

ALASKA

LEGISLATURE

COMMITTEE

FILES

1991-1992

8672

7233

HOUSE STATE

AFFAIRS

HB

22



## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 22

This bill amends AS 24.05 by adding a new section that makes a communication from a member of the public to a legislator or a legislator-elect, involving public policy or relating to the official duties of a legislator or legislator-elect, confidential unless confidentiality is waived by the member of the public, or the communication is offered as public testimony. The bill also makes a request to the Legislative Research Agency by a legislator, legislator-elect, or legislative committee for research confidential. And the bill makes a report prepared by the agency in response to a request confidential, unless the requestor directs the agency to release the report as a public record. Existing AS 24.20.100 already makes requests by legislators for research confidential, but this bill extends confidentiality to legislators-elect and makes completed reports confidential until released by the requestor. This legislation involves the operations of a separate co-equal branch of government, and it will not have a fiscal impact of the Department of Law.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO: HB 22

Revision Date: \_\_\_\_\_  
Title: "An Act... confidential communications  
to legislators... confidential legislative records...  
Sponsor: Representative C. Davis  
Requestor: House State Affairs

Department Affected: Legislative Affairs Agency  
BRU: Legislative Council  
Component: Legislative Research Agency

COMPONENT SERIAL NO: 1174

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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director  
Division: Administrative Services

*Pamela Stoops*

Phone: 465-3850  
Date: 1/29/91

Approved By: Warren W. Endicott, Executive Director  
Agency: Legislative Affairs Agency

*Warren Endicott*

Date: 1/29/91

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

# ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT 1  
HYDER  
KETCHIKAN  
KUPREANOF  
MEYERS CHUCK  
PETERSBURG  
SAXMAN  
WRANGELL



IN KETCHIKAN  
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KETCHIKAN, AK 99901  
PHONE 225-9449

DURING SESSION  
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STATE CAPITOL BUILDING  
JUNEAU, AK 99801  
PHONE 465-3121

## Representative Cheri L. Davis

### STATEMENT ON HOUSE BILL 22

I have introduced House Bill 22 as a response to some concerns expressed by constituents about conversations on sensitive issues.

Section 1, parts A and B, deals with the confidentiality of communications and records. It allows for any communication to a legislator or legislator-elect to be confidential unless waived by the member of the public. However, legislator confidentiality will not apply to public testimony or if the information received can be released, while protecting the identity of the constituent.

These two parts of the bill transpired out of a conversation I had last interim with a constituent who came to me about a personal matter and asked if our conversation, and subsequent correspondences, could be kept confidential. I asked our Legal Services this question and found that there was no confidentiality provision. Apparently most legislators, like myself, assume that until they choose to release information in the form of a bill, or testimony to a committee, that their conversations with constituents and their files on those conversations are confidential.

Part C, relating to the Legislative Research Agency, provides for more direct language concerning confidentiality of requests and reports. There is a statute that somewhat addresses this now (AS 24.20.100), but this provision "tightens" the confidentiality of requests and reports.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

February 12, 1991

**SUBJECT:** Confidential Communications to Legislators (HB 22)

**TO:** Representative Gene Kubina, Chair  
House State Affairs Committee

**FROM:** Tamara Brandt Cook  
Director

TBC

You have asked whether the confidentiality provision contained in HB 22 would create some form of a legislator/constituent privilege that would prevent the legislator from testifying in court regarding the content of communications. In my opinion it would not because the bill does not specifically address the issue of testifying.

The court has held that a statute that merely sets out that certain communications are confidential will not create a testimonial privilege, but is essentially an "anti-gossip" provision and that to create a privilege it is necessary to amend the court rules. (Allred v. State, 554 P.2d 411 (Alaska 1976)) Note, however, while rules of evidence are generally considered matters of procedure this is because those rules deal only with the orderly dispatch of judicial business. Certain rules of evidence, such as privilege, go beyond that and are considered matters of substance. Joiner and Miller, "Rules of Practice and Procedure: A Study of Judicial Rule Making" 55 Mich. L. Rev. 623 (1957)

The Allred case never specifically considered whether a privilege is a matter of procedure (requiring a change to court rule) or a matter of substance (which does not require a change to court rule). The court, apparently, now agrees with the commentators that the question of privilege is a matter of substance which the legislature can address through simple enactment of a bill creating a specific privilege not to testify. Evidence Rule 501 provides:

Except as otherwise provided by the Constitution of the United State or of this state, by enactments of the Alaska Legislature, or by these

or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

- (1) refuse to be a witness; or
- (2) refuse to disclose any matter; or
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or writing. (Emphasis added)

So, while there is no need to amend a court rule to create a testimonial privilege, a statute creating a privilege not to testify must so state specifically. This bill would need to be amended to do that.

It is my understanding, however, that the legislation was not intended to create a specific legal privilege and that, in fact, there was no intent to shield communications from situations involving litigation. Rather, I understood that the thrust of the legislation was to enable a legislator to decline to make a letter from a constituent available to the press or another when the constituent intended the communication to be private. Arguably, those items are now public records subject to disclosure on request.

You have also asked whether the bill modifies the open meetings statute (AS 44.62.-310) as it applies to meetings of legislative bodies. In my opinion, the bill does not do so. Meetings of legislative committees and subcommittees would still be subject to that statute. Only a communication to a legislator not intended as public testimony would be treated as confidential, and that type of communication could not be included in the public records of a committee.

TBC:gc  
91-073.glc

# Alaska State Legislature



Legislative Research Agency

P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 165-3991  
Fax: (907) 163-3331

January 31, 1991

Honorable Cheri Davis  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811-3100

Dear Representative Davis:

This letter is to express my support for the provision of House Bill 22 (paragraph c) that deals with the confidentiality of research prepared by the Legislative Research Agency. The language in House Bill 22 is more direct and explicit than that currently found in AS 24.20.100 concerning confidentiality ("Members of the legislature may utilize the research and bill drafting services of the Legislative Affairs Agency. Requests by members of the legislature are confidential"). It describes the existing practice of the Agency. Thus, to the extent that it removes any ambiguity that may reside in AS 24.20.100, we would prefer to rely on the provision in House Bill 22 for statutory authority to safeguard the confidentiality of our work.

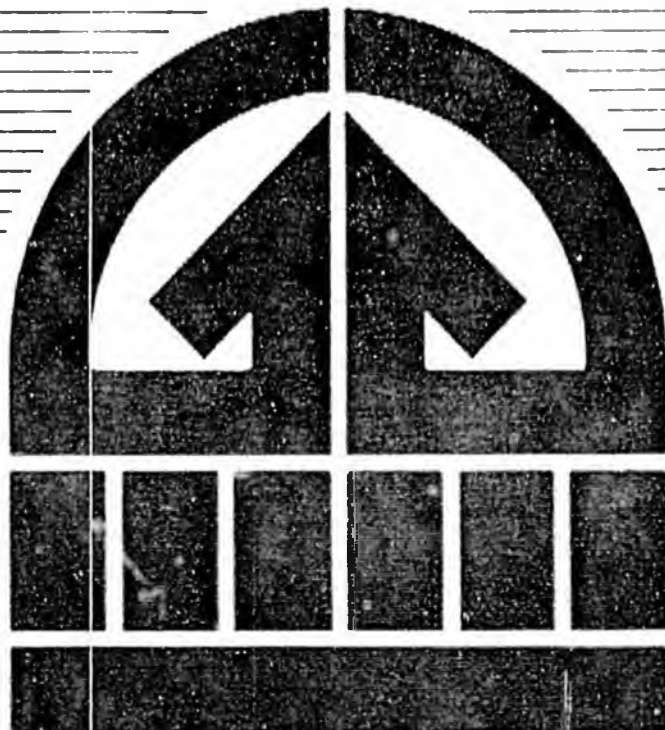
Sincerely,

A handwritten signature in cursive script that reads "Gordon S. Harrison".

