

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7007 HOUSE JUDICIARY

Senator Pat Pourchot
SB 39 Back up

SB 39, "An Act relating to the permanent fund and the Alaska Permanent Fund Corporation; and providing for an effective date."

Recent Office of Management and Budget research, the final report of the Commission on the Future of the Permanent Fund, and the Permanent Fund Board of Trustess have all identified several needed clarifications of statutory intent to ensure the legality of current Corporation practices. **Senate Bill 39** attempts to clean up many of the following inconsistencies, ambiguities and other confusing provisions currently in the statutes governing the Permanent Fund.

Language Consistency:

Currently in statute, the terms "Alaska Permanent Fund" and "Alaska Permanent Fund Corporation" are used inconsistently. The first term should refer to assets owned by the State of Alaska, and second term should refer only to the government instrumentality created to manage and invest those assets. The proposed legislation modifies AS 37.13.010 - AS 37.13.210 to use these terms correctly and consistently.

Adjustments to the Legislated List of Investments:

The Corporation is limited to investments of the types specified in statute. Unfortunately this list has not been updated to reflect the current state of financial markets. **Section 10** of SB 39 makes it possible for the Corporation to take advantage of investment opportunities in AA rated or better municipal and state bonds. This section also provides specific authorization for investments in money market instruments. This proposal also removes several investment instruments that have never been used, are not appropriate for the Fund, and have been prohibited by Board policy.

Inflation-proofing Deposits:

Money is added to the principal of the Fund once a year to offset the loss of value of the principal due to inflation. Inflation-proofing monthly deposits to the principal from mineral lease royalties and rents could be a very complex task if each deposit were inflation-proofed at a different rate depending on when during the year it was added to the Fund. To ensure that the simplest, most conservative method of inflation-proofing is used, **Section 18** of this legislation mandates that all deposits to the principal of the Fund shall be inflation-proofed at the full annual rate. This change in statute conforms to the current practice of the Corporation.

Litigation Revenue:

The Permanent Fund has received and will probably continue to receive hundreds of millions of dollars from settlements and awards from contested leasing and royalty issues. The money received by the Fund as a result of royalty and leasing litigation has two components, the original amount owed the fund and the interest that money has garnered during the dispute. Current statutes are silent on how these individual components are to be treated by the Corporation. Auditors have differed in their opinions on how such funds should be treated.

This confusion raises two important questions that require legislative clarification: 1) Should interest earned on monies due the Permanent Fund be included in the monies deposited in the Fund when the state eventually receives the funds? and 2) If interest is deposited in the fund, should it be counted as a contribution to principal or counted as income in the year in which the money was received?

The resolution could have a serious fiscal impact on the Fund. For example, the Fund could receive as much as \$385 million in disputed rents, bonuses and royalties from the Dinkum Sands and North Slope Royalty disputes. In the years since litigation was initiated those monies have earned \$386 million in interest (source: April 1990 OMB Report as altered by 1990 Arco Settlement). If the interest income is not dedicated to the Fund, then the interest funds would be general funds available for legislative appropriation. If the interest income is transferred to the Corporation, but is treated as income generated in the year it is received,

the income picture of the Corporation for that year could be dramatically skewed, affecting dividends in that year. The four subsequent years of dividends would be affected as well because of the averaging method currently used to calculate dividends.

The final alternative, treating all interest received as contributions to principal is the course of action currently being used by the Corporation. The legislature ratified this interpretation in the FY91 Operating Budget by mandating similar treatment for any litigation settlement interest monies in FY91.

Section 1 of the proposed legislation clears up this uncertainty by ensuring that all interest on the Fund's share of any settlements or awards will be transferred to the Fund, and that both the original amount due the Fund and any interest it has garnered shall be counted as deposits to the principal of the Fund. This represents the most conservative approach to this question. It adds the greatest amount possible to the principal of the Fund and prevents unpredictable and destabilizing surges in the Corporation's earnings.

Timely Transfers from DNR:

Current law mandates the transfer of funds due the Fund from royalty and lease income from the Department of Natural Resources on a monthly basis. During the thirty-day period between transfers DNR can accumulate sizable balances of monies that will eventually be transferred to the Fund. During recent months of exceptionally high oil prices and high production these monthly transfers have been as high as \$55 million. (November of 1990).

Section 2 of this proposal changes the process so that the Fund receives a transfer whenever \$5 million dollars owed the Fund accumulates at DNR or once a month, whichever is sooner. This will allow the Fund to gain the greatest possible benefit from the monies that have been constitutionally and statutorily dedicated for that purpose.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Juneau, Alaska 99801-2101

MEMORANDUM

February 5, 1992

SUBJECT: Permanent Fund Corporation (SB 39)

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Tamara Brandt Cook
Director *TBC*

You have asked whether the Board of Trustees of the Alaska Permanent Fund Corporation may be subject to legislative confirmation in view of AS 24.20.206(1), which provides:

Sec. 24.20.206. DUTIES. The Legislative Budget and Audit Committee shall:

(1) report to the legislature its recommendations relating to the confirmation of appointees to the Board of Trustees of the Alaska Permanent Fund Corporation; . . .

AS 24.20.206(1) was enacted as part of the 1980 Act, ch. 18, SLA 1980, establishing the permanent fund dividend corporation and providing for legislative oversight of the permanent fund. AS 37.13.050 originally contained the confirmation requirement also, but that was amended out in 1982 and, apparently, a conforming amendment to 24.20.206(1) was overlooked. With respect to the original 1980 legislation, our drafting file contains a note in the handwriting of the then-revisor of statutes, Donna Pegues, saying:

The appointment and removal provisions violate Bradner v. Hammond re confirmation. . . . This is not (1) a regulatory board [, or] (2) a bd. at head of department. Confirmation is unconstitutional. But I know no one (including the governor) cares.

I cannot find that we formally advised legislators of our conclusion on this point in 1980, but verbal advice may have been given at the time.

The Alaska Permanent Fund Corporation is established as a public corporation. AS 37.13.040. Our position is that legislative confirmation may not be required for the members of the board of directors of a public corporation. The basis for that was set out in a memorandum dated February 11, 1991 by Legislative Counsel Jerry Luckhaupt:

The constitutional convention proceedings are also helpful in determining whether a public corporation could be considered a "regulatory board." The convention specifically addressed the relationship between § 26 and the University of Alaska, a public corporation, and public corporations generally. Discussion of § 26 includes this statement by Delegate Sundborg:

This whole section applies only to three classes of agencies. It applies to principal departments of the state, to regulatory bodies and quasi-judicial bodies. It is inconceivable to me that no matter what the legislature did it could ever put the University of Alaska under one of those three headings, and I am very much afraid here that if we read in here an exception saying that it shall not apply to the University of Alaska, that it would apply or that it could be construed to apply to any other state corporation because we had not excepted that from the language.

ACCP, at p. 2257.

Delegate Walsh stated that after checking with a couple of attorneys he believed that the University of Alaska was not subject to the requirements of § 26 because it was a public corporation. ACCP, at p. 2246. Delegate Riley stated that he believed that the University of Alaska was clearly beyond the reach of § 26. ACCP, at p. 2248. A similar comment was made by Delegate V. Rivers while entertaining questions about the Committee on the Executive Branch's report. ACCP, at p. 2033-34.

From these examples it seems clear that a public corporation, established by the state, is not a § 26 board. It is also difficult to conceive how the state could delegate the responsibility of running a principal department or the exercise of the state's police powers through a regulatory or quasi-judicial agency to a public corporation, whose board owes a duty to the corporation and not necessarily to the state. Finally, the Alaska Supreme Court in Walker v. Alaska State Mortgage Authority, 416 P.2d 245 (Alaska 1966) held that ASMA, a public corporate authority of the state, was not at the head of a

Representative Dave Donley

February 5, 1992

Page 3

principal department of the state for purposes of triggering the confirmation requirement of § 26. The court did not discuss, but apparently assumed for purposes of that section that ASMA was not a "regulatory or quasi-judicial agency."

Therefore, I conclude that a "regulatory agency" for purposes of art. III, § 26 of the constitution, is an agency governed by a board or commission that adopts rules that govern, direct, or control the public, segments of the public (including professions or enterprises), or the use of the resources of the state. The term does not include public corporations created by the state.

If I can be of further assistance, please advise.

TBC:gc
92-101.glc

Enclosure



Alaska Permanent Fund Corporation

P.O. Box 25500 Juneau, Alaska 99802-5500

(907) 465-2047

MEMORANDUM

DATE: February 3, 1992

TO: Representative Dave Donley
Chairman, House Judiciary Committee

FROM: John Kelsey *J.K.*
Chairman, Board of Trustees

SUBJECT: **Proposed Amendments to CS for Senate Bill No. 39 (Finance): "An Act relating to the permanent fund and the Alaska Permanent Fund Corporation; and providing for an effective date."**

The Board of Trustees of the Alaska Permanent Fund Corporation, at their December 6, 1991 board meeting, expressed their continuing support for your bill, CS Senate Bill No. 39 (Finance), and asked for your support on the following three amendments:

Amendment #1:

AS 36.30.850(a)(16) is amended to read:

- (16) a contract that is a delegation, in whole or in part, of investment powers or fiduciary responsibilities of
- (A) the Board of Trustees of the Alaska Permanent Fund Corporation under AS 37.13;
 - (B) the Alaska Mental Health Trust Authority under AS 37.14.0001 - 37.14.099;

Purpose: Currently, the Corporation is exempt from the provisions of the procurement code only for contracts which are a delegation of investment powers. This amendment would clarify existing law to make it clear that the exemption includes contracts not only with a firm which specifically invests money on the Fund's behalf, but also with any firm which has a fiduciary

relationship with the Corporation such as the real estate consultant, the Fund's custodian, the manger search advisor and the asset allocation advisor.

Amendment #2:

AS 37.13.120(g)(8) is amended to read:

- (8) domestic corporate debt securities that are rated A [AA] or better by a nationally-recognized rating service, or nondomestic corporate debt securities of comparable quality;

Purpose: By expanding the Corporation's list of authorized investments to include A-rated corporate bonds, this amendment would add measurable dollars to the Fund's income over time without, in the judgment of management, significantly raising the Fund's risk level. According to a November 8, 1990 Corporation analysis which compared market returns of A-rated bonds versus AA-rated and better over the past 5 years, the impact of the current statutory restriction was about .02 percent per year. A September 1989 Callan Associates study using similar data over the preceding 16.5 years estimated a .09 percent impact per year. At a .02 — .09 percent range, this amendment potentially translates into a gain of approximately \$1.5 — \$6.75 million of total return each year on the Fund's \$7.5 billion marketable debt portfolio. See also the attached memorandum from William L. Means dated February 19, 1991.

Amendment #3:

AS 37.13.120(i) is amended to read

(i) The Alaska permanent fund may at no time own more than five percent of the voting stock of a corporation. Domestic stocks, except for bank and insurance company stocks, must be listed at the date of purchase on an exchange registered with the Securities and Exchange Commission. At the time of each investment, the aggregate investment of the fund in each stated category of investment may not exceed the following stated percentage of the total investments of the fund:

- (1) mortgages under (g)(16) of this section - 15 percent;
- (2) real estate investments under (g)(20) of this section - 15 percent;
- (3) certificates of deposit, term deposits, or bankers' acceptances under (g)(19) of this section - 20 percent;
- (4) securities of nondomestic governments, nondomestic government agencies, and nondomestic corporations under (g)(8), (21), and (22) of this section, domestic corporate stocks

[AND DEBT SECURITIES] under (g)[(8) AND](18) of this section, and short-term nondomestic corporate promissory notes under (g)(9)(B) of this section - 50 percent.

Purpose: There is a need to consider changes to the above statute which establishes statutory asset allocation limits on the investment of the Permanent Fund. In particular, the combined limit on U.S. corporate stocks and bonds and all non-U.S. investments which is currently set at 50 percent poses a problem. With 10.16 percent of the Fund (at cost) invested in U.S. corporate bonds as of November 30, 1991, staff finds itself legally prohibited from meeting the target asset allocation of 30% U.S. stock and 10% non-domestic stock adopted by the Board of Trustees last March. The Corporation recommends that this problem be solved by removing corporate debt securities from the limitation imposed by AS 37.13.120(i)(4).

