIBIT "A"

11/14 4 1988
 Name

PLEASE PRINT

DATE 12-18-87

Name	Date of Birth	Telephone Number
Alex Ashenfelter	11.06.66	None
Mailing Address		
1111 1st St White Mountain Bldg 411		
Who did you work for this month?	How Many Days?	

What is your employer's address?	Telephone Number	

What kind of work did you do this month?		
No jobs or not qualified		
If you didn't work this month, what was the reason?		
None		
Did you have any contacts with the Police this month?		
YES <input type="radio"/> (NO) <input checked="" type="radio"/> (circle one) If yes, explain below. _____		
Money received this month:	Money spent this month:	
∅	∅	
Your take-home pay from wages or salary:	\$ ∅	Living Expenses: \$ ∅
Your mates take-home pay from wages or salary:	\$ ∅	Payments on Debts: \$ ∅
Unemployment Compensation:	\$ ∅	Restitution Paid: \$ ∅
Welfare Benefits:	\$ ∅	Child Support Paid: \$ ∅
Pension and other sources of income:	\$ ∅	Fines Paid: \$ ∅
Total Received:	\$ ∅	Total Spent: \$ ∅
Comment here on how you are doing, and mention any problems you are having or questions you may have. (Use back if necessary)		
<p>Doing okay so far, no luck with any jobs here. I'm always not qualified enough or I have a lack of interest in that certain job, but I am still waiting for Kawarak to contact me about trade school so I can get some experience in my cooking field. Merry X-mas and have a happy new year.</p>		

EXHIBIT "B"

Alex Ashenfelter

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT NOME, ALASKA

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 ALEX I. ASHENFELTER,)
)
 Defendant.)

Case No. 2NO-S86-531Cr.

REPLY MEMORANDUM

COMES NOW Alex Ashenfelter, through counsel, and submits the following memorandum in reply to the state's opposition to Ashenfelter's motion to dismiss.

I. Introduction

In its response the state does not challenge Ashenfelter's central argument that imprisonment because of indigency is unconstitutional. Neither does the state challenge Ashenfelter's argument that a statute which results in imprisonment because of indigency is unconstitutional. The state takes the position that this particular statute, A.S. 12.55.105, can be interpreted by this court in a manner consistent with the constitution, that is, that the statute must be interpreted to require a consideration of ability to pay. Thus, at a probation revocation hearing Ashenfelter would be able to defend on the grounds that his failure to pay the probation fee was not willful, that is, that payment of the fee was unreasonable in light of his financial situation.

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1 II. Argument

2 Up to this point, there appears to be agreement
3 between the parties. However, there is disagreement on two
4 additional and critical points: 1) whether ability to pay must
5 be considered at the time the court sets conditions of probation
6 as well as at the revocation hearing, and 2) whether a
7 consideration of ability to pay can be lawfully performed by the
8 Department of Corrections rather than by the court?

9 a. Consideration at Time of Sentencing

10 The above two questions overlap to some degree. The
11 first question has been answered in a weak affirmative by the
12 State of Alaska. The Department of Corrections has adopted
13 regulations and policies providing for pre-revocation review of
14 the requirement that the probation fee be paid. However, the
15 court should make a determination of ability to pay at the time
16 of sentencing. Admittedly, the cases which hold that at the
17 time of sentencing the court must determine a defendant's
18 ability to pay a fine or restitution and set the amount
19 accordingly are based upon an interpretation of the relevant
20 statutes. (A.S. 11.55.035, A.S. 12.55.045). Each of these
21 statutes explicitly requires the sentencing court to take into
22 account the financial resources of the defendant and the nature
23 of the burden its payment will impose. However, since no
24 revocation can occur for non-payment of the probation fee unless
25 the non-payment was willful, just as no revocation can occur for
26 non-payment of a fine or of restitution unless the non-payment

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1 was willful, a similar requirement must be read into the
2 probation fee statute to save its constitutionality. Since
3 ability to pay is a necessary consideration at the revocation
4 hearing, it is also a necessary consideration at the time the
5 court imposes the payment requirement. See Karr v. State, 686
6 P.2d 1192, 1197 n.14 (Alaska 1984)(in many jurisdictions courts
7 must consider ability to pay even in the absence of a statutory
8 requirement).

9 b. Determination by the Department

10 The state also argues that the statute is
11 constitutional since the Department of Corrections has adopted
12 regulations and policies which provide for alternate forms of
13 payment of the probation fee. This argument is falacious.

14 Conditions of probation must be reasonably related
15 to the goals of rehabilitation. Oyoghok v. Municipality of
16 Anchorage, 641 P.2d 1267, 1270 (Alaska App. 1982). Ashenfelter
17 has a statutory and common law right to be free of any condition
18 of probation not reasonably related to his rehabilitation.
19 Tiedeman v. State, 576 P.2d 114, 116 (Alaska 1978); Sprague v.
20 State, 590 P.2d 410, 418 (Alaska 1979). The probation fee
21 statute is a revenue measure designed to secure funding for the
22 Department of Corrections. See A.S. 12.55.105(b-d). This
23 condition of probation has nothing to do with the goals of
24 sentencing. Therefore, it is unlawful to substitute community
25 work service which is related to the goals of sentencing for the
26 probation fee, which is unrelated to the goals of sentencing.