Gordon S. Harrison  
Director

Enclosure

# STATE LEGISLATIVE REPORT



CONFIDENTIALITY OF LEGISLATIVE RESEARCH DOCUMENTS

by

Sandra Singer  
Principal Research Analyst

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An Information Service of the National Conference of State Legislatures  
1050 17th Street, Suite 2100, Denver, Colorado 80265. Earl S. Mackey, Executive Director

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## CONFIDENTIALITY OF LEGISLATIVE RESEARCH DOCUMENTS

### INTRODUCTION

In most states, some or all of the legislative research documents\* are kept confidential in the research stage, or indefinitely, because of the legislature's perceived need for privileged communication to foster innovation. But that need must be balanced with the public's right to know about the internal workings of its government and its right to know that lawmaking is being conducted openly. For instance, a legislator may request that a bill be drafted but at the end of the process come to the conclusion that he does not want to introduce that type of legislation. If every bill draft or bill draft request were public information, legislators would be less likely to look at new ideas and approaches for fear of "mistakes" being publicized. Similarly, discussions and notes of legislators and legislative staff on the budget or other sensitive subjects need some privacy so people can speak candidly. To eliminate that privacy creates a chilling effect on communication which generally hinders the legislative process. On the other hand, if too much privacy is granted, the public fears that laws are being created through deals behind closed doors. Another reason for keeping preliminary work papers confidential is competition for new ideas. Some legislators take a proprietary interest in their work and don't want others to take credit for their ideas. This also is true in a partisan sense, as legislators of one party certainly do not want their ideas leaked to the other party. Each state deals with this issue somewhat differently, but generally most try to balance these competing interests by disclosing bills, reports and other documents as the work is put into final form.

### OVERVIEW

This State Legislative Report compares and contrasts the treatment of these documents by the various states. The information is based on a survey of all 50 states and American Samoa. Central non-partisan legislative research agencies were surveyed wherever possible. They were asked to list the types of legislative research documents that are treated as confidential

\*Documents considered under the broad heading of "research documents" include bill drafts, bill draft requests, research requests, background papers, staff notes and correspondence.

under either statute or office policy, and whether any of these documents have been subpoenaed from that office in the last 10 years. The survey responses were supplemented by a review of the relevant statutes supplied by most respondents. The survey information was gathered in January 1986.

Forty-two states and American Samoa consider bill drafts confidential, and bill draft requests are confidential in 45 states and American Samoa. Thirty-six states protect research requests from disclosure. Legislators' correspondence is confidential in 33 states, while legislative employees' correspondence is confidential in 27, and committee correspondence is confidential in only 18. Thirty states and American Samoa protect background papers and staff notes, and 28 states and American Samoa do so for preliminary reports by and for committees. (Appendix I lists the types of documents considered confidential in each state.)

#### EXEMPTIONS FROM DISCLOSURE

Most states enacted open records laws during the mid 1970s. Also known as public records acts, sunshine acts or freedom of information acts, they require the disclosure of public records in the custody of public agencies unless there are specific statutory exemptions. A number of states exempt legislative research documents from disclosure. These exemptions (if there are any) can be found in the open records laws, which often exempt legislative work papers from their provisions. This is the case in Arkansas, California, Connecticut, and nine other states. But Alaska, North Carolina, Rhode Island, Vermont and Wisconsin achieve the same result by excluding these documents from the definition of "public records." Another road to the same end is to adopt laws that prohibit disclosure of legislative documents. This works in conjunction with prohibitions found under statutory sections on the legislative branch (Alaska), the legislative counsel (California), legislative services (Colorado) or the legislative employee (Florida). Some states generally provide for disclosure but give the agency director discretion to deny disclosure of specified documents (such as "work product" in Indiana) or to protect individual privacy (Montana) or if the public interest (Connecticut) outweighs the merits of public disclosure. The opposite is true in Utah where work product is not considered to be "public record" unless the State Records Committee decides that the public interest in disclosure clearly outweighs the public interest in exempting the documents from disclosure. These provisions for discretion may be located in either the open records law or the statutes governing the legislature.

Several states provide specifically in their statutes or office policies for the exemption of material prepared in anticipation of litigation or that which would not be available to a party in litigation with the agency. Among these states are Maine, Maryland, Minnesota, Montana and Oregon. In addition, Minnesota statutes provide that drafting files are not subject to subpoena, search warrant, deposition, writ of mandamus, interrogatories or other disclosure.

## RELEASE OF CONFIDENTIAL INFORMATION

In most states where work papers are afforded protection, the agencies will not release them without the prior, express and specific permission of the requesting legislator. This practice is often based on the theory that the legislative employee is considered to be in an attorney-client relationship with each member and committee of the legislature. This is specifically provided in the statutes or office policies of California, Kansas, Maine, Missouri, South Carolina, South Dakota and Texas. West Virginia considers research for legislators or legislative committees to be the property of the requestor until he or she releases it to the public. In Utah, disclosure is made only with the drafting attorney's authorization. And Oklahoma requires the approval of the presiding officer of each house respectively. In contrast to those states is North Dakota, which considers work papers to be public unless the requestor designates them as confidential. Even when so designated, the papers become public when the finished document is delivered to the legislator.

Some states have different policies in different agencies. In Illinois, for example, all requests and work having to do with legislative subjects are confidential at the Legislative Reference Bureau but are treated confidentially at the Legislative Research Unit only if so requested.

Iowa, Maryland and Montana maintain the confidentiality of the content of requests but are required to keep public record of the requestor and the subject matter or title. In addition, Maryland must disclose the expenditures and the date when the final project summary will be available.

When and what is eventually disclosed varies considerably. In Missouri, all preparation material for bill drafts becomes public record after the introduction of the bill, whereas documents written or provided prior to the bill's introduction cannot be obtained in New Jersey. Maine assures legislators only that their proposals will be confidential during the biennium in which the proposal or report is prepared. Ohio provides that the public may examine a bill file only after a staff member has had an opportunity to remove any items that may have been requested by a legislator but never made public.

## CONCLUSION

The states vary greatly in their treatment of legislative research documents. At one extreme is Massachusetts, which claims no confidentiality at all. At the other are 16 states such as Hawaii, New Jersey and South Carolina, which claim confidentiality in all categories of documents. Delaware has no policy regarding confidentiality of legislative work papers. No matter where a state draws the line, it is a balancing act between what should be private and what should be public. This delicate balance must be drawn for each state in accordance with the standards of the day.