STATE OF ALASKA

Department of Revenue Treasury Division Cash Management

Facsimile Transmittal Form

Our Fax Number: (907) 465-4019

Addressed to: Jim Kelly
Research & Liaison Officer

Fax Number: 586-2057

From: Vern Voss, Cash Manager & Investment Officer
 Bruce Smith, Investment Officer
 Joe Meek, Accountant
 Debbie Idone, Accounting Technician

Total number of pages (including transmittal sheet) 2

If problems are experienced with this transmission, please call (907) 465-2360.

Comments: _____

Jim

1-31-92

Per our telephone conversation re proposed
change to senate Bill NO 38.

Sec. 2 line 7

Delete: ON

Add: within three banking days after

Jim Law

THE FORD FOUNDATION
320 EAST 43RD STREET
NEW YORK, NEW YORK 10017

RECEIVED 1-30-1992

JOHN W. ENGLISH
VICE PRESIDENT AND
CHIEF INVESTMENT OFFICER

(212) 573-5050

January 30, 1992

Senator Pat Pourchot
P.O. Box V
Juneau, Alaska 99811

Dear Pat:

Enclosed as you requested is some information on bond ratings and what the ratings mean.

Please note that an "A" rating is considered "upper medium grade" with a possible "susceptibility to impairment sometime in the future."

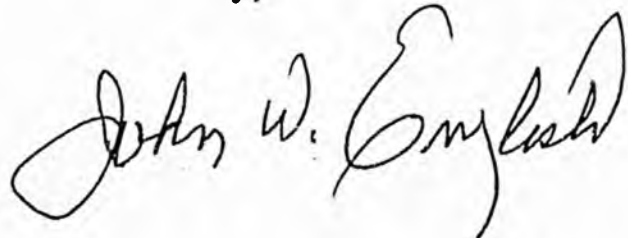
I'm also enclosing a copy of The Ford Foundation's Investment Policies and Guidelines which may be of interest.

As you know, there is a trade-off between risk and return.

My risk tolerance does not go any lower than "AA".

Please let me know if I can provide any additional assistance. I enjoy serving the State of Alaska in any way that I can.

Sincerely,



JWE:1f

Encs.

JOHN W. ENGLISH

VICE PRESIDENT AND
CHIEF INVESTMENT OFFICER
THE FORD FOUNDATION

320 EAST 43RD STREET
NEW YORK, N. Y. 10017
212-573-5050

INVESTMENTS FOR GROWING CHILDREN
OF THE FORD FOUNDATION

As intended through September 24, 1991

INVESTMENT GUIDELINES*

(1) The Foundation should limit its investments to the following categories:

- (a) publicly traded securities; and
- (b) securities not traded publicly and investments in real estate, provided that there shall exist adequate prospect of gain to compensate for (i) the limited marketability of such securities and investments, and (ii) the additional burden of investigation and administration inherent in such securities and investments.

(2) The Foundation's Vice President and Chief Investment Officer is responsible for maintaining a diversified portfolio of investments within the two broad categories of Equities and Fixed Income. Each category includes both domestic and foreign investments. The Equities category includes stocks, real estate, venture capital, and any other permissible investments whose returns are linked to such investments. The Fixed Income category includes long-term bonds and cash investments. The asset mix ranges are outlined below:

<u>ASSET CLASS</u>	<u>ASSET MIX RANGE</u>	
	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>TOTAL EQUITIES</u>	30%	70%
Stocks (minimum: 30%)	Maximum 65%	
Real Estate	10%	
Venture Capital	5%	
<u>TOTAL FIXED INCOME</u>	30%	70%
<u>TOTAL INTERNATIONAL SECURITIES</u> (Stocks, Bonds, Cash)	0%	25%

(3) Without prior Investment Committee approval, investments shall not be made in commodity futures (except financial futures), in working interests in oil and gas wells, or in "puts," "calls," "straddles" or other options (except covered call options, and other options including warrants granted in connection with an investment in other securities customarily acquired by institutional investors); nor without such approval shall securities be purchased on margin or "short sales" or "sales against the box" be made.

* Initially adopted by the Finance Committee on June 23, 1971; and as amended through September 25, 1991.

APPENDIX A

**STANDARD & POOR'S
CORPORATE AND MUNICIPAL BOND
RATING DEFINITIONS**

A Standard & Poor's corporate or municipal bond rating is a current assessment of the creditworthiness of an obligor with respect to a specific debt obligation. This assessment may take into consideration obligors such as guarantors, insurers, or lessees.

The bond rating is not a recommendation to purchase, sell, or hold a security inasmuch as it does not comment as to market price or suitability for a particular investor.

The ratings are based on current information furnished by the issuer or obtained by Standard & Poor's from other sources we consider reliable. We do not perform an audit in connection with any rating and may, on occasion, rely on unaudited financial information. The ratings may be changed, suspended, or withdrawn as a result of changes in, or unavailability of, such information, or for other reasons.

The ratings are based, in varying degrees, on the following considerations:

- I. Likelihood of default—capacity and willingness of the obligor as to the timely payment of interest and repayment of principal in accordance with the terms of the obligation
- II. Nature of and provisions of the obligation
- III. Protection afforded by, and relative position of, the obligation in the event of bankruptcy, reorganization, or other arrangement under the laws of bankruptcy and other laws affecting creditor's rights

AAA Bonds rated AAA have the highest rating assigned by Standard & Poor's to a debt obligation. Capacity to pay interest and repay principal is extremely strong.

AA Bonds rated AA have a very strong capacity to pay interest and repay principal and differ from the highest-rated issues only in a small degree.

A Bonds rated A have a strong capacity to pay interest and repay principal, although they are somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than bonds in higher-rated categories.

BBB Bonds rated BBB are regarded as having an adequate capacity to pay interest and repay principal. Although they normally exhibit adequate protection parameters, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity to pay interest and repay principal for bonds in this category than for bonds in higher-rated categories.

Standard & Poor's
Corporate and Municipal
Bond
Rating
Definitions
and
Other
List
Items

MOODY'S BOND RATINGS

The system of rating securities was originated by John Moody in

The purpose of Moody's Ratings is to provide the investors with a simple system of gradation by which the relative investment qualities of bonds may be noted.

Rating Symbols: Gradations of investment quality are indicated by rating symbols, each symbol representing a group in which the quality characteristics are broadly the same. There are nine symbols as shown below, from that used to designate least investment risk (i.e., highest investment quality) to that denoting greatest investment risk (i.e., lowest investment quality):

Aaa Aa A Baa Ba B Caa Ca C

For explanation of municipal rating symbols, in particular the A 1 and Baa 1 groups see page 328

Absence of Rating: Where no rating has been assigned or where a rating has been suspended or withdrawn, it may be for reasons unrelated to the quality of the issue.

Should no rating be assigned, the reason may be one of the following:

1. An application for rating was not received or accepted.
2. The issue or issuer belongs to a group of securities or companies that are not rated as a matter of policy.
3. There is a lack of essential data pertaining to the issue or issuer.
4. The issue was privately placed, in which case the rating is not published in Moody's publications.

Suspension or withdrawal may occur if new and material circumstances arise, the effects of which preclude satisfactory analysis; if there is no longer available reasonable up-to-date data to permit a judgment to be formed; if a bond is called for redemption; or for other reasons.

Changes in Rating: The quality of most bonds is not fixed and steady over a period of time, but tends to undergo change. For this reason changes in ratings occur so as to reflect these variations in the intrinsic position of individual bonds.

A change in rating may thus occur at any time in the case of an individual issue. Such rating change should serve notice that Moody's observes some alteration in the investment risks of the bond or that the previous rating did not fully reflect the quality of the bond as now seen. While because of their very nature, changes are to be expected more frequently among bonds of lower ratings than among bonds of higher ratings, nevertheless the user of bond ratings should keep close and constant check on all ratings—both high and low ratings—thereby to be able to note promptly any signs of change in investment status which may occur.

Limitations to Uses of Ratings: Bonds carrying the same rating are not claimed to be of absolutely equal quality. In a broad sense they are alike in position, but since there are a limited number of rating classes used in grading thousands of bonds, the symbols cannot reflect the fine gradations of risks which actually exist. Therefore, it should be evident to the user of ratings that two bonds identically rated are unlikely to be precisely the same in investment quality.

As ratings are designed exclusively for the purpose of grading bonds according to their investment qualities, they should not be used alone as a basis for investment operations. For example, they have no value in forecasting the direction of future trends of market price. Market price movements in bonds are influenced not only by the quality of individual issues but also by changes in money rates and general economic trends, as well as by the length of maturity, etc. During its life even the best quality bond may have wide price movements, while its high investment status remains unchanged.

The matter of market price has no bearing whatsoever on the determination of ratings which are not to be construed as recommendations with respect to "attractiveness." The attractiveness of a given bond may depend on its yield, its maturity date or other factors for which the investor may search, as well as on its investment quality, the only characteristic to which the rating refers.

Since ratings involve judgments about the future, on the one hand, and since they are used by investors as a means of protection, on the other, the effort is made when assigning ratings to look at "worst" potentialities in the "visible" future, rather than solely at the past record and the status of the present. Therefore, investors using the rating should not expect to find in them a reflection of statistical factors alone, since they are an appraisal of long term risks, including the recognition of many non-statistical factors.

Though ratings may be used by the banking authorities to classify bonds in their bank examination procedure, Moody's Ratings are not made with these bank regulations in view. Moody's Investors Service's own judgment as to desirability or non-desirability of a bond for bank investment purposes is not indicated by Moody's Ratings.

Moody's Ratings represent the mature opinion of Moody's Investors Service, Inc., as to the relative investment classification of bonds. As such, they should be used in conjunction with the description and statistics appearing in Moody's Manuals. Reference should be made to these statements for information regarding the issuer. Moody's Ratings are not commercial credit ratings. In no case is default or receivership to be imputed unless expressly so stated in the Manual.

KEY TO MOODY'S CORPORATE RATINGS

Aaa

Bonds which are rated Aaa are judged to be of the best quality. They carry the smallest degree of investment risk and are generally referred to as "gilt edge." Interest payments are protected by a large or by an exceptionally stable margin and principal is secure. While the various protective elements are likely to change, such changes as can be visualized are most unlikely to impair the fundamentally strong position of such issues.

Aa

Bonds which are rated Aa are judged to be of high quality by all standards. Together with the Aaa group they comprise what are generally known as high grade bonds. They are rated lower than the best bonds because margins of protection may not be as large as in Aaa securities or fluctuation of protective elements may be of greater amplitude or there may be other elements present which make the long term risks appear somewhat larger than in Aaa securities.

A

Bonds which are rated A possess many favorable investment attributes and are to be considered as upper medium grade obligations. Factors giving security to principal and interest are considered adequate but elements may be present which suggest a susceptibility to impairment sometime in the future.

Baa

Bonds which are rated Baa are considered as medium grade obligations, i.e., they are neither highly protected nor poorly secured. Interest payments and principal security appear adequate for the present but certain protective elements may be lacking or may be characteristically unreliable over any great length of time. Such bonds lack outstanding investment characteristics and in fact have speculative characteristics as well.

Ba

Bonds which are rated Ba are judged to have speculative elements; their future cannot be considered as well assured. Often the protection of interest and principal payments may be very moderate and thereby not well safeguarded during other good and bad times over the future. Uncertainty of position characterizes bonds in this class.

B

Bonds which are rated B generally lack characteristics of the desirable investment. Assurance of interest and principal payments or of maintenance of other terms of the contract over any long period of time may be small.

Caa

Bonds which are rated Caa are of poor standing. Such issues may be in default or there may be present elements of danger with respect to principal or interest.

Ca

Bonds which are rated Ca represent obligations which are speculative in a high degree. Such issues are often in default or have other marked shortcomings.

C

Bonds which are rated C are the lowest rated class of bonds and issues so rated can be regarded as having extremely poor prospects of ever attaining any real investment standing.

Note: Moody's applies numerical modifiers, 1, 2 and 3 in each generic rating classification from Aa through B in its corporate bond rating system. The modifier 1 indicates that the security ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates that the issue ranks in the lower end of its generic rating category.