1 Additionally, there is no authority for the Department
2 to impose community work service as a condition of probation.
3 Under A.S. 12.55.055 the court may allow a defendant to
4 substitute community work service for a fine or for
5 imprisonment. However, there is no authorization for the
6 Department to make that substitution. Unlike the probation fee,
7 both a fine and imprisonment are related to the goals of
8 sentencing. Substitution of community work service for a fine
9 or imprisonment is therefore both reasonable and lawful.

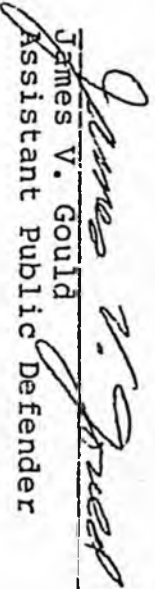
10 Finally, the Department's assumption of the power to
11 determinaton whether payment of the probation fee should be
12 excused is unlawful. Determination of whether a probation fee
13 should be ordered, the amount, and whether it should be excused
14 is a judicial responsibility. See Kerr v. State, 686 P.2d 1192,
15 1197 n.15 (Alaska 1984); Brezenoff v. State, 658 P.2d 1359,
16 1363-64 (AlaskaApp. 1983) (probation officer may not be delegated
17 the judicial responsibility of determining the amount of
18 restitution to be paid and the terms of payment). Sentencing is
19 a judicial function rather than an administrative function.

20 III. Conclusion

21 The statute is unconstitutional on its face for it
22 does not provide for a consideration of ability to pay. (See
23 A.S. 12.55.035 and .045 for properly written statutes). The
24 statute can be saved by interpretating it as requiring a
25 consideration of ability to pay, therefore avoiding imprisonment
26 for indigency. However, such an interpretation must also

1 provide for a meaningful judicial determination of ability to
2 pay. Therefore, if this court saves the statute through
3 interpretation, this court should also conclude that a judicial
4 consideration of ability to pay must be made at the time
5 sentence is imposed and that substitution of community work
6 service for the revenue producing probation fee requirement is
7 unlawful.¹

8 DATED this 25 day of April, 1988 at Nome, Alaska.

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James V. Gould
Assistant Public Defender

I certify that a copy of the
above was placed in the box
in the Clerk's Office, Nome.
This 25 day of April

10 1988

Mark

Public Defender Agency

By: 

1. See James v. Strange, 407 US 128, 32 LEd2d 600, 92
S.Ct. 2027 (1972); Fuller v. Oregon, 417 US 40, 40 LEd2d 642, 94
S.Ct. 2116 (1974); State v. Ayeala, 623 P.2d 584 (N.M. App.
1981); Peterson v. State, 384 So.2d 965 (Fla. 1980); State v.
Rowton, 645 P.2d 551 (Ore. App.1982).

Sec. 12.55.090. Granting of probation.

NOTES TO DECISIONS

- I. General Consideration.
- II. Five-Year Limitation.

I. GENERAL CONSIDERATION.

Sentence on revocation of probation. — It is not unreasonable to impose a sentence on revocation of probation consecutively to a sentence imposed for crimes committed while on probation. *Hernandez v. State*, Ct. App. Op. No. 424 (File Nos. A-186, A-193), 691 P.2d 287 (1984).

II. FIVE-YEAR LIMITATION.

Tolling of period.

The running of probation is tolled by the filing of a petition to revoke probation. *Gage v. State*, Ct. App. Op. No. 484 (File No. A-643), 702 P.2d 646 (1985).

Where a petition to revoke probation formally charging a probationer with committing a violation is filed and the court subsequently determines that the alleged violation was in fact committed,

there can be no legitimate justification for allowing the probationer to claim credit for time served on probation during the period between the filing of the petition and its ultimate adjudication. *Gage v. State*, Ct. App. Op. No. 484 (File No. A-643), 702 P.2d 646 (1985).

Revocation for offense discovered after probationary period has run. — Where a defendant is convicted of an offense and placed on probation for two years and commits a further offense within the two-year period which is not discovered by the division of corrections until after the two-year period runs, the trial court may revoke probation so long as the petition to revoke probation was filed within the five-year maximum probation period authorized by statute. *Galaktionoff v. State*, Ct. App. Op. No. 686 (File No. A-1625), 733 P.2d 628 (1987).

Sec. 12.55.100. Conditions of probation. (a) While on probation and among the conditions of probation, the defendant may be required

- (1) to pay a fine in one or several sums;
- (2) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had;
- (3) to provide for the support of any persons for whose support the defendant is legally responsible;
- (4) to perform community work in accordance with AS 12.55.055; and
- (5) to pay a periodic probation fee as provided in AS 12.55.105.