National Conference of State Legislatures

APPENDIX I

CONFIDENTIAL DOCUMENTS

Data gathered January, 1986

Key

- S - Statutory
- O - Office Policy
- B - Both

	BILL DRAFTS	BILL DRAFT REQUESTS	BACKGROUND PAPERS & STAFF NOTES	RESEARCH REQUESTS	PRELIMINARY REPORTS OR FOR COMMITTEES	LEGISLATIVE EMPLOYEE CORRESPONDENCE	COMMITTEE CORRESPONDENCE	LEGISLATORS' CORRESPONDENCE	COMMITTEE MEETING MINUTES	OTHER DOCUMENTS	NOTE (Includ)
ALABAMA	O	O		O				O			X
ALASKA	B	B	B	B	B	B1		B1		B2	
ARIZONA	O	O		O							X
ARKANSAS	O	O	O	O	O	O		B			
CALIFORNIA	S	S	S	S	S	S	S	S	S		X
COLORADO	S	S		O						O1	
CONNECTICUT	B	B	B	B	B	B	B	B		B1	
DELAWARE	NO POLICY ON CONFIDENTIALITY										X
FLORIDA	H	B	B	B	B	O	B	O	B		X
	S	O	O	O	O	O	O	O	O		X
GEORGIA	O	O	O	O	O	O	O	O			X
HAWAII	B	B	B	B	B	B	B	B			
IDAHO	O	O									X
ILLINOIS											X
INDIANA	O1	O	O	O	O2	O		O			
IOWA	O	O	O	O	O		O	O			X
KANSAS	B	B	B	B	B	B	B	B			
KENTUCKY	B	B	B1	B1	B	B	B	B			X
LOUISIANA	O	O		O		O	O	O			
MAINE	B	B	B	B	O	B	O	O		O1	X
MARYLAND	O	O								O1	X
MASSACHUSETTS											X
MICHIGAN	NO RESPONSE										
MINNESOTA	B	B	O	O	O			O			X
MISSISSIPPI	O	O	O	O	O	O		O			X
MISSOURI	O	O	O	O	O	O		O			X
MONTANA	B	B1	B	B	B	B	B	S2			
NEBRASKA	O	O									
NEVADA	B	B		B	O		O	O			X
NEW HAMPSHIRE	NO RESPONSE										
NEW JERSEY	S	S	S	S	S	S	S	S			
NEW MEXICO	B	B	B1	B1	B	B	B	B			
NEW YORK	NO RESPONSE										
NORTH CAROLINA	S	S	S	S	S1	S2		S			X
NORTH DAKOTA		O1		O1							
OHIO	O	O	O	O	O	O	O	O			X
OKLAHOMA	B	B	B	B		B		B			X
OREGON	B	B	O		O	O					X
PENNSYLVANIA	B	B	B	B	B	B	B	B		B1	X
RHODE ISLAND	B	B	B	B	B1		B1	B			
SOUTH CAROLINA	B	B	B	B	B		B	B			
SOUTH DAKOTA	O	O		O		O		O			X
TENNESSEE	B	S	S	S	B	S	B				X
TEXAS	B	B	O	O	O			O			
UTAH	O	O						O		O1	X
Vermont	B	B	B	B	B	B	B	B			X
VIRGINIA	S	S		B		B		B			
WASHINGTON	B	B	S								
WEST VIRGINIA	O	O	O	O	O						
WISCONSIN	B	B	B					B:			X
WYOMING	O	O	S		S						X
AMERICAN SAMOA	S	S	S		S						

## NOTES TO APPENDIX I

### ALABAMA

Note: Documents are confidential until the work is made public by the requesting member.

### ALASKA

1. Confidential only if related to bill drafting or research requests.
2. Internal reports showing request numbers and descriptive titles.

Note: All work requests and all files relating to them are confidential. Only the requestor can permit or direct disclosure to others.

### CALIFORNIA

Note: Government Code secs. 10207 and 10208 require the Legislative Counsel to maintain the attorney-client relationship with each member of the legislature. This prohibits the outside disclosure of any material that has not become a public record.

### COLORADO

1. Joint Budget Committee staff write-ups in preparation for hearings are available three days after the hearing; staff documents with regard to figure setting remain confidential at all times.

### CONNECTICUT

1. Amendments to bills on the floor.

### FLORIDA HOUSE

Note: Notes, drafts and unfinished reports are generally not made available without permission of the committee chairman or the speaker.

### FLORIDA SENATE

Note: A bill analysis becomes a public document at the time of the first committee meeting where the bill is placed on the agenda.

### GEORGIA

Note: Senate Administrative policy is that all Senate Research Office work is done expressly for the senator requesting the work. The work can be disseminated only at the request of the senator for whom the work was done.

## IDAHO

Note: No legislative documents are made "public" unless the requesting legislator gives permission.

## ILLINOIS

Note: Legislative Reference Bureau--requests and all work having to do with legislative subjects are confidential.

Legislative Research Unit--work is treated as confidential if so requested (rarely requested).

## INDIANA

1. Except approved study committee drafts.
2. Until presented to committee.

## IOWA

Note: The subject matter being worked on is listed in a subject index that the public may see. But some requests are confidential, and there is no record of these available to the public.

Note: Work product is not available until it has been delivered to the member or committee, and then it can be obtained from them.

## KENTUCKY

1. Only if related to bill request.

Note: Research for bill drafts, reports and related correspondence is confidential until filed or released at a public meeting.

## MAINE

1. All papers used in relation to preparing or amending a bill.

Note: All documents and work sessions are confidential until the end of the biennium. No one may examine a legislative file without the express consent of the individual legislator. However, access can be made with permission of the governor.

## MARYLAND

1. Bill summaries prepared for committee chairmen (at the option of the chairman).

Note: Bill and amendment drafting requests are confidential until introduced or proposed.

## MASSACHUSETTS

Note: All documents and papers are open to the public.

## MINNESOTA

Note: All legislative staff offices regard everything as confidential that has not been published as a public document.

Note: Drafting files are not public and not subject to "subpoena, search warrant, deposition, writ of mandamus, interrogatory or other disclosure."

## MISSISSIPPI

Note: No information about a research request, including the existence of the request, is released unless the legislator specifically authorizes its release.

## MISSOURI

Note: All bill drafters are lawyers. Until legislation is actually introduced, such work is attorney-client material and therefore confidential. After introduction, all preparation material becomes public record.

## MONTANA

1. Name of bill draft requestor and subject may be disclosed. All work in progress is confidential.

2. Material prepared in anticipation of litigation that would not be available to a party in litigation with the council under the Montana Rules of Civil Procedures on pretrial discovery.

## NEVADA

Note: Documents are confidential unless specifically released by the requestor.

## NEW MEXICO

1. Published research reports, background papers and research requests--if requested by a legislator and not of staff origin.

## NORTH CAROLINA

1. Confidential until distributed at a public meeting of a committee.

2. Confidential if arises out of request of legislator.

Note: All drafting and information requests and documents prepared at request of a legislator are confidential but become public when offered on the floor or in committee.

## **NORTH DAKOTA**

1. If a legislator specifically requests that a work request be kept confidential, the staff will not discuss that request with any non-staffer until the finished document is delivered to the legislator.

## **OHIO**

Note: A document is confidential prior to introduction or being made public by the legislator. Memoranda of a general nature may, however, be distributed to the public. The public may examine a bill file after a staff member has had an opportunity to remove any items that may have been requested by a legislator but never made public by him.