Moody's bond ratings, where specified, are applied to senior bank obligations with an original maturity in excess of one year. Obligations relying upon support mechanisms such as letters-of-credit are excluded unless explicitly rated. Obligations of a branch of a bank are considered to be domiciled in the country in which the branch is located. Unless noted as an exception, Moody's rating on a bank's ability to repay senior obligations extends only to branches located in countries which carry a Moody's sovereign rating. Such branch obligations are rated at the lower of the bank's rating or Moody's sovereign rating for the bank deposits for the country in which the branch is located. When the currency in which the obligation is denominated is not the same as the currency of the country in which the obligation is domiciled, Moody's ratings do not incorporate an opinion as to whether payment of the obligation will be affected by the actions of the government controlling the currency of denomination. In addition, risk associated with bilateral conflicts between an investor's home country and either the issuer's home country or the country where an issuer branch is located are not incorporated into Moody's ratings. Moody's makes no representation that rated bank obligations are exempt from registration under the U.S. Securities Act of 1933 or issued in conformity with any other applicable law or regulation. Nor does Moody's represent any specific bank obligation is legally enforceable or a valid senior obligation of a rated issuer.

PERMANENT FUND POLICY ISSUES

April 1990

In the past four years, public policy makers in Alaska have increasingly focused their attention on the Permanent Fund. Literally hundreds of Permanent Fund bills and resolutions have been proposed since 1986, and many public hearings have been held. In part, the debate is provoked by the fiscal uncertainty which Alaska now faces with the downturn of Prudhoe Bay oil production - - an era in which the Permanent Fund is likely to play a fundamental, if as yet undefined, role. In part, however, the debate results from unresolved questions about the Permanent Fund's ultimate purpose, or purposes. These unresolved questions are likely to plague policy makers in the coming years as they grapple with the prospect of a diminishing revenue base and the task of defining the Permanent Fund's future use.

Now is therefore an opportune time to identify major policy issues surrounding the Permanent Fund for further consideration by policy makers. Although some of the issues appear technical at first glance, they each contain the elements of policy. If left to the technicians, policy will be set by default rather than by the state's policy makers through public discussion and healthy debate.

1. *Fundamental Issues*

Purpose(s) Of The Permanent Fund

Although current uses of Permanent Fund income are defined in statute, no agreement seems to exist about the ultimate purpose or purposes of the Fund's earnings. What role should the Permanent Fund play in the state's long-term fiscal policy? For example: are the earnings intended to support state government services in Alaska's post-oil era? or to avoid fiscal calamity if oil prices suddenly collapse? or to directly distribute Alaska's resource wealth to residents? or to provide some of Alaska's current oil wealth to future generations? or serve as an investment fund for infrastructure? or several of the above? or anything additional?

Inferring the purpose of the Fund's principal from the existing statutory scheme for allocating the fund's annual investment earnings forces one to conclude that the Permanent Fund exists solely to provide dividends. Inflation-proofing, from this perspective, simply insures the purchasing integrity of future-year dividend checks. While some espouse this interpretation, others believe the Permanent Fund was established as some kind of ultimate fiscal or economic insurance policy for Alaska. When the Alaska public voted favorably to approve the establishment of the Permanent Fund in 1976, the dividend program was not yet even in existence. (The dividend program would not be created until the 1980 legislative session.) Thus, considerations of individual "reward" were not part of the voters' decision-making in establishing the Fund or in envisioning its intended purpose.

The divergence of current interpretations reveals both the need to clarify the Permanent Fund's purposes, as well as the wisdom of doing so before events such as the Prudhoe Bay production downturn or another world oil price collapse force a hurried, ill-considered decision. With Prudhoe Bay production projected to fall to two-thirds of today's level by 1995, the time for public debate about the Fund's purpose clearly is at hand. Almost any use of earnings other than the status quo will require statutory changes, requiring dialogue and a much deeper understanding of the Fund's intricacies than now exists.

revenues) over the next fifteen to twenty years. These trends are shown in Figures 1 and 2.

Figure 1

**PRINCIPAL END BALANCE IN REAL DOLLARS
3% REAL RATE OF RETURN, MIDCASE REVENUES**

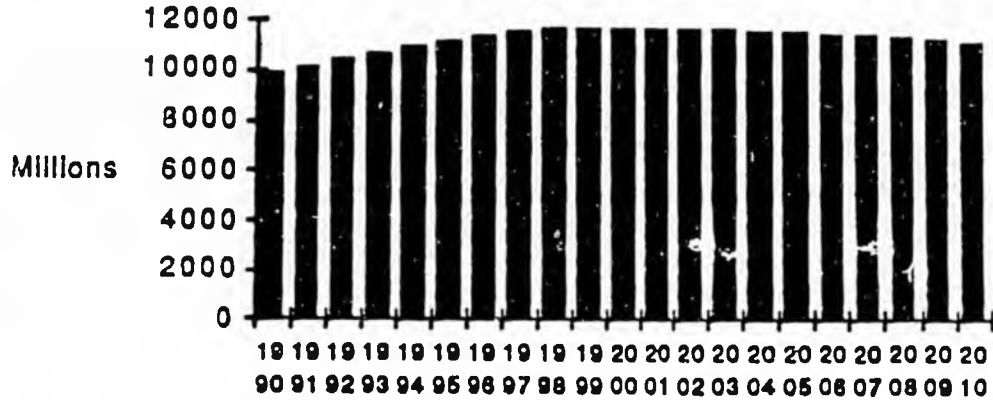
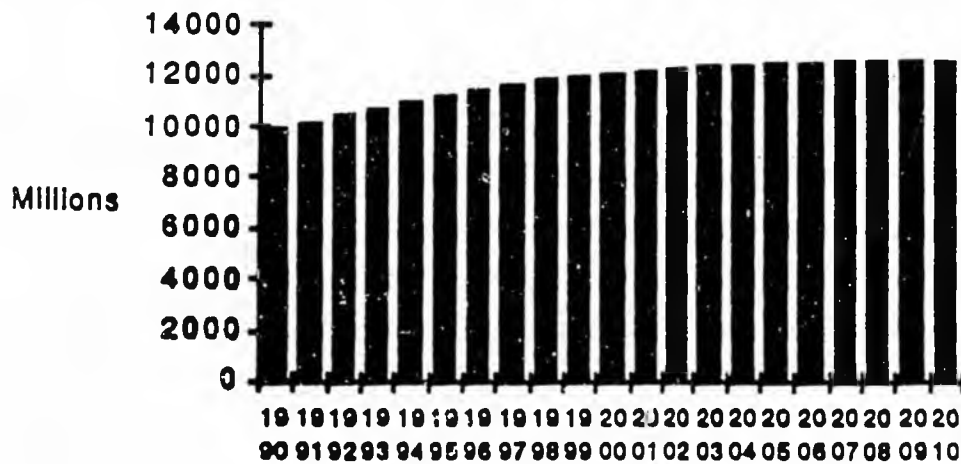


Figure 2

**PRINCIPAL END BALANCE IN REAL DOLLARS
4% REAL RATE OF RETURN, MIDCASE REVENUES**



This expected slowdown in the Fund's growth begs the question of the Permanent Fund's ultimate purposes, including the use of its earnings. It also complicates the dynamics of discussions about the Fund, because people

Any appropriation of money from the Permanent Fund's earnings reserve account, or any establishment of additional uses for Permanent Fund earnings (e.g., to supplement general fund appropriations), will compound the existing competition for Fund earnings and accelerate the reserve account's depletion. This would result in larger inflation-proofing shortfalls, and reduce the real value of the Fund's principal unless there is a change in the priority placed on inflation-proofing vis-a-vis dividends or other uses of earnings, or a fundamental structural change, such as establishment of a payout rule for Fund management.⁴

The complexities of inflation-proofing cease to be an issue if a fundamentally different approach to earnings is taken. A new approach, under initial consideration by the Trustees, is to fix an annual payout, based on the total market value of the Fund and other considerations. Under this approach, the Fund would retain its annual earnings, both realized and unrealized gains and losses, minus a percentage equivalent to real growth over time. Put simply, the amount paid out is not more than the long-term real earnings of the Fund, thus protecting the principal over time. Similar strategies have been used by various endowment funds, such as the Harvard Endowment. This approach and any other proposals, such as that proposed in House Bill 249, which preserve the real value of the Fund over time deserve active consideration by policymakers.

Investment Strategies

As dedicated revenues diminish, investment strategies, particularly "asset allocation" plans, chosen by the Corporation will become increasingly important in determining the health and ongoing power of the Permanent Fund. To date, the Trustees have been extremely conservative in their approach to diversification, with almost 80% of the portfolio in fixed income securities and very little in equities. As a result, the Fund's earnings performance has been adequate, but may not be in the future unless the investment strategy responds to changing financial markets.

⁴ Protecting the integrity of the Fund may be achieved through "a payout rule, developed at Harvard in the 1980s and since adopted in one form or another by various endowments and trusts. In its simplest form, a payout rule involves spending or "paying out" each year a percentage of the market value of the assets." Appendix C, *Final Report of the Commission on the Future of the Permanent Fund*, January 31, 1990, page 39.

any other uses of earnings. With the transition to more stocks in the portfolio, a basic management question will become balancing the need for current earnings versus growth in unrealized capital gains. The new asset allocation will probably generate a much more uneven cash flow than in the past. Thus, it may raise public concerns about short-term fund performance, as reflected in fluctuating dividend checks.

At this time, neither the Trustees nor the Legislature have set forth a policy about when to convert capital gains into realized returns. So far the Permanent Fund Corporation indicates it has resisted any pressures to increase realized earnings by selling securities that have an unrealized capital gain, except in appropriate market conditions. But an uneven cash flow and fluctuating dividend checks may tend to politicize fund management, especially at fiscal year-end.

The underlying policy question is the appropriate balancing of Fund benefits between current and future generations. Again, the lack of goals or priorities clearly defined in statute may well result in policy being set on a de facto basis. The lack of clear policy on conversion of capital gains into realized returns means that actual practice could change dramatically and inconsistently with legislative or gubernatorial desire, given a different Board of Trustees and/or staff.

2. Fiscal & Statutory Issues

Inflation-Proofing: More Dilemmas

(1) **Statutory Schizophrenia:** The statutory inflation-proofing procedures hinder the goal of protecting the Fund's principal. The formula for inflation-proofing requires that the inflation-proofing deposits be taken out of each year's cash earnings. This cash mandate calls for the Corporation to invest in short-term fixed-income, interest-bearing instruments. These instruments provide lesser yield than would equities over time. Thus, ironically, the procedures currently used to meet inflation-proofing requirements contribute to lesser

wise to err on the side of assuming the constitution means what it says in Article IX, Section 13. Accordingly, this year the Governor's proposed FY91 budget amendments include language providing an appropriation from annual earnings for inflation-proofing. From FY83 through FY89, \$1,644 million was transferred "automatically."

A second, related inflation-proofing issue is that an appropriation is clearly required in cases where funds are transferred out of the earnings reserve account to avoid an inflation-proofing shortfall; *i.e.*, in cases where the dividend distribution leaves too little residual net income to fully inflation-proof the fund's principal.

(4) **Conflicting Statutes:** Current law seems to require full inflation-proofing each year, rather than as much inflation-proofing as possible. AS 37.13.145 says that an amount "sufficient" for inflation-proofing "shall be transferred" (*emphasis added*) each year from the Permanent Fund's net income to the fund's principal. It does not say that the amount transferred for inflation-proofing shall depend on the amount of net income remaining after the dividend distribution, or on the size of the cumulative balance in the fund's earnings reserve account.

Yet, AS 37.13.145 and AS 43.23.045(b) (the statute specifying the size of the annual dividend distribution), can conflict with each other because AS 43.23.045(b) can leave too little net income available after dividends for the inflation-proofing requirements of AS 37.13.145 to be met. AS 43.23.045(b) takes precedence because it states, "Notwithstanding contrary provisions of the law...." As described earlier, the first inflation-proofing shortfall could occur as early as this fiscal year.

Also, the statutes reflect differing timelines: income available for distribution is calculated on a five year basis, while inflation requirements are calculated on an annual basis, thus increasing the potential for eventual conflict between the two provisions.

difference between "net income" and "Income available for distribution." Also alternative ways of structuring the statutes could be explored so that the entire distribution of Fund earnings is not dependent on a changing and not publicly reviewed formula.

Unclear "Income" Definitions": Impact on the General Fund

First, the Alaska constitution requires that "All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." But, the Corporation's calculations of "net income" do not include all income; instead, they exclude unrealized capital gains from securities. Thus, an argument can be made that current statute does not fully recognize "all income," and subsequently does not transfer to the general fund appropriate amounts.

Second, the Earnings Reserve Account may have received funds which actually belong to the General Fund - - potentially as much as \$335 million of the \$635 million FY89 ending balance. "Net income" is sometimes larger than "income available for distribution." Under the constitutional mandate and given the lack of a statutory disposition of the "net income" residual, it arguably should go to the General Fund. Instead, it has been retained in the earnings reserve account by the Corporation.