(b) The defendant's liability for a fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation. (§ 8.10 ch 34 SLA 1962; am § 13 ch 166 SLA 1978; am § 3 ch 104 SLA 1984; am § 13 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added paragraph (5) of subsection (a) and made a related grammatical change.

Editor's note: Catchline "Enquiring paym the main par. Sec the note line."

Limitation fine. — The relative limit amount of a fine the apparent provided for un keeping with tory construc solved in favo two statutes. No. 421 (File (1984).

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NOTES TO DECISIONS

Editor's notes. — The note under the catchline "Enforcement of court orders requiring payment of fines or restitution" in the main pamphlet should be disregarded. See the note below under the same catchline.

Limitation on authority to impose fine. — The existence of an express legislative limitation on the permissible amount of a fine effectively conflicts with the apparent open ended authority provided for under subsection (a)(1), and in keeping with accepted principles of statutory construction, this conflict must be resolved in favor of the more specific of the two statutes. Stone v. State, Ct. App. Op. No. 421 (File No. A-245), 690 P.2d 22 (1984).

The \$5,000 maximum fine provided for in former AS 17.10.010 constitutes an implied limitation on the court's authority to impose a fine as a condition of probation under subsection (a)(1). Stone v. State, Ct. App. Op. No. 421 (File No. A-245), 690 P.2d 22 (1984).

Remand for determination of earning capacity for restitution order. — Though a presentence report recommended restitution, it did not discuss the defendant's earning capacity or the kinds of jobs that she could reasonably be ex-

pected to perform in the future; it was therefore necessary that the case be remanded to the trial court for further findings. Zimmerman v. State, Ct. App. Op. No. 524 (File No. A-921), 706 P.2d 343 (1985).

Enforcement of court orders requiring payment of fines or restitution. — AS 12.55.051(a) prescribes a specific method for dealing with enforcement of court orders requiring the payment of fines or restitution, regardless of whether such orders are directly imposed as part of the original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under this section; AS 12.55.051 expressly provides that imprisonment for failure to pay court-ordered restitution is permissible only if the failure to pay was intentional or the result of bad faith. Lominac v. Municipality of Anchorage, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Quoted in Hood v. Smedley, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972); Thibedeau v. State, Sup. Ct. Op. No. 2182 (File No. 4325), 617 P.2d 759 (1980).

Cited in Golden Valley Elec. Ass'n v. Revel, Sup. Ct. Op. No. 3063 (File No. S-1011), 719 P.2d 263 (1986).

Sec. 12.55.105. Probation fee. (a) A court granting probation shall require a periodic probation fee to be paid to the Department of Corrections as a condition of probation. The fee amount shall be established by regulation adopted by the commissioner of corrections.

(b) A probationer may choose to make the probation fee payments by assignment of the probationer's permanent fund dividend received under AS 43.23.005. The Department of Corrections shall provide a form to the probationer to indicate this preference to the Department of Revenue.

(c) The commissioner of corrections may attach the permanent fund dividend of a probationer that is in arrears on the probation fee.

(d) Money collected under this section shall be deposited in the general fund. The commissioner of administration shall separately account for money that the Department of Corrections deposits in the general fund under this subsection. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of AS 33.05. (§ 14 ch 138 SLA 1986)

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Commissioner may, at the discretion of the department of administration, credit the individual's annuity account with any amount not previously credited. If the individual, the individual has been in the state for 10 years. If the individual has been in the state for more than 10 years, the debt shall be paid within three years."
Notes. — The 1988 amendments. — January 1, 1989.

fund is established as a permanent fund dividend fund to be invested by AS 37.10.070. Each year the department shall distribute 50 percent of the fund for the fiscal year ending in the distribution.

act, the department shall implement this section for the fiscal year for which the department is determining the amount as provided in AS 37.10.070, AS 39.10.099 SLA 1985;

added subsection

department shall establish a permanent fund dividend fund; the Administrative Procedure Act (AS 44.62) shall require a permit for application of eligible individuals which the dividends are paid to the individual.

Administrative Procedure Act (AS 44.62) shall require a permit for application of eligible individuals which the dividends are paid to the individual.

upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends;

(5) annually determine, in cooperation with the Department of Corrections, the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d); and

(6) adopt regulations that are necessary to implement AS 43.23.005(d). (§ 1 ch 102 SLA 1982; am § 2 ch 55 SLA 1983; am § 3 ch 43 SLA 1984; am § 3 ch 54 SLA 1988)

Revisor's notes. — Section 11, ch. 99, SLA 1985, amends this section. The amendment is effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendment becomes law, the section will read: "The department shall

"(1) annually make payments to individuals who elect to receive cash under AS 43.23.005(d);

"(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend or for electing an annuity credit; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following that year;

"(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not credited or received

during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

"(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends; and

"(5) provide the commissioner of administration with information necessary to maintain individual annuity account records and administer the annuity program."