## **OKLAHOMA**

Note: The records and files of the legislature, not otherwise provided by law to be open to public inspection, shall be confidential and privileged and may be released for public consumption only upon approval by the presiding office of each house respectively.

## **OREGON**

Note: Legislative counsel staff are prohibited from revealing the content of a member's request if declared confidential by the member. If not so declared, committee rules prohibit revealing the content except to avoid duplication.

## **PENNSYLVANIA**

1. Material filed by administrative agencies relating to rulemaking.

Note: All unpublished material is confidential without the consent of the originating member.

## **RHODE ISLAND**

1. Items for internal use only are considered confidential, otherwise they are considered open public records.

Note: Under Senate Rule 9.5, senators may request computer access confidentiality for bills, letters, memoranda or any other documents.

## **SOUTH DAKOTA**

Note: The staff functions in a relationship to the legislator that is similar to the attorney-client relationship.

## **TENNESSEE**

Note: Documents are confidential until made public by a committee or legislator for whom it was prepared.

Note: Confidentiality has always applied to legislative attorney and research records for legislators and committees by the central office staff.

A legislator's correspondence in the office of legal services is confidential; however, there has been no determination on such correspondence in other legislative offices. In 1984, legislative records were added to the records management law (TCA 10-7-303). There have been no lawsuits on the question of what is a public legislative record.

#### UTAH

1. Research surrounding bill drafts.

Note: Materials are confidential if the legislator requests. Disclosure is made only with the drafting attorney's authorization.

#### VERMONT

Note: All information received in connection with research or drafting is confidential unless the requestor or the party giving the information designates in the request that it is not confidential.

#### WISCONSIN

1. "Drafts, notes, preliminary computations" prepared for the legislator's personal use or prepared by a staff person in the name of the legislator are exempt from definition as "public records" under the open records law.

Note: Records of drafting and reference requests, including their existence, are confidential until they become part of the record of an introduced proposal.

#### WYOMING

Note: Research for committees is released after it is supplied to the committee.

## APPENDIX II

### Applicability of Open Record Laws to Legislative Research Documents

#### ALASKA

Alaska Stat. sec. 24.20.100

Records required by state law to be confidential are not "open records." AS 24.20.100 makes legislative work requests confidential.

#### ARKANSAS

Ark. Stat. Ann. sec. 12-2804

Freedom of Information Act exempts "unpublished memoranda, working papers and correspondence of the governor, legislators..." from disclosure.

#### CALIFORNIA

Cal. Govt. Code sec. 9070  
(Title 2, Div. 2, Part 1,  
Chap. 1.5)

Open records act exempts all materials arising out of the attorney-client relationship between the legislative counsel and any member of the legislature.

#### COLORADO

Colo. Rev. Stat. secs.  
24-72-202(6); 24-72-203

All documents in the custody of 24-72-505 legislative employees are probably "public records" within the meaning of 24-72-202(6), but 24-72-203 provides that the open records law may be superseded by other provisions of law, such as 2-3-505 which provides that the contents and nature of bill draft requests be confidential.

#### CONNECTICUT

Conn. Gen. Stat. sec.  
1-19(b)(1)

Freedom of Information statute exempts from disclosure "preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.

## ILLINOIS

Ill. Rev. Stat. Ch.116,  
Par. 207(f) [Freedom  
of Information Act,  
P.A. 83-1013 (1984)]

Records which pertain to the preparation  
of legislative documents are exempt from  
copying or inspection under the Freedom  
of Information Act.

## INDIANA

Ind. Code sec. 5-14-3-4

Law allows the Legislative Services Agency  
discretion in releasing information on  
"work product" of the agency.

## KANSAS

Kan. Stat. Ann. secs. 45-22  
(a)(1)(20)(21),(25); 45-221(b)

Open records law exempts research done for  
members and records pertaining to proposed  
legislation until disclosed in an open  
meeting. Attorney work product is also  
exempt under the attorney-client  
principle.

## KENTUCKY

Ky. Rev. Stat. secs. 61.878  
(1)(g),(h); 6A.100; 7.120

Exempted from open records law are  
preliminary drafts, notes, correspondence  
with private individuals (other than  
correspondence which is intended to give  
notice of final action of a public  
agency), preliminary recommendations and  
preliminary memoranda in which opinions  
are expressed or policies formulated or  
recommended.

## LOUISIANA

La. Rev. Stat. Ann. secs.  
44.2; 44.3

Open records law exempts records retained  
by legislative attorneys that concern any  
case, cause charge or investigation being  
conducted by or through the legislature  
until final disposition, at which time  
they become public records.

## MAINE

Me. Rev. Stat. Ann. tit. 1,  
sec. 402(3)

Exempted are records within the scope of a  
privilege against discovery or use as  
evidence recognized by the courts if the  
records or inspection thereof were sought  
in the course of court proceedings. Also  
exempted are records, working papers and  
inter-office and intra-office memoranda  
used or maintained by any legislator.

legislative agency or legislative employee to prepare proposed senate or house papers or reports for consideration by the legislature or committees during the biennium in which the proposal or report is prepared.

#### MARYLAND

Md. State Govt. Code Ann.  
sec. 10-618(b),(d)

Under the Public Information Act, a custodian may deny inspection of any part of any inter-agency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit. Also, custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the state or of a political subdivision is conducting (this does not include the part of a public record which gives the name, title, expenditures and date when the final project summary will be available).

#### MASSACHUSETTS

Mass. Gen. Law Ann. tit. X,  
ch. 66, secs. 1-10

Records are open for public inspection.

#### MISSOURI

Mo. Rev. Stat. tit. 39,  
ch. 610

Open records law generally applies, particularly after a bill is introduced.

#### MONTANA

Mont. Const. Art. II, secs. 8,9  
& 10; Mont. Code Ann. secs.  
2-3-201 through 2-3-221;  
2-6-101 through 2-6-104

Generally, everything is open to the public except information that the Executive Director of the Legislative Council determines not to be available because the demands of individual privacy clearly exceed the merits of public disclosure.

#### NEW JERSEY

N.J. Rev. Stat. secs. 52:11-70  
47:1A-1

Open records law applies only to legislative documents that are public and required by law to be made and maintained, such as introduced bills, committee statements, etc. Documents made prior to the bill's introduction are not obtainable.

#### NORTH DAKOTA

N.D. Const. Art.XI, sec. 6;  
N.D. Cent. Code sec. 44-04-18

All records of public agencies are public records unless specifically excepted, which legislative documents are not.

#### OHIO

Ohio Rev. Code Ann. ch. 121

Legislative documents are not expressly included in open records act. No court decision or opinion of the attorney general clearly resolves the issue.

#### OREGON

Or. Rev. Stat. secs. 192.410-500

Exempted from public disclosure are records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. Also exempt are the contents or nature of any matter brought before the legislative counsel if the person bringing it before the counsel designates it as confidential.

#### PENNSYLVANIA

65 Pa. Cons. Stat.  
secs. 261; 264

Open records act applies to minutes of policy-making meetings of the General Assembly.

#### RHODE ISLAND

R.I. Gen. Laws secs. 38-2-2(d)  
(11), (13)

Research papers are considered "work papers" or "work products" under the public records law and therefore are not deemed public records.