These possibly inappropriate allocations of earnings have resulted from the confusion arising over "net income" and "Income available for distribution." Inflation-proofing deposits are taken from "net income," leaving a residual. Dividend appropriations, however, are taken from "Income available for distribution," leaving a different residual. AS 37.13.145 then calls for the residual from "Income available for distribution" to be transferred to the earnings reserve account. But current statutes are silent on the disposition of any remaining net income. When "net income" is larger than "Income available for distribution," monies are left over.

This occurred in FY87, as follows:

million of interest earnings would go to the Permanent Fund, along with \$385 million in principal. The table below presents maximum distributions based on the "best of all possible worlds" outcomes for the state. Noteworthy is that interest earnings now rival the principal amount in both cases.

Maximum Possible Distributions to Permanent Fund of Dinkum Sands and North Slope Royalty-related Proceeds*

Dinkum Sands

\$ 194,797,625	Bonuses	244,126,432	Bonus Interest
<u>990,991</u>	Rents	<u>1,167,879</u>	Rent Interest
\$ 195,788,616	Total Rents/Bonuses	245,294,311	Total Interest

North Slope Royalty Case

\$ 131,249,721	RIV Deficiencies	101,117,831	RIV Interest
<u>58,266,680</u>	RIK Deficiencies	<u>39,747,053</u>	RIK Interest
\$ 189,516,401	Total Deficiencies	140,864,884	Total Interest

		<u>Principal</u>	<u>Interest</u>
Dinkum Sands	\$	195,788,616	245,294,311
North Slope		<u>189,516,401</u>	<u>140,864,884</u>
Total	\$	385,305,017	386,159,195
<hr/>			
Total Permanent Fund Distributions	\$	771,464,212	

* Dinkum Sands proceeds calculations based on Minerals Management Service data of 12/31/89; North Slope Royalty proceeds calculations based on estimated deficiencies plus interest as of 3/90; Hellen Partnow, and Condon.

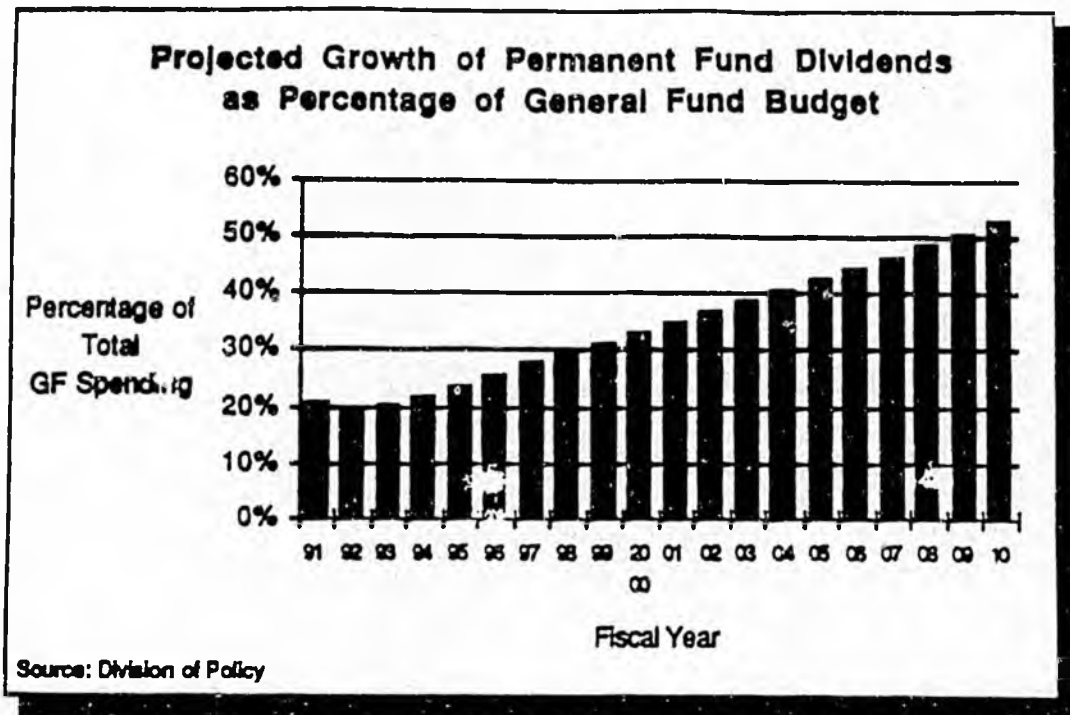
mineral lease rentals, royalties, royalty sale proceeds, certain net profit shares, and federal mineral revenue sharing payments from leases issued after December 1, 1979, and all bonuses received from mineral leases issued after February 15, 1980 to go to the Permanent Fund principal. This section was enacted in 1980, before Alaska court rulings on continuing appropriations, such as State v. Trustees for Alaska (Alaska 1982). On a first reading, the section appears to establish a dedicated fund, binds future legislatures, and effectively creates a continuing appropriation. That defect could be remedied by enacting a separate appropriation each time monies are received which would fall under the section. Without a companion appropriation, however, the section appears to be similar to AS 37.11.020 (requiring that not less than five percent of state mineral revenues be placed in the Alaska renewable resources development fund) which the Department of Law opined was unconstitutional. Nonetheless, in 1988, a transfer from the general fund was made of revenues received from a partial resolution of the Dinkum Sands case which included about \$80 million allocated to the Permanent Fund under AS 37.13.010(a)(2). Adding the following language to the FY91 and subsequent budgets would reaffirm the legislature's power of appropriation: "Amounts received by the state to which AS 37.13.010(a)(2) applies, shall be deposited into the principal of the Alaska permanent fund."

A similar situation occurs under AS 43.23.045, which calls for the annual earnings of any deposits received as a result of the North Slope Royalty case (formerly known as Amerada Hess) to be deposited back into the principal of the Fund. In order for this deposit to occur legally, a separate appropriation needs to be placed in the operating budget. As settlement monies were received in FY90, such language needs to be in the FY91 budget in order to cover the earnings at the end of FY90. The following language would be appropriate: "Interest earnings from deposits made to the Alaska permanent fund under AS 43.23.045 shall be deposited into the principal of the permanent fund."

Dividends As A Percentage of Expenditures: Policy Considerations

Appropriations for the Permanent Fund dividend program have been increasing steadily each year, as the table below shows:

Figure 3



Over time, dividends will account for an ever increasing percentage of state government expenditures, and, as a consequence, the competition between dividends and other public programs, already sensed by legislators, will become more explicit. Significantly from a policy perspective, the entire purchasing power of Permanent Fund earnings is now tied up in dividends. Any alternative use(s) of earnings, for whatever purpose, will impact the size of future dividends, both in nominal and real terms. The existence and size of the dividend program are also quite likely to complicate the probable future debate over re-establishment of an individual income tax. Some, undoubtedly, will debate with vigor that the re-imposition of a personal income tax is inappropriate, if not ludicrous, when the State is distributing about half a billion dollars annually in dividends. Others will see the dividend as insurance that any eventual income tax will probably be very progressive in nature.

Dividends: Impacted by Earnings Reserve Account

Though available for appropriation for any use under current law, the balance of the Permanent Fund's earnings reserve account (ERA) also is regarded as a

policymakers without resources to provide for inflation-proofing in the case of a shortfall, unless they are willing to make inflation-proofing the first priority.

Dividends: Economic Impact

One of the most universally accepted "truths" in Alaska economics, but one that seems to rest on a very narrow base of empirical evidence, is that Permanent Fund dividends provide a substantial stimulus to Alaska's economy.

Establishing the veracity of this claim is a surprisingly difficult task, and has not been rigorously undertaken to date. Two factors, in particular, need to be evaluated before basing future policy decisions on this conclusion.

First, there does not exist, as many may suppose, a large body of research findings directly addressing this issue. To date, only a single study (thrice revised) exists, conducted by the University of Alaska's Institute for Social and Economic Research. Secondly, many of the economic benefits that result from the expenditure of dividend money are exported directly to other states in the form of profits, and have their ripple effects outside instead of within the Alaska economy. In spite of much anecdotal evidence that dividend money is "exported" in many cases, no study to date has addressed this issue directly, or measured the proportion of the dividend's economic benefits that occur outside of Alaska.

In view of these factors, it would seem especially prudent to establish the dividend program's in-state economic impact more carefully before accepting it as a given and basing future policy decisions on it.

Budgetary Use Of Permanent Fund Earnings

While the debate continues about whether or how to use Permanent Fund earnings differently from the present statutory allocation scheme, the annual use of the Fund's earnings already has reached significant levels.

3. Management Issues

Lack Of Oversight Of The Permanent Fund

Neither the executive branch nor the legislative branch of Alaska state government has institutionalized or possesses an adequate capacity for consistent oversight of the Permanent Fund; *i.e.*, the financial expertise to understand or assess activity occurring in large capacity investment functions. The trustees have called for outside audits and performance reports; these, however, seldom receive sustained or thorough attention by the legislative branch.⁷ One minor remedy would be the widespread distribution of performance reports, such as those recently made by Callan Associates.

This lack of a detailed understanding of portfolio management concepts, market dynamics and realty investments, effectively means that little knowledgeable external review of Permanent Fund operations occurs. Such a situation creates an almost tangible jeopardy regarding public accountability for the Fund. This is especially noteworthy in view of the fact that many Alaskans, in one way or another, are implicitly counting on the Permanent Fund as Alaska's future fiscal security. At a minimum, regular oversight hearings on key topics would keep policymakers familiar with fund basics. Legislators spend hundreds and hundreds of hours on the expenditure of \$2 billion, but comparatively little time on the management of \$10 billion. The scrutiny brought to bear on the state's budget could be applied productively to Fund policies.

The Corporation's investment strategies, for example, may significantly alter the continuity and size of earnings which, in turn, could dramatically affect the state's fiscal policies and the legislature's choices in the future. With the current statutory vagueness, much is left to the discretion of the Corporation staff. The practices, so far largely beneficial to preservation and improvement of the Fund's principal, could change dramatically with a different Board and/or staff, and without legislative awareness of the changes. But legislators and the

⁷ For more detail, see *Alaska's Permanent Fund: Legislative History, Intent, and Operations*, Alaska Senate Rural Research Agency, January 1986, pp. 105-106, 143-144.

and for making major fiscal policy decisions, especially during legislative sessions.

The Corporation's model also possesses some significant technical flaws that should be reviewed and corrected. They include but are not limited to the following:

- the lack of a link in the model between national inflation rates and the projected amounts of dedicated oil revenue deposits to the Fund (such that when future inflation rate assumptions in the model are changed, which in reality would change the flow of oil revenue to the State, the model's projected amount of dedicated oil revenue expected to be deposited annually into the Fund in the future does not change);
- a fundamental ambiguity about whether realized capital gains are included or excluded in the model's projections of future net income.¹¹
- the use of two conflicting inflation factors, 4.5% for the dedicated revenue stream and 6% for fund earnings. Either the projections understate revenues, or overstate nominal earnings. A single inflation factor should be used, preferably that provided by the Dept. of Revenue so that general fund revenue projections are comparable to Permanent Fund earnings projections.

As the fiscal importance of the Permanent Fund performance increases in the future, policymakers would be well advised to establish a performance forecasting process rather than relying on a limited, mechanically driven technique.

¹¹ The Permanent Fund Corporation has traditionally taken the position that their projections exclude any estimate of realized capital gains, due to the difficulty of predicting complex market movements and managers' reactions to those movements. If the Corporation's future income projections are based on the Trustees' formally stated performance goal of a three percent real (inflation-adjusted) average annual rate of return, which the Corporation confirms, however, then realized capital gains (like all other forms of future income) are included in that three percent. This question is still unresolved by the Corporation.

Appendix A

Unclear "Income" Definitions: Impact on Inflation-Proofing and on Earnings Reserve Account

The statutory definitions of the dividend amount and the inflation-proofing amount are inconsistent and confusing, and the cash flows they imply are not reflected in current Permanent Fund Corporation accounting practice.