Effect of amendments. — The 1984 amendment substituted "October" for "December" in paragraph (2).

The 1988 amendment, effective May 26, 1988, deleted "and" at the end of paragraph (3), and added paragraphs (5) and (6).

Editor's notes. — Section 4, ch. 54, SLA 1988 provides that the amendments made to this section by ch. 54, SLA 1988 apply "only to eligibility for permanent fund dividends for years after 1988."

Sec. 43.23.065. Exemption of permanent fund dividends.

(a) Except as provided in (b) of this section, 50 percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

(1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220;

(2) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100;

(3) a court ordered probation fee under AS 12.55.105; or

(4) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 1 ch 57 SLA 1985; am § 67 ch 138 SLA 1986)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

"(b) The department shall require an in-

dividual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt described in (a)(1) or (2) of this section.

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Effect of amendments. — The 1984 amendment added the last sentence and, in the next-to-last sentence, substituted "An exemption is not" for "No exemption is," inserted "(1)," and added the language beginning with "(2) a debt" at the end of the sentence. Section 2, ch. 157, SLA 1984 limits the application of the 1984 amendment to dividends issued for 1984 and subsequent years.

The first 1985 amendment added "or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100" at the end of the next-to-last sentence and in the last sentence inserted "or court ordered restitution" and "and court ordered restitution."

The second 1985 amendment, effective if § 1, ch. 99, SLA 1985 is repealed, rewrote subsection (a) and added subsections (b) and (c).

The 1986 amendment rewrote this section.

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Sec. 14.43.105. Administration of program. The executive secretary shall administer the programs subject to review by the committee and in accordance with the regulations adopted by the committee. The adoption of these regulations is subject to the Administrative Procedure Act (AS 44.62). A summary of the regulations shall be distributed to each applicant. (§ 1 ch 98 SLA 1971; am § 5 ch 136 SLA 1974)

Revisor's notes. — Formerly AS 14.40.757. Renumbered in 1982.

Sec. 14.43.110. Undergraduate loans. The student financial aid committee may make a loan, not to exceed \$5,500 in any one school year, to an undergraduate student eligible under AS 14.43.125. The committee may make a loan for a summer term, even if the total loan for the school year exceeds the \$5,500 maximum, if the loan for the summer term is counted against the \$5,500 maximum for the following school year. (§ 1 ch 98 SLA 1971; am § 6 ch 136 SLA 1974; am § 1 ch 153 SLA 1978; am § 1 ch 89 SLA 1981; am § 1 ch 34 SLA 1985; am § 1 ch 65 SLA 1986)

Revisor's notes. — Formerly AS 14.40.759. Renumbered in 1982.

Effect of amendments. — The 1985 amendment added the second sentence of the section.

The 1986 amendment inserted "student financial aid" in the first sentence and substituted "\$5,500" for "\$6,000" in three places in the section.

Sec. 14.43.115. Graduate loans. The student financial aid committee may make a loan, not to exceed \$6,500 in any one school year, to a graduate student who is eligible under AS 14.43.125 and is pursuing an advanced degree. The committee may make a loan for a summer term, even if the total loan for the school year exceeds the \$6,500 maximum, if the loan for the summer term is counted against the \$6,500 maximum for the following school year. (§ 1 ch 98 SLA 1971; am § 7 ch 136 SLA 1974; am § 2 ch 89 SLA 1981; am § 2 ch 34 SLA 1985; am § 2 ch 65 SLA 1986)

Revisor's notes. — Formerly AS 14.40.761. Renumbered in 1982.

Effect of amendments. — The 1985 amendment added the second sentence.

The 1986 amendment inserted "student financial aid" in the first sentence and substituted "\$6,500" for "\$7,000" in three places in the section.

Sec. 14.43.120. Conditions of loans. (a) Proceeds from scholarship loans may only be used for books, tuition and required fees, and for room and board.

(b) Scholarship loans may only be used to attend a

(1) career education program that has been approved by the commission before July 1, 1986, or has been operating for at least two years before the borrower attends; or

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(2) a college or university that

(A) has been approved by the commission before July 1, 1986, or has been operating for at least two years before the borrower attends;

(B) is accredited by a national or regional accreditation association recognized by the Council on Postsecondary Accreditation or is approved by the commission; and

(C) if the loans are federally insured, is approved by the United States Secretary of Education.

(c) To maintain a loan the student must continue to be enrolled as a full-time student in good standing in a career education program, college or university designated under (b) of this section. The commission shall adopt regulations defining "good standing" for purposes of this subsection.

(d) Scholarship loans may not be made to a student

(1) for more than five years of undergraduate study;

(2) for more than five years of graduate study;

(3) for more than a total of eight years of undergraduate and graduate study;

(4) to attend an institution, other than a nonprofit institution, if the total amount of scholarship loans made to students to attend that institution exceeds \$100,000 and the default rate on those loans exceeds the program default rate by more than 150 percent as defined by regulation.