#### SOUTH CAROLINA

S.C. Code Ann. secs. 30-4-40;  
30-4-70

Public records law exempts correspondence or work products of legal counsel for a public body and any other material that would violate the attorney-client relationship and memoranda, correspondence and working papers in the possession of members or their staffs.

## TENNESSEE

Tenn. Code Ann. sec. 3-12-106

Public Records Law applies to documents that are part of public proceedings. Materials arising out of the attorney-client relationship between legal staff and legislators are not considered to be open records. This exception from the Open Records Law does not apply to non-legal legislative staff. No question has been raised nor any determination made on whether the individual legislator's records are public records.

## TEXAS

Tex. Stat. Ann. tit. 110A,  
Art. 6252-17a, 3(a)(6);  
tit. 87, Art. 5429b-3

Open records law exempts "drafts and working papers involved in the preparation of proposed legislation." The work product of staff lawyers is considered privileged as a result of attorney-client relationship.

## UTAH

Utah Code Ann. sec. 63-2-61(5)  
(1985)

The term "public records" does not include preliminary drafts or personal notes made or received, and retained by the agency in the ordinary course of business, unless, in the opinion of the State Records Committee, a public interest in disclosing these records clearly outweighs the public interest in exempting them.

## VERMONT

Vt. Stat. Ann. tit. 2,  
sec. 404(c)

Open records law applies to committee transcripts and minutes, written testimony submitted to committees, bills or amendments that have been released or approved for printing or introduction and material appearing in the journals or calendars.

## VIRGINIA

Va. Code secs. 30-28.18; 2.1-342

"Memoranda, working papers and correspondence held or requested by members" are exempt from the Freedom of Information Act.

**WASHINGTON**

Wash. Rev. Code secs. 1.08.027;  
42.17.310

"Preliminary drafts, notes, recommendations and inter-agency memorandums in which opinions are expressed or policies formulated" are exempt from the public records law.

**WEST VIRGINIA**

W.Va. Code Art. 9A

Research for legislators or legislative committees is the property of the requestor until it is released by them or becomes public information (usually through public release or discussion). Internal memoranda or letters received or prepared are exempt from disclosure under the public records law.

**WISCONSIN**

Wis. Stat. sec. 13.92; 905.03;  
19.31-19.39

The open records law favors public inspection of public records except where the harm done to the public interest by disclosure outweighs the right of access to the particular record.

## APPENDIX III

### Legislatures That Have Had Research Documents Subpoenaed In The Last 10 Years

#### ARKANSAS

The court found there was a strong public policy in favor of public records and construed the Freedom of Information Act exemption of legislators' work papers narrowly. Since the Legislative Joint Auditing Committee was not made up of legislators, their work papers were public records and had to be disclosed.

Note: In its 1987 session, the Arkansas legislature amended the Freedom of Information Act to exempt the working papers of the state auditor.

#### CALIFORNIA

California is subpoenaed approximately 15 times a year. Most subpoenas are valid, and the state usually complies. However, when a legislative aide was subpoenaed for the purpose of establishing legislative intent, the state resisted successfully on the grounds of relevancy. California law provides that testimony of legislators and legislative aides is irrelevant to a court's construction of a statute.

#### FLORIDA

Subpoenas of legislators and staff have been contested on the grounds of legislative privilege, separation of powers and relevancy. The legislature has virtually always been successful.

#### MARYLAND

A request for access to bill drafting files was initially denied, but a compromise was later reached allowing the plaintiff to inspect and copy all documents in the files except those reflecting communications between Maryland legislators (or their staff) and persons employed by the legislative branch of government.

#### MINNESOTA

Motions to quash have been successful on several occasions. More usually, when it has been indicated that any subpoena would be resisted on constitutional grounds (speech or debate clause), the attempt has been dropped.

#### NEW JERSEY

As part of various law suits, legislative employees and records have been subpoenaed. An attorney accompanies the individual to ensure that N.J.S.A. 52: 11-70 (which provides for the confidentiality of legislative work and requests) is not violated. Public documents are provided.

### NEVADA

Records of the bill draft were used in court in determining legislative intent.

### NORTH CAROLINA

A legislative services officer was subpoenaed to bring certain public legislative documents. He did so and testified only to the fact that they were originals of the committee minutes.

In another incident, the director was subpoenaed to testify about what happened in the 1949 General Assembly. The director informed the plaintiff's attorney that his testimony would be useless because 1949 was before he was born, and the subpoena was withdrawn.

### OHIO

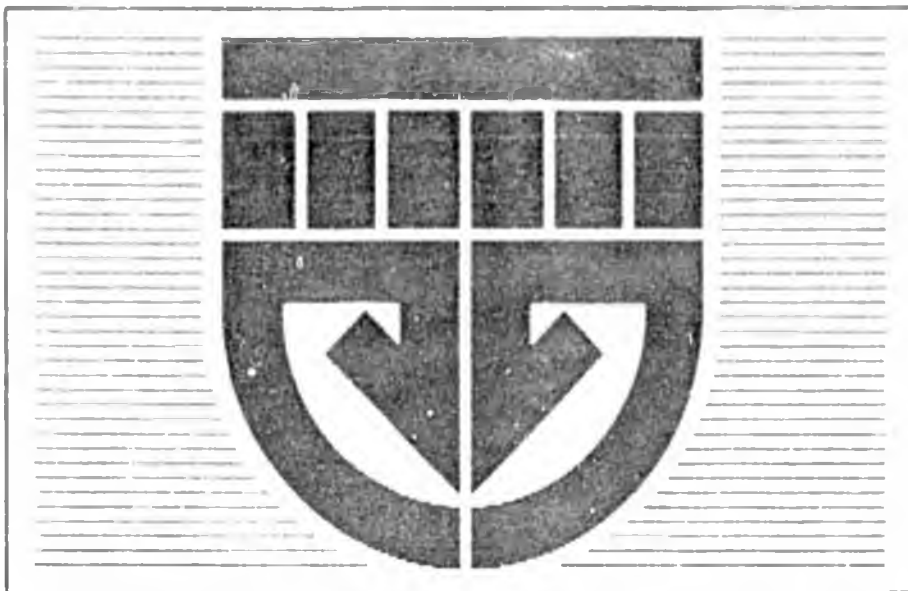
Copies of documents subpoenaed were supplied.

### PENNSYLVANIA

Records pertaining to a legislative investigation into the propriety of a no-bid source contract to furnish granite for an extension of the state capitol building were requested under a blanket federal grand jury subpoena. The House of Representatives' motion to quash was granted in federal district court. The Third Circuit Court of Appeals reversed. The House has applied for certiorari to the U.S. Supreme Court.

### VERMONT

The court protected the confidentiality of documents under the attorney-client relationship.



**STATE  
LEGISLATIVE  
REPORT**

**National Conference  
of State Legislatures  
1050 17th Street, Suite 2100  
Denver, Colorado 80265**

**Non-Profit Organization  
U.S. Postage  
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# Proposal fosters Capitol secrets

**N**ow before the House State Affairs Committee is a question that contains its answer. Briefly stated, the question is as follows:

A member of the *public* writes a letter to a *public* official involving a matter of *public* policy or relating to the legislator's official duties.

Should that letter be *public*?

When a constituent contacts a legislator, presumably that contact has to do with public policy. That is a statement of the obvious, sort of like saying when someone writes to a car dealer, it has to do with a car.