(1) Impact on Inflation-Proofing

The dividend amount is defined in terms of "Income available for distribution" (AS 43.23.045(b)), whereas the inflation-proofing amount is defined in terms of "net income" (AS 37.13.145). Since these two terms refer to different quantities, interpretation of the annual cash flows from income allocations as outlined in statute is problematic. For example, based on the December 31, 1989 Corporation earnings estimates for FY91 through FY95, the money available for inflation-proofing varies considerably if the statute is applied literally. Using the following abbreviations

NI	=	Net Income
IAFD	=	Income Available For Distribution
PFD	=	Permanent Fund Dividend
IP	=	Inflation-Proofing

the calculations would be:

STEP ONE: Calculation of Net Income For Five-Year Period

Yr/NI	
FY91	937
FY92	1,057
FY93	1,131
FY94	1,209
<u>FY95</u>	<u>1,291</u>
Total	5,625

(2) Impact on Earnings Reserve Account

The wording of AS 37.13.140 and AS 37.13.145 may have led to inappropriate deposits in the Earnings Reserve Account. Again, this possibility arises because of the confusing usage of the terms "Income", "net income" and "Income available for distribution" in the two statutes referenced above. The following example, using the last five years of Permanent Fund earnings, illustrates the problem of identifying the amount of money that goes to the earnings reserve account under AS 37.13.145:

Again, the following abbreviations apply:

- NI = Net Income
- IAFD = Income Available For Distribution
- PFD = Permanent Fund Dividend
- IP = Inflation-Proofing

Step One: Calculation of Net Income

FY/NI	
FY 85	658
FY 86	1,021
FY 87	1,069
FY 88	789
<u>FY 89</u>	<u>868</u>
Total:	4,405

STEP TWO: Calculation of Income Available for Distribution (AS 37.13.140)

$$\text{IAFD}_{\text{FY89}} = .21 \times \text{Total NI} = .21 \times 4,405 = 925.05$$

STEP THREE: Calculation of Dividend Amount (AS 43.23.045(b))

$$\text{PFD}_{\text{FY89}} = .50 \times \text{IAFD} = .50 \times 925.05 = 462.525$$

By **Mary Halloran** and **Jack Fagnoli**. With help from **Jetta Whittaker**, **Brad Pierce**, **Jack Kreinheder**, and **Steve Cole**.

And thanks to all those who reviewed the work or otherwise provided comments, including **Marla Berg**, staff to **Senator Adams**; **Peter Bushre**, **Alaska Permanent Fund Corporation**; **Scott Goldsmith**, **ISER**; **Mike Greany**, **Director, Legislative Finance**; **Gordon Harrison**, **Director, Legislative Research**; **Jay Hogan**, staff to **Representative Larson**; **Representative Steve Rieger**; **Jim Rhode**, **Special Assistant, Dept. of Revenue**; **Robert Newton**; **Jerry Schilz**, staff to **Representative Grussendorf**; **Randy Welker**, **Legislative Auditor**; and **Permanent Fund Trustees Hugh Malone** and **Byron Mallott**.

Educational endowment

The Governor's proposed education endowment engendered lengthy comment and healthy debate before the Commission. People discussed the issues of the Permanent Fund's role, government spending in general, and specifically the level and method of funding education. This issue is now before the Legislature and this appears to be the appropriate forum for deciding upon any proposal to be placed before the voters.

Recommendation: The Commission forwards no specific recommendation on the proposed educational endowment.

Clean up the statutory language

The Legislature should re-examine all of the current statutes involving the Permanent Fund for consistency and clarity. A clear and precise definition and method of calculating net income should be adopted (in the absence of the adoption of a payout method). There appears to be less than precise use of the terms "fund", "principal", and "Corporation".

For example, A.S. 37.13.010(a) discusses the Permanent Fund and is generally cited as the statutory definition of the principal of the Fund. It is often stated that the balance in the earnings reserve account (ERA) is not part of the principal. However, a reading of A.S. 37.13.010(a)(3) and 37.13.145 "allocates" the ERA which is "in the Alaska Permanent Fund". If the ERA is not part of the "fund", i.e. principal, why are the earnings from the ERA used to calculate dividends? Also A.S. 37.13.140 addresses "net income of the corporation" and A.S. 37.13.040 discusses the "assets of the corporation", while neither of these phrases is defined.

Recommendation: The ambiguities in the existing statutes regarding the Permanent Fund should be clarified.

income for the Fund over time and, hence, lesser principal. The current inflation-proofing procedure (converting investments into cash which can then be deposited into the principal) may actually be robbing the Fund of real growth over time.

(2) Maximizing Deposits: In the past, the Corporation has calculated annual inflation-proofing requirements so as to produce the maximum possible deposit for inflation-proofing each year. The Corporation assumes that the dedicated mineral revenue deposits are included in the fund's principal for the entire fiscal year, when in fact dedicated revenue deposits into the Fund occur continuously throughout the year, and their actual inflation-proofing requirements are less than the inflation-proofing deposits made. With the statute silent on this point, the Corporation has chosen an approach unusual by accounting practices, but designed to produce maximum contributions to the fund's principal. The Corporation sought legislative approval for this approach through Legislative Budget and Audit, albeit after the fact. After one unsuccessful attempt (October 24, 1983 meeting, where action was tabled), Legislative Budget and Audit approved the methodology at its January 12, 1984 meeting. But it remains a matter of policy, not statute nor regulation, and with a different Board of Trustees or Corporation staff, the outcome could be different.

(3) Inflation-proofing Transfers: Inflation-proofing transfers used to occur automatically under AS 37.13.145, but arguably require an appropriation. In an April 11, 1979 memorandum, the Dept. of Law examined the clause concerning disposition of permanent fund income: "all income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." and concluded that the clause does not exempt the fund's income from the prohibition against dedicated funds. Further, the constitution provides that "No money shall be withdrawn from the treasury except in accordance with appropriations made by law" (Art. IX, Sec. 13). Furthermore, the Alaska courts have subsequently ruled that continuing appropriations are not constitutional. The counter argument is that the statutory dedication is arguably required to achieve the basic goal for which the fund was established, i.e. provide permanence, and hence is allowable. If that argument were carried to its logical conclusion, however, then inflation-proofing would be automatically the first priority for Fund earnings, which it clearly is not. If there is ambiguity, it seems

Net Income of \$1.069 billion, minus Permanent Fund Dividends (PFD) of \$391 million, minus Inflation-Proofing of \$148 million, leaves a Net Income residual of \$530 million.

Income Available for Distribution of \$787 million, minus PFD of \$391 million, minus Inflation-Proofing of \$148 million,⁶ leaves an Income Available for Distribution residual of \$248 million.

The difference between the two residuals is \$282 million, which has since earned interest of about \$54 million, for a total of about \$335 million.

The statute calls for only the residual from "income available for distribution" to be transferred to the earnings reserve account, or \$248 million. Instead, the entire "net income" residual of \$530 million was retained in the earnings reserve account. The statutory confusion has resulted in the disposition of over \$300 million taking place without due legislative consideration. The policy consequences are to increase the size of the dividend and keep money out of the general fund which should be there as a matter of constitutional requirement. A clarification of the statute is warranted to establish legislative intent.

Treatment of Royalty Litigation Interest Earnings - - 8(a) or Dinkum Sands and North Slope Royalty Funds

When funds placed in escrow during royalty litigation generate interest earnings, should the interest that eventually goes to the Permanent Fund be treated upon receipt by the Corporation as principal or as earnings? If the latter, the money representing the interest component would be distributable and available for appropriation. As oil revenues dwindle in the future, the availability or non-availability of royalty litigation interest earnings will have significant fiscal and possible program implications for the state. Legal proceeds from both the North Slope Royalty and Dinkum Sands cases may be large, as much as \$2.3 billion. Of that combined total, approximately \$386

⁶ The statutes do not speak to subtracting Inflation-Proofing from Income Available for Distribution, but from Net Income. The practice, however, is as represented in the example. If one relies solely on the statutory construction, the numbers never add up.

million of interest earnings would go to the Permanent Fund, along with \$385 million in principal. The table below presents maximum distributions based on the "best of all possible worlds" outcomes for the state. Noteworthy is that interest earnings now rival the principal amount in both cases.

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		<u>Principal</u>	<u>Interest</u>
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<hr/>			
Total Permanent Fund Distributions	\$	771,464,212	

* Dinkum Sands proceeds calculations based on Minerals Management Service data of 12/31/89; North Slope Royalty proceeds calculations based on estimated deficiencies plus interest as of 3/90; Hellen Partnow, and Condon.

1991 SLA CH. 18

Chapter 18

1 for distribution under AS 37.13.140. [HOWEVER, INCOME EARNED ON MONEY
2 AWARDED AFTER TRIAL IN STATE V. AMERADA HESS, ET AL., 1JU-77-847 CIV.
3 (SUPERIOR COURT, FIRST JUDICIAL DISTRICT) SHALL BE TREATED IN THE SAME
4 MANNER AS OTHER INCOME OF THE ALASKA PERMANENT FUND, EXCEPT THAT
5 IT IS NOT AVAILABLE FOR DISTRIBUTION TO THE DIVIDEND FUND, AND SHALL
6 BE ANNUALLY DEPOSITED INTO THE PRINCIPAL OF THE ALASKA PERMANENT
7 FUND.]

8 * Sec. 3. AS 43.23.045 is amended by adding a new subsection to read:

9 (e) Notwithstanding (b) of this section, income earned on money awarded in or received
10 as a result of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial
11 District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that
12 is tied to the outcome of this case, or interest earned on the money, or on the earnings of the
13 money shall be treated in the same manner as other income of the Alaska permanent fund, except
14 that it is not available for distribution to the dividend fund, and shall be annually deposited into
15 the principal of the Alaska permanent fund.

16 * Sec. 4. AS 43.23.045(e), added by sec. 3 of this Act, is repealed on the day that the revisor of
17 statutes certifies to the legislature that the Alaska Supreme Court has made a final determination that,
18 in the absence of AS 43.23.045(e), added by sec. 3 of this Act, no judge or juror is disqualified from
19 serving as judge or juror solely because the judge or juror may qualify to receive a permanent fund
20 dividend.

21 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

S B

4 3

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 29, 1991

FURTHER REFERRALS:

Date of Committee Action: 4-23-91

The JUDICIARY Committee considered:

CSSB 43(HES)

CS FOR SENATE BILL NO. 43 (HES)

NURSES DETERMINATION OF DEATH

"An Act authorizing a registered nurse to determine and pronounce death under certain circumstances."

- RECOMMENDATIONS: the same title
 be replaced with _____ a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

3 zero fiscal note(s) HES 1-30-91
SEN 2-27-91
Admin 2-27-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Dave Donley</i>	✓	<i>Larry Martin</i>		✓	
<i>Mark Hanley</i>	X				
<i>Kevin P. Parnell</i>	✓				
<i>A. Ellis</i>	✓				
<i>Max Shumbeff</i>	✓				

Dave Donley

 CHAIRMAN'S SIGNATURE

REQUEST: FISCAL NOTE

Revision Date: _____ Agency Affected: Health & Social Services
 Title: To determine death under certain circumstances BRU: State Health Services
 Sponsor: Collins by request Components: Nursing
 Requester: Senate HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of Dollars)

General Funds/MHT	0.0					
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

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

ANALYSIS: (attach a separate page if necessary)

No fiscal impact.

4-24-91

Replace Hess
7. W. SB 43

Prepared By: Peter M. Nakamura, MD, MPH, Director *Pmn*
 Division: PUBLIC HEALTH

Phone: 465-3090
 Date: 04/24/91

Approved By Commissioner: Theodore Mala, M.D., MPH *TJM*
 Agency: HEALTH & SOCIAL SERVICES

Date: 4/24/91

Distribution (by preparer):

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

REQUEST: FISCAL NOTE

Revision Date: _____ Agency Affect: Health & Social Services
 Title: Authorizing a registered nurse to determine and pronounce death BRU: State Health Services
 Sponsor: Collins by request Components: Nursing
 Requester: Senate HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-Time		0				
Part-Time		0				
Temporary		0				

ANALYSIS: (attach a separate page if necessary)

No fiscal impact.

Changes in CSSB 43 (HESS)
have no fiscal impact. This
fiscal note is appropriate.

1-30-91 MSE
date Comte Aide (initial)

Prepared By: Alfred G. Zangri
Division: PUBLIC HEALTH

Phone: 465-3090
Date: 01/28/91

Approved By Commissioner: Theodore Mala, M.D., MPH
Agency: HEALTH & SOCIAL SERVICES

Date: _____

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

FISCAL NOTE

No. 2

Bill Version: CSSB 43(HES)

(S) Publish Date: 2/27/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: Authorizing a registered nurse to determine and pronounce death . . . BRU: Occupational Licensing
 Component: Administration
 Sponsor: Senator Collins by Request
 Requestor: Senator Collins COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

SB 43 will allow a licensed registered nurse to make a determination and pronouncement of death under certain circumstances. No fiscal impact is anticipated.