(e) Loans are interest bearing while a student is enrolled under (c) of this section or is receiving a deferment of payments under (k) of this section; however, a student is entitled to have a portion of the interest paid in accordance with (l) of this section.

(f) Interest on a loan given under AS 14.43.090 — 14.43.160 is at the rate of eight percent a year unless the loan is in default. Interest on a loan that is in default is 10 percent a year for the period the loan is in default.

(g) Repayment of the principal and interest on the loan begins no later than one year after the borrower's studies are terminated. The loan shall provide for repayment of the total amount owed in periodic installments in not more than 10 years from the commencement of repayment, except as provided in (k) and (m) of this section. If the commission and the borrower agree to a different repayment schedule, the borrower shall repay the loan in accordance with the agreement. A borrower may make payments earlier than required by this subsection.

(h) Security may not be required for a loan; however, provision shall be made for payment of all fees and costs incurred in collection of the amount owed on the loan if it becomes delinquent or in default.

(i) If a loan is in default, the commission shall notify the borrower that repayment of the remaining balance is accelerated and due by sending the borrower a notice by registered or certified mail. The

permanent fund dividend of a borrower may be taken under AS 43.23.065(b)(4) to satisfy the balance due on the defaulted loan.

(j) *[Repealed, § 19 ch 92 SLA 1987.]*

(k) Periodic installments of principal shall be deferred, but interest shall accrue and be paid unless the student is eligible for interest payment benefits under (l) of this section during any of the following:

- (1) return to student status as provided in (c) of this section;
- (2) serving an initial period of up to six years on active duty as a member of the armed forces of the United States;
- (3) serving, for up to three years, as a full-time volunteer under the Peace Corps Act;
- (4) serving, for up to three years, as a full-time volunteer under the Domestic Volunteer Service Act of 1973;

(5) for a one-time period up to 12 months in which the borrower is seeking and unable to find employment in the United States; or

(6) if the borrower becomes 50 percent or more disabled as certified by competent medical authority.

(l) The state shall pay the interest on that portion of a loan that is not federally insured during

- (1) the period in which the borrower is a full-time student;
- (2) deferments under (k) of this section.

(m) In case of hardship, the committee may extend repayment of a loan for an additional period of up to five years in increments no longer than 12 months each.

(n) *[Repealed, § 11 ch 89 SLA 1981.]*

(o) *[Repealed, § 19 ch 92 SLA 1987.]*

(p) For purposes of this section, a person qualifies as a resident if the person is physically present in the state with the intent to remain permanently in the state or, if not physically present in the state, the person intends to return to the state and is absent due to military service.

(q) For the purposes of this section a loan is in default if a loan payment is 120 or more days past due.

(r) The rate of interest, time of payment of an installment of principal or interest, or other terms of a scholarship loan may be modified if required to establish or maintain tax-exempt status under 26 U.S.C. 103 (Internal Revenue Code of 1986), as amended, for the interest on bonds issued by the Alaska Student Loan Corporation. (§ 1 ch 98 SLA 1971; am § 4 ch 150 SLA 1972; am § 6 ch 78 SLA 1974; am § 8 ch 136 SLA 1974; am §§ 1 — 4 ch 99 SLA 1977; am §§ 3 — 8 ch 87 SLA 1979; am §§ 3 — 9, 11 ch 89 SLA 1981; am §§ 2 — 4 ch 158 SLA 1984; am § 3 ch 34 SLA 1985; am §§ 3, 4 ch 65 SLA 1986; am §§ 5 — 9, 19 ch 92 SLA 1987)