There are some people, however, who believe that what they tell their legislators is nobody else's business. How could that be? If a legislator is working for the public on the public payroll about matters of public policy, then it would seem that the public would have a perfect right to know about it.

The State Affairs Committee in the House is considering House Bill 22, which would add a new section to state law making communications between a member of the public and a legislator or a legislator-elect confidential unless:

- Confidentiality is waived by the member of the public.
- The communication is offered as public testimony.

In addition, the bill would not only make reports prepared by the Legislative Research Agency secret unless the legislator who requested it wants it released, it would make legislator's requests for reports secret.

Such a broad-brush amendment would have the effect of ~~making any~~ public-records laws as they current pertain to legislator-constituent communications and research reports.

Our system of government is based on the premise that the public has a right to elect its representatives - and to know what they do once they are elected.

This legislation has the effect of negating that most basic premise and, if enacted, could open the door to any number of abuses.

The public must trust its elected representatives. The way to build that trust is to maintain openness in every facet of government.

This bill would do precisely the opposite. Alaska's legislators would do well to reject it in its entirety.

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**ISSUE:** Bill would  
make all constitu-  
ent letters secret

---

he served his time, he's struck again.

Who let this guy out on furlough? Why doesn't his p.r. man have him under electronic surveillance?

At a nearly all-male, all-jock event in Connecticut, the Ramington reaper was being roasted about a season in which the losses on the playing field were more than matched by the losers in the locker room. Some of his players were more dangerous out of uniform - and I mean OUT of uniform - than in.

The naked aggression against reporter Olson had produced an unrivaled flap about sexual harassment. Our boy Victor, who called the incident "a flyspeck in the ocean" and called Olson a "classic bitch," had ended up in full-flight, full-page, all-network apologies.

But here he was on a weekday pass and he couldn't help himself. He told the crowd a joke: "What do the Iraqis have in common with Lisa Ol-

## Democrats

TROBINE MEDIA SERVICES

Perhaps, the war has distracted us all.

But, last week, the Bush administration passed several milestones in American history, virtually without notice.

• For the first time since World War II, federal spending is scheduled to exceed 25 percent of America's gross national product.

• This year and next we will run the two largest deficits in U.S. history - \$318 billion this fiscal year, \$281 billion in fiscal year '92 - dwarfing the two largest Reagan deficits by nearly 40 percent.

• Federal tax revenues will move back up to levels unseen since before the Reagan tax cuts, near one-fifth of GNP.

Big Government is crowding us out.

Compared to the last Great Society, guns-and-butter budget of LBJ, the Bush budget for 1992 - \$1.45 trillion in spending - is a giant. Not since 1945 has the federal government made so huge a claim on America's resources. As The Wall Street Journal notes: "One dollar of every four produced by working Americans will be handed over to Congress and its various Departments of Good Intentions." After Congress takes its 25 percent bite, state, county, and city governments are lining up for their share.

Few have noticed the crossing of this fiscal equator, and fewer complain, though Mr. Bush's '92 budget will take 3 percent more of GNP than Mr. Reagan's last, which claimed

# Legislators consider secrecy bill

By BRIAN S. AKRE

THE ASSOCIATED PRESS

Letters and memos from the public to lawmakers involving public policy would be secret under legislation considered Wednesday by the House State Affairs Committee.

House Bill 22 also would make legislators' research requests to the Legislative Research Agency confidential, as well as reports prepared in response to those requests.

Sponsoring Rep. Cheri Davis, R-Ketchikan, testified that the bill would put into law what legislators already thought they could do: keep personal correspondence from constituents and sensitive research reports confidential.

"There are times when they need to be confidential," she said.

The committee took no action on the bill.

Chairman Gene Kubina, D-Valdez, referred it to a subcommittee, which will try to narrow the effect of the legislation. The bill should apply only to personal matters, not public policy, he said.

Kubina had invited members of the news media to testify on the bill, but none did. Committee members did read an editorial from Tuesday's Juneau Empire, which sharply criticized the bill.

"Such a broad-based amendment would have the effect of negating any public-records laws as they currently pertain to legislator-constituent com-

munications and research reports," the editorial said.

"Our system of government is based on the premise that the public has a right to elect its representatives, and to know what they do once they are elected."

Davis said constituents who write her about problems with state social-service agencies often "spill their guts" with sensitive personal information, and most don't realize their letters are public record. If such letters are not kept secret, the public will be discouraged from writing lawmakers, she said.

State law already protects the confidentiality of many social service agency files, such as those pertaining to child adoption, child abuse and foster care, but the protection does not cover letters on those subjects sent to legislators by members of the public.

The bill would not affect letters that legislators put in their bill files, which are public record, Davis said.

Rep. Max Gruenberg, D-Anchorage, urged the committee to move slowly on the bill.

"This bill is a very difficult public issue, and it is not the kind of thing we should rush through," Gruenberg said. "I don't think it's as simple as the editorial says. I don't think it's as simple as the sponsor says."

Under the legislation, confidentiality of letters could be waived by the writer, and correspondence of-

ferred as public testimony would be exempt from the secrecy provision.

The bill also would allow statistics and "information regarding the substance of the communication" to be released if the identity of the source could be withheld.

Gordon Harrison, director of the Legislative Research Agency, said the bill would put into law what has for years been an unwritten policy in dealing with research requests and reports.

The research agency's budget is about \$1 million a year, and about half of its work is never released.

*Juneau Empire 2-13-91*

# Open letters

## *Correspondence should remain public*

Lawmakers rarely get to choose explicitly between good and bad, between right and wrong. Usually, they are compelled to choose between competing interests — between opposing positions supported by both logic and merit.

Such is the case with Rep. Cheri Davis' bill that would make secret the letters and memos the public sends lawmakers.

Rep. Davis, R-Ketchikan, has a point when she says constituents with problems often don't expect their communications to become part of the public record. One can sympathize with her desire to protect unsuspecting writers.

But then look at the other side. The letter writers, after all, are writing to public officials. A letter can influence a legislator's behavior or a bill. The relationship between a constituent and a lawmaker takes place in the public realm. Traditionally, a constituent's comments to his or her representative become part of the public record. A public official and a constituent don't have a private relationship like a patient and a doctor or a client and a lawyer, so why should a constituent expect — much less receive — privacy?

In the Daily News' judgment, the public interest will be better served by keeping constituent mail on the public record. The fact that a relatively small number of letter writers might be embarrassed by what they've written does not provide compelling reason to make all constituent communications disappear into locked files.

Nor should reports prepared in response to constituents' requests remain confidential. Such reports, after all, provide analysis and understanding of the public world — and they're prepared at public expense.

Rep. Davis has raised a problem that vexes a small number of Alaskans. Unfortunately, she's come up with a solution bad for everyone else.

ADN 2-16-91

HB

26

Thursday  
Feb. 21, 1991

Rep. Gene Kubina  
Chairman, House State Affairs Committee

Dear Sir:

We have received a reply to our letter to Senator Sam Cotton pertaining to our concern about House Bill #26. He also sent us a copy of the proposed bill to read and suggested we write to you. Our concerns about House Bill 26 are as follows:

1. Since both the Longevity Bonus and Permanent Fund Dividend programs are State of Alaska laws, the residency criteria should be identical for both programs. It is important that the payments go only to bone fide Alaskan residents. We don't feel the number of days absent from the state is as important to establishing residency as ownership of one's home or long term rental in Alaska, voter registration, car registration, Alaska driver's license, fishing and hunting licenses. We think recipients of both or either programs should be required to be physically in the state at least half of the year, but the applications should also require the other evidence of residency.