Prepared By: Jennifer Strickler, Administrative Officer Phone: 465-2144

Division: Occupational Licensing Date: January 25, 1991

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: January 25, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

No. 3

Bill Version: CSSB 43(HES)

(S) Publish Date: 2/27/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____

Title: An Act authorizing a registered nurse to determine and pronounce death under certain circumstances.

Sponsor: Senator Collins

Requestor: Senate Health, Education and Social Services Committee

Department Affected: Administration

BRU: Division of Pioneers' Benefits

Component: Pioneers' Homes

COMPONENT SERIAL NO.

3	5		
---	---	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

This bill allows for timely notification of next of kin by registered nurses when a death occurs in a Pioneers' Home.

Prepared by: Barbara Bathony *Barbara Bathony*
Division: Pioneers' Benefits

Phone: 465-4400
Date: 2/11/91

Approved by Commissioner: Millet Keler *M. Keler*
Agency: Administration

Date: 2/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 43

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: Authorizing a registered nurse to determine and pronounce death . . . BRU: Occupational Licensing
 Component: Administration
 Sponsor: Senator Collins by Request
 Requestor: Senator Collins COMPONENT SERIAL NO.

0	3	5	6
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

SB 43 will allow a licensed registered nurse to make a determination and pronouncement of death under certain circumstances. No fiscal impact is anticipated.

Prepared By: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: January 25, 1991
 Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: January 25, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB43

Revision Date: _____

Department Affected: Administration

Title: An Act authorizing a registered nurse to determine and pronounce death under certain circumstances.

BRU: Division of Pioneers' Benefits

Component: Pioneers' Homes

Sponsor: Senator Collins

COMPONENT SERIAL NO.

3	5		
---	---	--	--

Requestor: Senate Health, Education and Social Services Committee

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

This bill allows for timely notification of next of kin by registered nurses when a death occurs in a Pioneers' Home.

Prepared by: Barbara Bathony *Barbara Bathony*
Division: Pioneers' Benefits

Phone: 465-4400
Date: 2/11/91

Approved by Commissioner: Millett Keller *Millett Keller*
Agency: Administration

Date: 2/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

REQUEST: FISCAL NOTE

Revision Date: _____ Agency Affects: Health & Social Services
 Title: Authorizing a registered nurse to determine and pronounce death BRU: State Health Services
 Sponsor: Collins by request Components: Nursing
 Requester: Senate HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-Time		0				
Part-Time		0				
Temporary		0				

ANALYSIS: (attach a separate page if necessary)

No fiscal impact.

Prepared By: Alfred G. Zangri
 Division: PUBLIC HEALTH

Phone: 465-3090
 Date: 01/28/91

Approved By Commissioner: Theodore Mala, M.D., MPH
 Agency: HEALTH & SOCIAL SERVICES

Date: _____

Distribution (by preparer):

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



Official Business

Alaska State Legislature

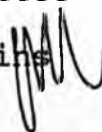
Senate

SENATOR VIRGINIA COLLINS

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Senator Virginia Collins 

DATE: March 28, 1991

RE: Request for hearing: Senate Bill 43,
"An Act authorizing a registered nurse to determine and
pronounce death under certain circumstances."

I respectfully request that you schedule the above-referenced bill, SB 43, for hearing at your earliest convenience. This bill passed the Senate by a unanimous vote and it passed the House HESS Committee with a unanimous "do-pass."

Attached herewith are the following:

1. Sponsor statement
2. A zero fiscal note from the Department of Health & Social Services
3. A zero fiscal note from the Department of Commerce & Economic Development
4. A zero fiscal note from the Department of Administration
5. A position paper from the Department of Health & Social Services
6. A position paper from the Department of Commerce & Economic Development
7. A position paper from the Department of Administration
8. Back-up which includes:
 - a. A written statement by Carol Clausson, R.N.
 - b. A letter from Division of Occupational Licensing
 - c. A letter of support from the Alaska Medical Association

If you have any questions regarding the above, please do not hesitate to contact me or Marveen Palmer at 465-2828. Thank you for your attention to this request.



Alaska State Legislature

SENATE

SENATOR VIRGINIA COLLINS

Official Business

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

SPONSOR STATEMENT

Senate Bill 43

Senate Bill 43, "An Act authorizing a registered nurse to determine and pronounce death under certain circumstances."

This bill would clarify statutes and allow registered nurses to pronounce death when death is anticipated and the physician has given written authorization for the nurse to make the pronouncement. If death occurs in a health care facility, a registered nurse would be allowed to pronounce death when the physician has given written authorization and when it is in accordance with the written regulations of that facility.

This would alleviate undue stress and emotional trauma for the family of the individual who died. Currently, nurses have to wait for many hours (often 4-10 hours) until the attending physician or emergency room physician arrives to pronounce death. Until that pronouncement is made, the family is kept in turmoil while life-sustaining care is continued (such as the continuation of IV's, etc.). Not only could there be reduction of mental stress, but costs could be reduced.

Once pronouncement is made, the life-sustaining measures can cease. The physician would still be required to sign the certification of death except in certain circumstances already in statute or regulation. Those exceptions primarily address isolated areas of the bush.

SB 43 is supported by the Alaska Board of Nursing, the Alaska Nurses' Association, the Alaska Medical Association, the Department of Health and Social Services, the Department of Commerce and Economic Development, and the Department of Administration. SB 43 has 3 zero fiscal notes. It passed the Senate by an 18-0 vote.

Approximately 14 states allow a nurse to pronounce death under certain circumstances. Most of these laws have been enacted within the past 10 years as more nurses have become involved with the terminally ill patient.

NOTE: The Senate Hess Committee substitute reflects only technical changes.

I would appreciate your support of Senate Bill 43.

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 1, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3/27/91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: CSSB 43 (HES)

CS FOR SENATE BILL NO. 43 (HES) NURSES DETERMINATION OF DEATH

"An Act authorizing a registered nurse to determine and pronounce death under certain circumstances."

RECOMMENDATIONS: the same title

be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

(2) zero fiscal note DOA + DOCED

zero fiscal note(s) DHSS 1/30/91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Cheri Davis</i>	<input checked="" type="checkbox"/>				
<i>Mary Miller</i>	<input checked="" type="checkbox"/>				
<i>Mark Hanley</i>	<input checked="" type="checkbox"/>	(HANLEY)			
<i>Betty Davis</i>	<input checked="" type="checkbox"/>	(DAVIS)			
<i>J. G. Gonzales</i>	<input checked="" type="checkbox"/>	(GONZALES)			
<i>Robert Carney</i>	<input checked="" type="checkbox"/>	(CARNEY)			
<i>Lincoln</i>	<input checked="" type="checkbox"/>	(LINCOLN)			

[Signature]
CO-CHAIRMAN'S SIGNATURE

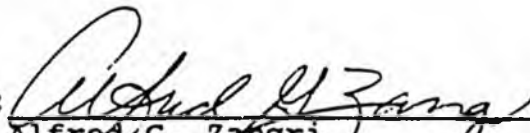
Committee Substitute
Senate Bill No. 43

For an Act entitled: "An Act authorizing a registered nurse to determine and pronounce death under certain circumstances."


SB 43 allows Registered Nurses to determine and pronounce death in a specific set of circumstances with written prior approval of finite duration from an attendant physician.

While the Department believes that current statutes and regulations are permissive enough to allow this activity, current practice in many facilities appears to exclude RNs from determining and pronouncing death. This practice, at least in the limited context of SB43, results in unnecessary delays and could result in unnecessary and potentially life-threatening calls to EMTs.

The Department believes that SB 43, as it is currently structured, will have no impact on the Department. Since the bill addresses actual and potential problems, the Department supports its passage.

Recommended: 
Alfred G. Zangri
Acting Director
Division of Public Health

Date: 2/1/91

Approved: 
Theodore Mala, M.D., M.P.H.
Commissioner
Department of Health
and Social Services

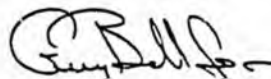
Date: 2/1/91

CSSB 43 (HESS): An Act authorizing a registered nurse to determine and pronounce death under certain circumstances.

CSSB 43 (HESS) adds a new section to AS 08.68 which will allow registered nurses to pronounce death under certain circumstances. These circumstances include: (1) that an attending physician has documented in the person's medical or clinical record that the person's death is anticipated; (2) that upon documentation by the physician, the physician may authorize a specific registered nurse or nurses to make the death pronouncement; and (3) that nurses employed by health facilities may also pronounce death under established facility procedures.

At the November 1990 meeting of the Board of Nursing, the board endorsed the concept of nurses pronouncing death. The board believes registered nurses to be educationally and clinically prepared to pronounce death under the circumstances described. The board also believes it is in the best interests of the patient's family to have the nurse, who has been working with the family, to make the death pronouncement rather than calling paramedics and/or local law enforcement individuals into the home to pronounce death for the person who chooses to die at home.

The department's previous concern over item (f) which grants the Department of Health and Social Services the authority to adopt regulations to implement this section has been resolved and, therefore, the department supports passage of CSSB 43 (HESS).



Glenn A. Olds, Commissioner

Date: February 1, 1991

GAO/JS/dgl8805D
020191c

1991 LEGISLATION
POSITION PAPER
DEPARTMENT OF ADMINISTRATION

Division Pioneers' Benefits Bill Number CSSB43 (HES)

Bill Title An act authorizing a registered nurse to determine and pronounce death under certain circumstances.

Position Statement: Explain briefly what bill does, its impacts and Department's position, i.e.
a) support, b) do not support, c) neutral or d) oppose.

This is a bill that appears long overdue within the practice of long-term care nursing, because the physicians have comfortably relied on the skills of the registered nurses to determine and pronounce death. A physician is very seldom present when a resident dies and may not be readily available to complete the required documentation. The nursing staff in the homes expressed support for this bill.

This bill is also supported by the Alaska Medical Association and the Alaska Nurses' Association.

FEB 08 1991

APPROVED:

Director Barbara Bathony *B. Bathony* Division Pioneers' Benefits
print name

Signature _____ Date _____

Commissioner Millett Keller

Signature *Millett Keller* Date 2/8/91

(For more information, call Barbara Pritchett 465-2200)

Rev. 1/23/91

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

7TH FLOOR FRONTIER BLDG.
3601 G STREET, SUITE 722
ANCHORAGE, ALASKA 99503
PHONE: (907) 581-2878

November 27, 1990

Carol Clausson
13200 Ridgeview Drive
Anchorage, Alaska 99516

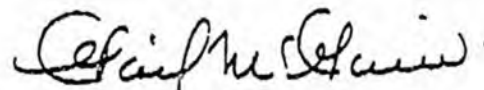
Dear Carol:

Thank you for attending the Board of Nursing Meeting on November 1, 1990, where the Board of Nursing addressed the issue of registered nurses pronouncing death.

The board did pass a motion at that meeting to support the Alaska Nurses Association's proposal for pronouncement of death by registered nurse if the death is anticipated, that is which is in the opinion of the attending physician expected due to illness, infirmity or disease. The board appreciates the information that you shared from the research which you conducted which explored the issue in other states.

Carol, you are to be commended for your efforts to pursue this issue. The Board of Nursing wishes you the best of luck in meeting your goal during the next legislative session. If we can be of any further assistance, do not hesitate to contact us.

Sincerely,



Gail M. McGuill, RN
Executive Secretary
Alaska Board of Nursing

cc: Randall P. Burns, Director
Division of Occupational Licensing

Pam Ventgen, Executive Secretary
Alaska State Medical Board

1244n/mh

**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

The Alaska Nurses Association State Legislative Committee is making an effort to allow the Registered Nurse in Alaska to pronounce death under certain circumstances.

In the hospital setting, we assert that having either the attending physician or emergency room physician pronounce death can result in a delay in the pronouncement which may in turn result in a period of anxiety for the patients family. The same holds true for the Home health/Hospice setting where EMTS may pronounce. In Alaska's unique rural setting, where State Troopers may pronounce, there could be quite a delay.

This issue was voted on at the ANA Convention in March of 1990 and there were no opposing votes. The State Board of Nursing voted to endorse our efforts.

Research was conducted exploring the issue in other states. Forty states responded to our inquiry. The results were as follows: Nurses may pronounce death in fifteen states. Seventeen states do not allow for it. Six other states do not allow for it; however, attempts are being conducted to change this. Two states responses were unclear.