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NR	BARD	[REDACTED], Arnold L.	168072	180.00	08/25/88	0.00
NR	BARD	[REDACTED] James	120015	225.00	11/25/88	69.00
NR	BARD			405.00		69.00
NR	BTHL	[REDACTED] Edward	68631	180.00	12/23/88	45.00
NR	BTHL	[REDACTED] Carl G.	66285	90.00	10/13/88	90.00
NR	BTHL	[REDACTED] Joseph	132690	135.00	12/23/88	0.00
NR	BTHL	[REDACTED] Dale	126336	45.00	10/13/88	0.00
NR	BTHL	[REDACTED] Golga	108441	225.00	12/23/88	0.00
NR	BTHL	[REDACTED] Charles	98802	225.00	12/23/88	0.00
NR	BTHL	[REDACTED] John Jr.	128073	45.00	12/23/88	0.00
NR	BTHL	[REDACTED] Preston	69441	44.00	10/13/88	1.00
NR	BTHL	[REDACTED] James	143619	225.00	12/23/88	0.00
NR	BTHL	[REDACTED] Joseph	141060	45.00	12/23/88	189.00
NR	BTHL	[REDACTED] Edwin	117795	45.00	12/23/88	213.00
NR	BTHL	[REDACTED] Leonty	128079	180.00	12/23/88	16.50
NR	BTHL			1484.00		554.50
NR	FRBK	[REDACTED] Gerald	140340	0.00	11/28/88	45.00
NR	FRBK	[REDACTED] Allen	127500	135.00	10/31/88	45.00
NR	FRBK	[REDACTED] Bill	24417	0.00	08/25/88	-7.50
NR	FRBK	[REDACTED] Charles	148806	0.00	08/25/88	0.00
NR	FRBK	[REDACTED] Terry	112332	285.00	11/25/88	0.00
NR	FRBK	[REDACTED] Raymond	127425	180.00	11/25/88	0.00
NR	FRBK	[REDACTED] Orville	133683	744.09	10/13/88	-264.09
NR	FRBK	[REDACTED] Dennis	143427	90.00	08/24/88	0.00
NR	FRBK	[REDACTED] John	132612	283.50	11/25/88	26.00
NR	FRBK	[REDACTED] Guy	153411	225.00	10/13/88	0.00
NR	FRBK	[REDACTED] Jerry A.	127659	0.00	11/28/88	-605.00
NR	FRBK	[REDACTED] Chester	88293	0.00	11/28/88	-35.00
NR	FRBK	[REDACTED] Michelle Y.	178959	100.00	11/29/88	5.00
NR	FRBK	[REDACTED] Tony	162756	105.00	10/31/88	33.00
NR	FRBK	[REDACTED] Martin	162960	225.00	11/25/88	0.00
NR	FRBK	[REDACTED] Richard	154611	157.50	11/01/88	0.00
NR	FRBK	[REDACTED] Patrick	127191	135.00	11/25/88	0.00
NR	FRBK	[REDACTED] Claude	155130	90.00	10/13/88	0.00
NR	FRBK	[REDACTED] Donald	136788	0.00	11/01/88	16.31
NR	FRBK	[REDACTED] Michelle	136833	61.31	11/01/88	0.00
NR	FRBK	[REDACTED] Blane	68898	280.50	10/12/88	0.00
NR	FRBK	[REDACTED] Jesse	1773	135.00	10/13/88	0.00
NR	FRBK	[REDACTED] Eric J.	169905	93.00	11/01/88	0.00
NR	FRBK	[REDACTED] William	104349	135.00	11/01/88	-90.00
NR	FRBK	[REDACTED] Samuel	143424	360.00	11/01/88	42.00
NR	FRBK	[REDACTED] Jack	131364	270.00	11/25/88	0.00
NR	FRBK	[REDACTED] Clinton	121926	180.00	11/25/88	45.00
NR	FRBK	[REDACTED] Donald	101688	50.00	10/12/88	109.50
NR	FRBK	[REDACTED] William	40929	100.00	10/13/88	40.00
NR	FRBK	[REDACTED] Leroy	129954	528.00	10/13/88	0.00