2. As we read the proposed House Bill 26, there would be a hardship created by the age 65 or older proposal for allowed absence from the state. For example, one of us (husband) is 67 and the other (wife) is 63. The older one could be absent from the state longer than the younger one and still be eligible for the Permanent Fund Dividend. This discrepancy should be corrected by both programs requiring 180 days the maximum time allowable for absence from the state in one calendar year.

In conclusion we would suggest the following:

1. Have the requirements for allowed absence from the state identical (ie 180 days maximum without regard to age).

2. Use home ownership, long term rental, voter and vehicle registration, Alaska driver's license etc. as additional evidence of residency.

Thank you for reading our comments. We will be following your deliberations closely.

Sincerely,

*Marvis Nelson*  
*Robert E. Nelson*

Marvis Nelson  
Robert E Nelson  
4016 James Dr.  
Anchorage, Ak 99504

FEB 25 1991

HB

37

# HOUSE COMMITTEE REPORT

(7)  
 Date Referred: January 21, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 2-13-91

The STATE AFFAIRS Committee considered: HB 37

HOUSE BILL NO. 37 INVESTMENT OF PENSION FUND

"An Act establishing the Alaska State Pension Corporation; relating to management and investment of state pension funds and other state funds; and providing for an effective date."

RECOMMENDATIONS:  
 be replaced with C.S. HB. 37 (State Affairs)  the same title  
 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 Revenue  fiscal note(s) \_\_\_\_\_  
 zero fiscal note Administration  zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>Tom Moyer</i> <small>Moyer</small>				
<i>Chris Choquette</i> <small>Choquette</small>	<i>Mike Miller</i>		<input checked="" type="checkbox"/>	
<i>Frank Baker</i> <small>Baker</small>	<i>Mike Stassenberg</i>		<input type="checkbox"/>	
<i>Gene Beckman</i> <small>Beckman</small>	<i>Gene Kubina</i>		<input checked="" type="checkbox"/>	

*Gene Kubina*  
 \_\_\_\_\_  
 Chairman's Signature

# FISCAL NOTE

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

BILL NO. HB 37

Revision Date: \_\_\_\_\_  
 Title: An Act Establishing the Alaska State Pension Corporation  
 Sponsor: Ulmer  
 Requestor: \_\_\_\_\_

Department Affected: Administration  
 DRU: Retirement & Benefits  
 Components: Retirement & Benefits  
 COMPONENT SERIAL NO. 64

**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	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>REVENUE</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUNDING: (Thousands of Dollars)**

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

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

Estimate of current year impact: \_\_\_\_\_

**ANALYSIS: (attach a separate page if necessary)**  
 There is no measurable fiscal impact to the Division from this bill.

Prepared By: Gary M. Bader, Director *Gary M. Bader* Phone: 465-4470  
 Division: Retirement and Benefits Date: 1/25/91  
 Approved By Commissioner: Milva Ulmer *Milva Ulmer* Date: 1/28/91  
 Agency: Administration

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

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 37

Revision Date: \_\_\_\_\_  
Title: Alaska State Pension Corporation  
Sponsor: Ulmer  
Requestor: House State Affairs

Department Affected: Revenue  
BRU: Treasury  
Component: \_\_\_\_\_

Component Serial No.

	1	2	1
--	---	---	---

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	(9,846.2)	(19,692.4)	(19,692.4)	(19,692.4)	(19,692.4)	(19,692.4)
TOTAL OPERATING	(9,846.2)	(19,692.4)	(19,692.4)	(19,692.4)	(19,692.4)	(19,692.4)

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	(9,846.2)	(19,692.4)	(19,692.4)	(19,692.4)	(19,692.4)	(19,692.4)
TOTAL	(9,846.2)	(19,692.4)	(19,692.4)	(19,692.4)	(19,692.4)	(19,692.4)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: Alaska State Pension Corporation is assumed to take over retirement fund investments January 1, 1992. FY 92 figures are half the amounts requested in Treasury's FY 92 budget for retirement funds. FY 93- 97 are the full amount of FY 92 budget for retirement funds.

Prepared by: Milton B. Barker MB

Phone: 465-2350

Division: Treasury

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

Approved by Commissioner: *[Signature]*

Agency: Revenue

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

# Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

## MEMORANDUM

TO: Rep. Gene Kubina, Chairman  
House State Affairs Committee

FROM: Rep. Fran Ulmer *[Signature]*

RE: HB 37, an act establishing the Alaska State Pension Corporation; relating to management and investment of state pension funds and other state funds; and providing for an effective date.

DATE: January 29, 1991

HB 37 represents the latest in several attempts over the past several years to give the state's retirement funds greater security. Today, I believe this legislation is especially prudent considering the volatile condition of our financial markets and the recent spate of investment scandals that have put pension funds of other states and organizations in considerable peril.

Today the state is responsible for over a billion dollars in retirement funds that are managed by a single person, the Commissioner of Revenue. This bill would place those funds under the guidance of the Alaska State Pension Corporation, its board of trustees and a professional advisory council. Additionally, I believe this corporation will strengthen our management of retirement funds by giving the members of these programs representation. In the future HB 37 may also lead to the integration of benefit administration with investment duties.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99801 • Phone: 465-4947

- Sponsor Statement -

January 29, 1991  
Page Two

The Alaska State Pension Corporation

- 1) is a public corporation established to manage the PERS, TRS, Judicial and Military retirement system funds and other state funds, upon agreement.
- 2) allows for beneficiary and employer representation through a 7 member board of trustees, composed of: 3 elected members, 2 seats appointed by employers, the Commissioner of Revenue and 1 appointed member nominated by the other 6 trustees.
- 3) provides for an Investment Advisory Council, composed of 3 to 5 professionals, that would recommend investment policies, assist in the selection of performance consultants and advise on the overall financial well being of the Corporation.
- 4) requires that all named fiduciaries adhere to the Prudent Investor Rule and that all applicable transactions follow the General Accepted Accounting Principals.
- 5) requires the board to employ and fix compensation for an executive director. The executive director may appoint employees. All are exempt from the personnel code.
- 6) provides for legislative, executive, member and employer oversight through reporting and through use of outside performance evaluators and auditors.

Thank you for your prompt consideration of this important legislation. Please contact my office if you need any additional information.

a:hb37prep.mem

MEMORANDUM

January 29, 1991

TO: Rep. Gene Kubina Chair  
House State Affairs Committee

FROM: Rep. Fran Ulmer

RE: Sectional Analysis of HB 37

The folling is a sectional analysis of HB 37, An act establishing the Alaska State Pension Corporation: relating to management and investment of state pension funds and other state funds: and providing for an effective date.

TITLE: Identifies that the retirement system funds, and other state funds upon agreement are to be managed and invested by the corporation.

SECTION 1/FINDINGS: recommendation that the ASPC should integrate the investment of pension funds with retirement benefit administration responsibilities for all state related pension funds, including EPORS, within two years of enactment of this legislation.