We propose that a Registered Nurse in the State of Alaska be permitted to pronounce death under these circumstances: if the death is an anticipated death, a death which is, in the opinion of the attending physician, expected due to illness, infirmity or disease.

Carol Claussion R.N.
ANA District : Board Member
ANA State Legislative Committee

BACK-up



FEB 13 1991

ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

February 8, 1991

Honorable Virginia Collins
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Senator Collins:

The Alaska State Medical Association in careful study, support your efforts in the passage of Senate Bill No. 43 authorizing a registered nurse to determine and pronounce death under certain circumstances.

If we can assist your efforts, do not hesitate to call.

Sincerely,

Ray Schalow
Executive Director

cc/R. Urion

S B

5 5

FISCAL NOTE

No. 8

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: CSSA 55 (JUD)

(S) Publish Date: 2-21-92

Revision Date: 02/05/92 Department Affected: Public Safety
 Title: An act relating to the detention and incarceration of minors. BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Senator Duncan
 Requestor: Senate Judiciary COMPONENT SERIAL NO.

7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
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

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Gayle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 2/5/92
 Approved by Commissioner: Gayle A. Horetski for Richard L. Burton
 Agency: Department of Public Safety Date: 2/5/92

**Department of Public Safety
Fiscal Note Analysis - CSSB 55(JUD)
Page 2**

The Department of Public Safety shares with the Division of Family and Youth Services the responsibility to transport juvenile prisoners prior to their acceptance into an appropriate juvenile facility. Approximately 100 juvenile transports are conducted by the Alaska State Troopers annually, funded through the prisoner transport budget. This bill is not expected to result in any increase in the number of juvenile transports, so there should be no additional fiscal impact to the Department.

FISCAL NOTE

No. 7

Bill Version: CSSA 55 (JUD)

(S) Publish Date: 2-21-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: February 18, 1992 Department Affected: Department of Law
 Title: "An Act relating to detention and incarceration of minors." BRU: Prosecution, Legal Services
 Component: All, Legal Services - Ops.
 Sponsor: Senator Duncan
 Requestor: Senator Pourchot COMPONENT SERIAL NO.

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85 through 91, 93

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 18, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 18, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 55 (JUD)

The Judiciary Committee substitute for SB 55 adopts additional provisions that recognize weather caused transportation delays that can arise ^{include} moving minors during temporary detention, and that allow detention in a correctional facility for protective custody and allow detention in a correctional facility of a minor held pending prosecution as an adult, provided in all cases that there is sight and sound separation from adult prisoners. These changes should eliminate most of the impact for the Department of Corrections and the Department of Public Safety that would have been caused by the original version of the bill.

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

Bill Version: SB 55
(S) Publish Date: 2-21-92

Revision Date: _____ Dept. Affected Health and Social Services
 Title: "An act relating to the detention and incarceration of minors" BRU: Purchased Services
 Component: Preventive Services
 Sponsor: Senator Duncan
 Requestor: Senator Duncan **COMPONENT SERIAL NO. 0248**

Expenditures/Revenues (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Changes in SSB 55 (JUD) have no fiscal impact. This fiscal note is appropriate.
 2-19-92 Richard M. R.
 date Comte Aide (initial)

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

CSSB55 prohibits the confinement of youth in an adult correctional facility, jail, or lockup, except under special circumstances.

This is an attempt to comply with the jail removal mandate of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, which limits or prohibits the confinement of youth in adult correctional facilities.

Prepared by: Brian Saylor, Deputy Commissioner, DHSS BS Phone: 465-3030
 Division: Family and Youth Services Date: February 4, 1993

Approved by Commissioner: Theodore A. Mala T. Mala Date: 12 Feb 92
 Agency: Department of Health and Social Services

Distribution (by preparer):
 Legislative Finance OMB
 Legislative Sponsor Impacted Agency(ies)
 Requestor

ANALYSIS (cont.):

Enactment of this legislation would demonstrate Alaska's intent to meet the requirements of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, which requires total and enforceable separation of youth from adults when confined in the same facility and limits the placement of youth in adult confinement facilities.

Alaska annually receives a federal formula grant of \$325,000 to make improvements in the juvenile justice system, including better practices for the detention of youth. Placing youth in adult correctional facilities, jails or lockups is not a good child care practice. Further, such practice jeopardizes this funding. Without this grant revenue of \$325,000, it would be necessary to use state general funds to continue funding to support fourteen (14) shelters that provide alternatives to placing youth in facilities designed for the incarceration of adults.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: CSSB 55 (JUD)

(S) Publish Date: 2-10-92

Revision Date: 02/06/92 Department Affected: Department of Corrections

Title: "An Act relating to the... incarceration of minors." BRU: Statewide Operations

Sponsor: Senator Duncan Component: Various

Requestor: Senate Judiciary COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

The Committee Substitute has no fiscal impact on the Department, since separation of minors waived to adult status would not be required.

Prepared By: Carl Nickel, Director *Carl Nickel* Phone: 465-3376

Division: Administrative Services Date: 02/07/92

Approved by Commissioner: Lloyd Hames, Commissioner *Lloyd Hames*

Agency: Department of Corrections Date: 02/07/92

Alaska State Legislature

SENATOR JIM DUNCAN

COMMITTEES:
VICE CHAIR –
FINANCE
VICE CHAIR –
STATE AFFAIRS
RULES
BUDGET & AUDIT
ETHICS REFORM

MEMORANDUM

Date: April 13, 1992

To: Representative Dave Donley, Chair
House Judiciary Committee

From: Senator Jim Duncan

Re: CS SB 55 (Judiciary), Relating to Detention and
Incarceration of minors.

Please schedule SB 55 for a hearing at your earliest convenience. SB 55 amends state law to comply with U.S. Department of Justice requirements which prohibit incarceration of juvenile offenders in adult jails or lockup facilities.

Currently attempts are made to separate juvenile prisoners from adults, however, in village jails they are not always successful. The potential for mental and physical harm to juveniles is great in such situations. This bill will show our good faith effort, given the problems we experience in this state with isolation and associated transportation problems, provide other options besides adult facilities for holding minors. **SB 55 does not apply to minors waived to adult status.**

One option which has proven particularly successful in small communities had been the use of "attendant care shelters" where juveniles can be detained temporarily until released to their parents or transported to one of the five regional youth corrections facilities; Bethel Youth Facility, McLaughlin in Anchorage, Johnson Youth Facility in Juneau, Nome Youth Facility, or the Fairbanks Youth Facility.

These shelters have been funded through an annual \$325,000 federal grant from the Office of Juvenile Justice & Delinquency Prevention. In FY 91 grants were made for Attendant Care Shelters in Barrow (\$25,000), Juneau (\$20,000), Ketchikan (\$24,200), Kotzebue (\$17,000), Homer, Kenai, and Seward (\$48,150), Kodiak (\$9,987), Petersburg (\$5,000), Sitka (\$11,972), Valdez (\$15,000), and Wrangell (\$5,000). A portion of the funding also goes to the UAA, Justice Center for data collection and analysis. In addition, in FY 91, \$22,392 was earmarked for Alaska Native non-profit organizations. During FY 91, 443 youths were served at 12 Attendant Care Shelters.

There are compelling reasons to lodge juvenile offenders in facilities separate from adults. The national suicide rate for children held in adult jails is eight times higher than that of children placed in juvenile facilities. When separation efforts are made in adult facilities the result is solitary confinement for children. SB 55 represents a further commitment on our part to improve the quality of juvenile justice in this state.

Attachments

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 55 (JUDICIARY)

Page 3, following line 10:

Insert a new subsection to read:

"(h) In a proceeding relating to the minor on the petition filed under this chapter or in the prosecution of the minor as an adult, a court may not order the suppression of evidence as a remedy for a failure to comply with a requirement of this section unless the person on whom the requirement is imposed has failed to make a good faith effort to comply with the requirement."

Reletter the following subsection accordingly.

(7)
Date Referred: March 6, 1992

HOUSE COMMITTEE REPORT
FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4/16/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: CSSB 55(JUD)

CS FOR SENATE BILL NO. 55 (JUD) INCARCERATION OF MINORS IN ADULT INST.

"An Act relating to the detention and incarceration of minors."

RECOMMENDATIONS: [] the same title
be replaced with _____ [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note _____

[] zero fiscal note(s) Corrections, DHSS, LAW
Public Safety

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Robert W. Carrey</i>	<input checked="" type="checkbox"/>				
<i>Debbie...</i>	<input checked="" type="checkbox"/>				
<i>Mary Miller</i>	<input checked="" type="checkbox"/>				
<i>Betty Davis</i>	<input checked="" type="checkbox"/>				
<i>J. C. Bonnyles</i>	<input checked="" type="checkbox"/>				
<i>Cheri Garris</i>	<input checked="" type="checkbox"/>				

Robert W. Carrey
CO-CHAIRMAN'S SIGNATURE

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 7, 1992

SUBJECT: CS Senate Bill 55 (Judiciary), sectional analysis
(Work Order No. 7-LS0216(M))

TO: Senator Jim Duncan
ATTN: Roxanne Stewart

FROM: Jack Chenoweth
Legislative Counsel

CSSB 55 (Judiciary), the version approved by the state Senate, was prepared on the basis of a model intended to conform Alaska law generally to limitations imposed by key provisions of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended. Those paragraphs of the federal Act, 42 U.S.C. 5633(a)(13) and (14), provide as follows:

(a) [To qualify the state for a formula grant under the Juvenile Justice and Delinquency Prevention Act, a state plan submitted to the federal government shall]

...

(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) [of this subsection] shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;

(14) provide that, [after December 8, 1985,] no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1993, promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which

(A) are outside a Standard Metropolitan Statistical Area,

(B) have no existing acceptable alternative placement available, and
(C) are in compliance with the provisions of paragraph (13);

....

Bill section 1, an uncodified provision, summarizes the general purposes of the measure, citing both the requirements of the pertinent federal Act and conditions specific to the state.

Bill section 2 substantially revises and extends the key juvenile detention/incarceration provision of current statutory law, AS 47.10.130 ^{1/}:

Proposed AS 47.10.130(a) establishes an explicit prohibition against incarceration of a minor in a correctional facility. ^{2/}

Proposed AS 47.10.130(b) carries forward without change language of the current statute assigning responsibility for notification of the minor's parent(s), guardian(s), or custodian(s) of the minor's detention.

^{1/} Current AS 47.10.130 dates from the last session of the Territorial Legislature (1957) and, in its entirety, reads as follows:

Sec. 47.10.130. DETENTION. A minor under 18 years of age who is detained pending hearing may not be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately.

^{2/} Please appreciate that this measure depends on the cross-referenced definition of "correctional facility" as defined by AS 33.30.901, a definition of the statutes that are applicable to prison facility management. The term "correctional facility" is defined, in pertinent part, as follows:

"correctional facility" or "facility" means a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners; . . .

The reference to "prisoners" in the definition set out in that paragraph, generally applicable to AS 33.30, is to adult persons held in custody, for AS 33.30.901(11) defines "prisoner" as follows:

"prisoner" means a person, other than a juvenile, held under authority of state law in official detention . . .

(Emphasis added.)

Proposed AS 47.10.130(c) sets out three exceptions to the general prohibition against a minor's incarceration in a correctional facility:

- (1) minors adjudicated delinquent or held in official detention ^{3/} pending filing of a delinquency adjudication petition, the incarceration not to exceed six hours or the time necessary to arrange other transportation, whichever is shorter;
- (2) minors held pending prosecution as an adult; and
- (3) minors held in protective custody, that is, held because they are intoxicated or incapacitated by alcohol.

Proposed AS 47.10.130(d) places conditions and limitations on the holding of minors who are placed in correctional facilities under the exceptions of sec. 130(c)(1) (temporary detention pending transportation) or 130(c)(3) (protective custody detention). Those conditions and limitations include assignment to quarters separate from adults and provision of necessary services separate from the services that are provided to adults held in the correctional facility.

Proposed AS 47.10.130(e) recognizes weather related and similar delays beyond the control of the custodian by allowing an extension of the holding of a minor in temporary detention pending transportation beyond the six hour maximum in limited circumstances. At the same time, the subsection imposes specific duties on the person having responsibility for the minor's detention to document the reason for the extension and to advise the pertinent parties of the delay in transportation.