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
NR	FRBK	[REDACTED] Vickie S.	133410	0.00	11/28/88	-555.00
NR	FRBK	[REDACTED] John	148812	135.00	10/13/88	0.00
NR	FRBK	[REDACTED] Howard	139581	135.00	11/25/88	13.50
NR	FRBK	[REDACTED] Darlene	160563	193.50	11/25/88	45.00
NR	FRBK	[REDACTED] Roger Eric	112815	14.00	11/25/88	222.50
NR	FRBK	[REDACTED] Lazaro	137751	45.00	11/25/88	142.50
NR	FRBK	[REDACTED] Selena	157577	115.00	10/31/88	24.50
NR	FRBK	[REDACTED] Gerald	53966	30.00	08/25/88	0.00
NR	FRBK	[REDACTED] Larry	165168	90.00	10/13/88	0.00
NR	FRBK	[REDACTED] Michael T.	166338	90.00	10/13/88	25.50
NR	FRBK	[REDACTED] Willard	147378	90.00	11/01/88	95.00
NR	FRBK	[REDACTED] Allen	158652	0.00	08/25/88	0.00
NR	FRBK	[REDACTED] Merle	132510	180.00	11/01/88	70.50
NR	FRBK	[REDACTED] Linda S.	173967	0.00	11/28/88	45.00
NR	FRBK	[REDACTED] Robert	162755	67.50	10/13/88	45.00
NR	FRBK	[REDACTED] Robert	162753	45.00	11/01/88	112.50
NR	FRBK	[REDACTED] Russell	69468	150.00	11/01/88	63.00
NR	FRBK	[REDACTED] Ron	117798	200.00	11/25/88	104.50
NR	FRBK	[REDACTED] Frank	119541	181.50	08/25/88	0.00
NR	FRBK	[REDACTED] Floyd	135633	156.00	10/13/88	0.00
NR	FRBK	[REDACTED] William	142731	45.00	10/13/88	190.50
NR	FRBK	[REDACTED] Mark	116052	180.00	10/13/88	0.00
NR	FRBK	[REDACTED] Michael	157305	404.00	12/07/88	0.00
NR	FRBK	[REDACTED] Wayne	157824	200.00	11/01/88	25.00
NR	FRBK	[REDACTED] John	157821	180.00	11/01/88	0.00
NR	FRBK	[REDACTED] Brenda	136083	100.00	11/25/88	148.50
NR	FRBK	[REDACTED] Larry	161115	150.00	11/01/88	55.50
NR	FRBK	[REDACTED] Christine L.	159309	0.00	10/13/88	110.00
NR	FRBK	[REDACTED] Paul L.	128082	175.00	10/13/88	39.50
NR	FRBK	[REDACTED] William T.	158619	407.00	11/28/88	1.50
NR	FRBK	[REDACTED] Brandon	131217	0.00	11/28/88	89.00
NR	FRBK	[REDACTED] Juan	170799	0.00	11/28/88	-135.00
NR	FRBK	[REDACTED] Walter	76623	230.00	11/25/88	48.50
NR	FRBK	[REDACTED] Tamara	153951	0.00	11/28/88	45.00
NR	FRBK	[REDACTED] Thomas	125913	180.00	10/31/88	0.00
NR	FRBK	[REDACTED] Raymond	27759	0.00	10/25/88	312.00
NR	FRBK	[REDACTED] Chad	137175	100.00	10/13/88	80.00
NR	FRBK	[REDACTED] Melvin	34785	200.00	11/01/88	-20.00
NR	FRBK	[REDACTED] Arnold	157833	90.00	11/01/88	0.00
NR	FRBK	[REDACTED] Wesley	130950	151.00	10/31/88	45.00
NR	FRBK	[REDACTED] Gary F.	83943	180.00	11/01/88	10.50
NR	FRBK	[REDACTED] Ronald	64596	0.00	11/28/88	-265.00
NR	FRBK	[REDACTED] John	167076	405.00	08/24/88	-315.00
NR	FRBK	[REDACTED] John	94779	0.00	08/25/88	7.50
NR	FRBK	[REDACTED] Beverly	132447	162.50	08/25/88	0.00
NR	FRBK	[REDACTED] Robert D.	143501	0.00	11/28/88	0.00
NR	FRBK	[REDACTED] Jonathan	45933	0.00	11/28/88	16.50
NR	FRBK	[REDACTED] Alan D.	158241	0.00	11/28/88	-420.00
NR	FRBK	[REDACTED] Edward	126378	40.00	10/13/88	140.00
NR	FRBK	[REDACTED] Jacqueline	142005	90.00	11/25/88	178.50
NR	FRBK	[REDACTED] Gene	164202	189.50	10/31/88	45.00
NR	FRBK	[REDACTED] James	125256	90.00	11/01/88	110.50

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
NR	FREK			10814.40		402.72
NR	KOTZ	[REDACTED] George	129687	225.00	12/23/88	0.00
NR	KOTZ	[REDACTED] Chris	146259	225.00	12/23/88	0.00
NR	KOTZ	[REDACTED] Kenneth	144939	270.00	11/01/88	0.00
NR	KOTZ	[REDACTED] Michael	174135	225.00	12/23/88	0.00
NR	KOTZ	[REDACTED] Thomas Sr.	176517	90.00	12/23/88	0.00
NR	KOTZ	[REDACTED] Ricky C.	150615	240.00	10/13/88	0.00
NR	KOTZ	[REDACTED] John	101148	90.00	12/23/88	135.00
NR	KOTZ			1365.00		135.00
NR	NOME	[REDACTED] Robert	62601	45.00	10/13/88	45.00
NR	NOME	[REDACTED] Shirlene	82467	225.00	11/25/88	0.00
NR	NOME	[REDACTED] Patty	141099	241.50	12/23/88	21.00
NR	NOME	[REDACTED] George I. Jr.	156279	0.00	11/25/88	0.00
NR	NOME	[REDACTED] Robert	33387	0.00	11/25/88	460.50
NR	NOME	[REDACTED] Larry	41559	180.00	11/25/88	13.50
NR	NOME	[REDACTED] Thomas	146256	0.00	11/01/88	-90.00
NR	NOME	[REDACTED] Thomas	144942	326.00	11/01/88	0.00
NR	NOME	[REDACTED] Joel L.	74877	0.00	11/25/88	400.00
NR	NOME	[REDACTED] John	124626	225.00	11/25/88	0.00
NR	NOME	[REDACTED] Warren	23631	45.00	12/23/88	10.00
NR	NOME	[REDACTED] Wayne	50370	540.00	08/26/88	-450.00
NR	NOME	[REDACTED] Margaret	130335	0.00	11/25/88	111.00
NR	NOME	[REDACTED] Dennis	114363	225.00	11/25/88	0.00
NR	NOME	[REDACTED] Karen	87477	135.00	10/13/88	0.00
NR	NOME	[REDACTED] Scott	141141	180.00	11/25/88	180.00
NR	NOME			2367.50		701.00
NR				16435.90		1862.22
SC	ANCH	[REDACTED] Jeffrey	136173	180.00	08/30/88	0.50
SC	ANCH	[REDACTED] Robert Michael	177159	109.00	11/29/88	2.00
SC	ANCH	[REDACTED] Raymond C.	117369	135.00	12/01/88	45.00
SC	ANCH	[REDACTED] Fannie	128604	135.00	08/30/88	135.00
SC	ANCH	[REDACTED] Samuel J.	145995	90.00	08/30/88	0.00
SC	ANCH	[REDACTED] Crystal	175923	90.00	11/29/88	61.50
SC	ANCH	[REDACTED] Robert	141726	175.00	12/01/88	0.00
SC	ANCH	[REDACTED] Pamela O.	148557		09/02/88	0.00
SC	ANCH	[REDACTED] Ean S.	133113	90.00	11/29/88	537.00
SC	ANCH	[REDACTED] William E.	148188	-25.05	09/13/88	0.00
SC	ANCH	[REDACTED] Richard	139353	19.50	08/30/88	0.00