Proposed AS 47.10.130(f) authorizes extension of the holding of the minor in temporary detention pending transportation only so long as necessary to complete the necessary transportation arrangements for the minor.

For minors held in protective custody, ^{4/} proposed AS 47.10.130(g) directs that the parameters of treatment and detention that are set out in AS 47.37.170(i) are made applicable to minors so held.

Proposed AS 47.10.130(h) adds relevant definitions.

^{3/} Under another cross-referenced definition, "official detention" includes custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release. See AS 11.81.900(35).

^{4/} By law, protective custody does not constitute an arrest and no entry or other record may be made to indicate that the minor detained has been arrested or charged with a crime. However, a confidential record may be made for the administrative purposes of the facility to which the minor has been taken or which is necessary for statistical purposes. In the latter instance, the minor's name may not be disclosed. See AS 47.37.170(i).

Senator Jim Duncan
April 7, 1992
Page 4

Bill section 3 makes correlative changes to a related juvenile detention statute,
AS 47.10.190.

*

Because no effective date clause is included, the measure would take effect in accordance with the first sentence of article II, section 18 of the state constitution, that is, 90 days after the measure's signature into law or after its becoming law without signature.

JBC:pl
92-248.plm

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

THEODORE A. MALA, COMMISSIONER

P.O. BOX H
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-2030

*Raymond
Whelan
Bill*

Senator Jim Duncan
Alaska State Legislature
P.O. V
Juneau, Alaska 99811-3100

December 6, 1991

Dear Senator Duncan,

Thank you for your letter regarding SB 55 relating to the detention and incarceration of minors. The Department supports any effort to improve the juvenile justice system in Alaska.

It is my understanding that this bill and its proposed CS are a result of the legislative process last session. The development of this legislation has been a cooperative effort involving Alaska's Juvenile Justice Advisory Committee, other Departments, and your office. The continuation of these efforts during the upcoming session will result in a law that is workable for Alaska.

The Department supports SB 55 in its CS form as it will assist us tremendously towards our goal of compliance with the federal JJDP Act.

At the end of last session the CS work draft had the conceptual support of the other effected Departments. A meeting will be planned to review the CS in its current form prior to the beginning of the upcoming session.

Thank you for the support in our efforts to improve juvenile justice in Alaska.

Sincerely yours,

Theodore A. Mala

Theodore A. Mala MD, MPH.
Commissioner
Department of Health and Social Services

Department of Health and Social Services
Division of Family and Youth Services

**JAILING OF CHILDREN IN ALASKA - AN UNSOLVED PROBLEM
ISSUES FOR THE CRIMINAL JUSTICE WORKING GROUP
NOVEMBER 3, 1989**

In Alaska, there is a historical and pervasive practice of confining children under conditions which violate both state and federal law, increasing the risk of harm and potentially violating the civil rights of children.

BACKGROUND:

Since 1976, Alaska has received formula grants from the U.S. Department of Justice under the Juvenile Justice and Delinquency Prevention (JJDP) Act. The former state Criminal Justice Planning Agency and the Division of Corrections administered these funds until 1982 when responsibility was transferred to the Division of Family and Youth Services of the Department of Health and Social Services. Acceptance of these funds has obligated the state to improve its juvenile justice system and comply with the requirements of the Act which calls for:

Deinstitutionalization - a termination of the practice of securely detaining non-offenders or status offenders;

Separation - complete separation of juvenile offenders from adult prisoners when housed in the same secure facility;

Jail Removal - termination of the practice of holding any juvenile in an adult jail or lockup facility; and

Annual Monitoring - regular inspection of facilities which detain children along with collection, analysis and reporting of admission or booking data to assess compliance.

These requirements were to be achieved incrementally with deinstitutionalization to be achieved within three years of submission of the state's first grant application.

Separation and jail removal were to be achieved by December 1985, but subsequent extensions allowed exceptions to full compliance until December 1988.

Based on action to date, Alaska is now in substantial but not full compliance with the deinstitutionalization and separation mandates. Compliance with the mandate for total removal is far from being achieved. Until full compliance with all of the mandates is achieved, Alaska risks termination of the federal juvenile justice grant and faces the possible threat of litigation.

Federal requirements compliment Alaska laws contained in Title 47. Alaska statutes do not permit secure detention of any juvenile status offenders except for an allowable 24-hour period for runaways already under court jurisdiction when there is specific prior court approval.

Further, Alaska statutes require that children be separated by sight and sound from adult prisoners when both are held in the same facility. Because virtually none of Alaska's over one hundred (100) adult jails, lockups or correctional facilities are physically designed or operated to prevent contact between children and adults, children cannot lawfully be confined in those facilities.

As recently as 1987, over eight hundred (800) children continued to be detained in municipal adult jails and rural lockups throughout Alaska. Most of these juveniles were detained following their arrest for minor crimes and status offenses. Some of the minor crimes, such as Consumption of Alcohol By A Person Under Age 21, are even defined as status offenses by the U.S. Department of Justice.

In most cases, children are detained in physically separate cells from adult prisoners, but not with complete sight and sound separation as required by law. None of Alaska's adult jails and lockups have separate booking, food service, exercise or visitation areas for children and few have the ability to provide much more than token separation. When separation efforts are made, they often result in solitary confinement for children.

The practice of inappropriately confining children in adult jails is not only against the law, it is also contrary to the safe treatment of children. The national suicide rate of children placed in adult jails is eight times greater than that of children placed in separate juvenile detention centers. When a child is housed in an adult jail, rural lockup or adult correctional facility, their risk of becoming depressed, suicidal, or chance of experiencing emotional, physical and

sexual abuse increases significantly. Jail staff are seldom trained to handle the emotional and family problems of children in crisis. A child often leaves the jail angry and defiant, to act out their rage on the community.

A number of recent cases have been brought before other state and federal courts on the jailing of children. In several of those cases the court has determined that an aggrieved individual has a private right to civil rights action for deprivation caused by a violation of the Juvenile Justice and Delinquency Prevention Act. Litigation against one or more municipal jail or rural lockup and the state for failure to comply with the requirements of the JJDP Act is currently being considered by groups such as Alaska Legal Services Corporation and the American Civil Liberties Union.

WHAT HAS BEEN DONE ABOUT THIS PROBLEM?

From the time Alaska began participation in the JJDP Act grant program in 1976, federal grant funds have been used for a variety of projects to improve Alaska's juvenile justice system including community work service, restitution, and case management programs. However, until 1988 only two significant JJDP Act compliance strategies were implemented.

The initial strategy was statutory change to Title 47 which redefined acts such as runaway, truancy, and curfew violation so they were no longer delinquent acts which could result in secure detention. The second was to develop a network of secure regional juvenile detention facilities constructed and operated with state general funds. Five facilities are now in operation. They are located at Juneau, Fairbanks, Nome, Bethel and Anchorage. These facilities were costly to build and are expensive to operate. It is not likely this network of juvenile detention facilities will be expanded in the foreseeable future.

Until recently it was believed that the initial and subsequent statutory changes had brought Alaska into full compliance with the requirement to deinstitutionalize status offenders. In 1987 we were informed by federal officials that Alaska's misdemeanor offense of Possession or Consumption By Persons Under The Age Of 21 is defined as a status offense for the purpose of the JJDP Act. At the same time, annual monitoring data showed that a significant number of children were being detained at both adult facilities and regional juvenile detention centers on this offense. The Division of Family and Youth Services immediately stopped these admissions at the regional juvenile detention

centers except when the conditions for the protective custody of an intoxicated person are met. Many adult jails and lockups have continued to book children for drinking alcohol and other status offenses.

The overuse of detention as a mechanism for dealing with juveniles who violate alcohol laws is a continuing problem and one of the primary obstacles in achieving compliance with the JJDP Act. Nearly all of Alaska's violations of the JJDP provision requiring deinstitutionalization of status offenders result from the detention/jailing of youth charged with possession or consumption of alcohol. The vast majority of these youth do not meet the standards for detention required by the Rules of Court or the criteria established by DFYS.

As recently as 1980 only the Anchorage area had a separate juvenile detention center. Children from all other areas of the state were being confined at adult correctional facilities, municipal jails and rural lockups. The five DFYS-operated regional juvenile detention centers now account for about 70% of all juvenile detention admissions and over 95% of juvenile detentions which exceed 48 hours.

Despite significant expenditures to build and operate separate juvenile detention centers, many Alaskan children continue to be jailed in adult facilities. While the majority of the incidents have regularly taken place in only ten or twelve communities, there are over ninety (90) communities with a jail or lockup which may occasionally detain a juvenile. In many cases transporting the juvenile to a regional juvenile detention facility is not practical for the arresting law enforcement agency. In other cases, detention of a juvenile is a short term convenience but not a necessity to protect either the child or the public.

Construction of costly juvenile detention centers in every Alaska community with a history of jailing children is not a realistic solution to this problem. If Alaska is to stop putting its children in jails, other alternatives must be created.

Beginning in 1988 the Division of Family and Youth Services began to develop and implement some creative and moderately priced solutions. However, the efforts of only one participating agency of the Alaska juvenile justice system will not be sufficient to overcome decades of past practice by it and the many other state and community agencies which make up the system.

PROMISING NEW STRATEGIES:

In the fall of 1987 the Division of Family and Youth Services made a decision to focus 100% of its JJDP grant receipts on activities directly related to meeting JJDP Act mandates rather than on any other juvenile justice system improvements. Additionally, a full time central office program position was assigned to the compliance effort.

A comprehensive review of successful program models used in other states has been completed. Several proven strategies have been adapted to Alaskan conditions in addition to the ongoing development of home grown ideas. The following components are part of the DFYS plan to end the jailing of children in Alaska.

Improved Monitoring and Data Collection - For the first ten years of JJDP Act participation the identified universe of municipal jails, rural lockups, adult correctional facilities, and juvenile detention facilities for monitoring and data collection only identified 14 facilities. While it was clearly obvious that more such facilities existed in Alaska, no effort had been made to identify their location. For years, Alaska had under reported both the number of secure facilities and the number of children detained in those facilities.

In 1988 the Division of Family and Youth Services negotiated an RSA with the University of Alaska Justice Center to develop a comprehensive monitoring plan and prepare monitoring reports for calendar years 1987 and 1988. **Over 100 secure facilities have now been identified.** One-third of these facilities will be inspected each year to verify sight and sound separation of children from adult prisoners. Booking and admission data is collected from each facility, where available, to complete a comprehensive monitoring report. Data from the 1987 report is currently been used for program planning.

Two major data recording deficiencies have surfaced during this monitoring effort. First, many of the 75 rural lockups do not maintain sufficient records to determine age, offense, and duration of confinement. Second, many of the records for 17 municipal jails (those under contract to the Department of Public Safety) do not separate booking records from admission records. On site inspection has revealed that children are often booked at arrest but never placed in the secure area of the jail. These jails keep booking records but not admission records. This

results in over reporting of JJDP Act violations. Efforts are underway to assist these adult facilities in maintaining more accurate records and DFYS anticipates the development of regulations to standardize reporting procedures.

Non-secure Attendant Care Shelter - Analysis of the data on juvenile confinement in adult facilities revealed that most children who are jailed could be safely placed in alternative facilities, if they were available. The attendant care shelter concept has been the most successful alternative used by other states. A child placed in an attendant care shelter is supervised on a one-to-one basis by a trained adult attendant until the child can be released to a parent or guardian, taken to court, or transported to a regional juvenile detention facility. Attendant care shelter sites are only operated on an as needed basis with a roster of available on-call attendants. The site itself may be an administrative office, a room in a public building, a foster home, or an apartment, with access to a restroom and minimal accommodations.

Since September 1988 ten (10) non-secure attendant care shelter sites have been established to serve the following 12 communities:

Barrow	Homer	Seward
Juneau	Kenai	Sitka
Ketchikan	Kodiak	Valdez
Kotzebue	Petersburg	Wrangell

These programs are funded by pass-thru grants using JJDP Act grant revenue. The average cost per program is \$20,000 per year. Four of the programs are operated by local government, five by non-profit social service or mental health agencies and one by a native association. DFYS expects to be able to fund one or two more sites in FY90.

Secure Modular Holdover - The availability of a previous capital reappropriation for juvenile detention alternatives in Ketchikan permits DFYS to fund a model secure detention program in that community. A small modular building with two secure rooms is being designed and constructed. The modular unit will be placed at the new Ketchikan health facility and will contain two secure rooms. DFYS will contract with the City of Ketchikan for its operation on an on-call basis similar to a non-secure attendant