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
SC	ANCH	Anthony	130059	190.00	11/29/88	205.00
SC	ANCH	Gust	127395	45.00	08/30/88	0.00
SC	ANCH	Bienvenido	101571	180.00	12/01/88	34.50
SC	ANCH	Jim	136233	180.00	08/30/88	22.00
SC	ANCH	Beth	175578	90.00	12/01/88	0.00
SC	ANCH	Michael R.	144486		09/02/88	0.00
SC	ANCH	Richard	108327	135.00	09/01/88	0.00
SC	ANCH	Sandra	157746	135.00	12/01/88	172.50
SC	ANCH	Allen K.	21984		09/02/88	0.00
SC	ANCH	George A.	92256	40.00	11/29/88	392.00
SC	ANCH	James L.	145107	180.00	12/01/88	0.00
SC	ANCH	Larry	177195	109.50	11/29/88	18.00
SC	ANCH	John	91125	90.00	09/29/88	49.50
SC	ANCH	Ron	174153	90.00	11/29/88	0.00
SC	ANCH	Shannon	168549	135.00	09/28/88	0.00
SC	ANCH	John	141852	60.00	08/30/88	138.00
SC	ANCH	Sean	133140	180.00	10/27/88	0.00
SC	ANCH	Eric J.	123930	135.00	09/29/88	45.00
SC	ANCH	Jeff	150015	100.00	08/30/88	123.50
SC	ANCH	Jeffrey	128847	180.00	09/29/88	84.00
SC	ANCH	Aaron	161205	135.00	09/29/88	0.00
SC	ANCH	Jose L.	63660	114.50	08/30/88	0.00
SC	ANCH	Denise	93912	180.00	12/01/88	1.50
SC	ANCH	Robert E.	77562	70.00	08/30/88	227.50
SC	ANCH	Leonard W.	1623		09/02/88	0.00
SC	ANCH	William	165858	81.00	11/29/88	0.00
SC	ANCH	Robert	105504	180.00	11/29/88	0.00
SC	ANCH	Jerrell	134454	135.00	09/28/88	0.00
SC	ANCH	Tammy	161937	135.00	12/01/88	16.50
SC	ANCH	Robert Martin	132513	80.00	11/29/88	10.00
SC	ANCH	Stacy L.	127752	90.00	08/30/88	-22.69
SC	ANCH	James A.	161643		09/02/88	0.00
SC	ANCH	Sherwyn Miles	128097	200.00	11/29/88	169.00
SC	ANCH	Ronald	77416	45.00	12/01/88	10.50
SC	ANCH	Rose	155931	45.00	08/30/88	0.00
SC	ANCH	Linda L.	136149	708.19	08/30/88	10.31
SC	ANCH	Andrew R.	113424	114.00	08/30/88	0.00
SC	ANCH	Gerald	108906	90.00	08/30/88	135.00
SC	ANCH	Robert R.	148146	90.00	08/30/88	0.00
SC	ANCH	John F.	120429	90.00	09/29/88	57.00
SC	ANCH	Todd R.	184095	20.00	11/29/88	0.00
SC	ANCH	Peter	2277		09/02/88	0.00
SC	ANCH	Valton	140139	180.00	12/01/88	84.00
SC	ANCH	Peter A.	129780		09/02/88	0.00
SC	ANCH	Deborah K.	168555	135.00	12/01/88	0.00
SC	ANCH	Deborah L.	140970	135.00	12/01/88	49.50
SC	ANCH	Troy	44456	45.00	12/01/88	9.00
SC	ANCH	Thomas W.	101885		09/02/88	0.00
SC	ANCH	Linda E.	140616	20.00	08/30/88	175.00
SC	ANCH	Richard D.	67311	50.00	12/01/88	0.00
SC	ANCH	Randy	118059	180.00	12/01/88	45.00
SC	ANCH	James	174879	45.00	11/29/88	7.50
SC	ANCH	Trena K.	154116	75.00	08/30/88	150.00
SC	ANCH	Paul	112026	75.00	12/01/88	0.00