SECTION 2: creates the Alaska State Pension Corporation.

Sec. 37.10.210 establishes the corporation as a public corporation. Subsection (b) sets out the seven voting trustees, three of which are elected by members of the retirement systems, two of which are appointed by the governor from a list submitted by employers, one additional is appointed by the governor, from a list of nominees submitted by the other six trustees, and the commissioner of revenue serves as a trustee. Subsection (c) sets out staggered four year terms for trustees. Subsections (d) and (e) set out removal of trustees and filling of vacancy. Subsections (f)(g)(h) set out board organization: board elects chair annually, four trustees constitute a quorum and designees are not allowed. Subsection (i) requires trustees to participate in financial education training.

Sec. 37.10.220 sets out the powers and duties of the board, including establishing investment policies for the funds for which it is responsible, submitting investment reports to the legislature, employers, appropriate boards, contracting for external performance reviews, employing outside investment advisors, employing legal counsel, permitting trustees to enter agreement to assume responsibility for other state funds upon agreement with the managers of those funds.

Sec. 37.10.230 sets out conflict of interest provisions for the fiduciaries and allows the board to designate other staff who must comply with these provisions. Under this section, the board shall adopt regulations to restrict fiduciaries and any designated staff, from having a substantial interest in corporate assets. Subsection

- Sectional Analysis -

(c) identifies that failure to disclose conflicts is grounds for termination of employment.

Sec. 37.10.240 exempts the board from the Administrative Procedures Act but requires the board to comply with the open meetings law.

Sec. 37.10.250 sets the honorarium for trustees at \$150 per meeting day and states that those who are public employees shall serve without compensation but shall be granted administrative leave.

Sec. 37.10.260 requires the board to employ and fix the compensation for an executive director who must meet qualifications as set in statute. The executive director may appoint employees with approval of the board. Subsection (b) requires the board to adopt regulations restricting staff from financial interest in those companies which provide service to the corporation. All employees are exempt from the personnel act but are subject to the ethics act.

Sec. 37.10.270 requires the board to appoint an investment advisory council composed of at least three and not more than five members who must meet qualifications. Subsection (b) sets out staggered three year terms. Subsection (c) allows board to establish compensation for advisory members. Subsection (d) sets out duties of the council to include reviewing investments, recommending investment policy, advising on selection of consultants and auditors. Subsection (e) allows the council to contract with other state agencies to provide advice.

Sec. 37.10.280 requires the board to protect assets held in trust and its own assets, services and employees by purchasing insurance or arranging for self-insurance.

Sec. 37.10.290 exempts the corporation and property it owns, manages or holds in trust from all taxes and assessments in the state.

Sec. 37.10.300 permits banks to give sureties to the corporation or to enter collateral agreements on approved securities.

Sec. 37.10.310 prohibits the corporation from engaging in commercial banking activity, from acting as a depository or trustee for a private person and from acting as a lender to a private person of money from any source other than the money from the state funds under its own management.

Sec. 37.10.320 limits the states responsibility for liabilities of the corporation.

Sec. 37.10.390 defines board, corporation and retirement systems.

Section 3 AS 06.05.025 amends the banking code to allow the board of trustees or the legislative auditor to request an examination of the corporation by the Division of Banking, Securities and Corporations

SECTION 4: substitutes the corporation for the Commissioner of Revenue in reporting about the condition of the teachers retirement system (TRS) and requires the corporation provide the TRS board with an annual external performance review of the trust fund.

SECTION 5; makes the corporation fiduciary of the TRS fund in place of the Commissioner of Revenue.

SECTION 6; substitutes the corporation for the commissioner of revenue in management of the Judicial Retirement Trust.

SECTION 7; substitutes the corporation for the commissioner of revenue in management and investment of the Alaska National Guard and Alaska Naval Militia retirement fund, referred to as the Military fund or system.

SECTIONS 8 and 9 exempt the corporation from the procurement code but require the board of trustees to adopt comparable procedures.

SECTION 10 substitutes the corporation for the Commissioner of Revenue in the section that sets out the powers and duties of the fiduciary that invests and manages state funds. In paragraph (a)(8) the bill requires accounting records to be kept in accordance with generally accepted accounting principles. Subsection (c) requires the fiduciary to exercise the Prudent Investor Rule in exercising powers and duties. Subsection (e) requires the state to defend and indemnify the fiduciary if fiduciary performed in good faith and was prudent. Subsection (f) defines fiduciary to include trustee, officer of the corporation and any other person who exercises control over corporation assets.

SECTION 11; places employees of the corporation in the exempt service.

SECTIONS 12 and 13; substitute the corporation for the Commissioner of Revenue in the management and investment of the public employees retirement (PERS) fund.

SECTION 14; adds the members of the Alaska State Pension Corporation to coverage of the conflict of interest statutes.

SECTION 15; amends the duties of the Department of Revenue to reflect the changes made by the bill.

SECTION 16; is a transition section.

SECTION 17; sets out the initial terms of the board and permits the board to hold organizational meetings as soon as a quorum has been appointed/elected.

SECTION 18; sets July 1, 1991 as the effective date for board organization.

SECTION 19; sets the earlier of July 1, 1992 or the date established by resolution of the trustees as the effective date for the corporation to begin managing and investing assets as well as other duties as defined in the bill.

Statutes cited: ASPC

- AS 09.25.110 Public Records/Code of civil procedure
- AS 09.25.120 Public Records/copy and inspection
- AS 14.25.035(d) TRS Board
- AS 14.25.180 Management/investment of TRS fund
- AS 22.25.048(c) Judicial Retirement Trust Accounting/Investing
- AS 26.05.228(c) Military Retirement " " "
- AS 36.30.850 Procurement Code/Public Contracts
- AS 36.30.990 Procurement Code/Exempt from agency definition
- AS 37.10 Public Funds
- AS 37.10.071 DOR Investment powers and duties
- AS 37.1071 (8) GAAP
- AS 37.10.071 (c) Prudent Investor
- AS 39.20.180 Transportation/Per Diem for Boards/Commissions
- AS 39.25.110 Exempt service/Public Officer & Employees
- AS 39.25.020 PERS/Administration
- AS 39.35.080 PERS/Duties of Commissioner of Revenue
- AS 39.35.110 Investments/Commissioner of Administration
- AS 39.37 EPORS
- AS 39.50 Conflict of Interest
- AS 39.50.200 Definitions
- AS 39.52 Ethics Act
- AS 44.25.020 Department of Revenue
- AS 44.62 Administrative Procedures Act

A M E N D M E N T

OFFERED IN THE HOUSE  
TO: HB 37

BY REPRESENTATIVE ULMER

Page 1, lines 10 - 11:

Delete "within two years after enactment of this legislation"

Insert "when prudent"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE ULMER

TO: HB 37

Page 2, line 3, after "pension":

Insert "and benefits"

Page 11, following line 29:

Insert a new bill section to read:

\*\* Sec. 12. AS 39.30 is amended by adding a new section to read:

Sec. 39.30.175. INVESTMENT OF BENEFIT PROGRAM RECEIPTS. The Alaska State Pension Corporation is the fiduciary of the receipts of the employee benefits program established under AS 39.30.150 - 39.30.180 and has the powers and duties concerning the management and investment in regard to those receipts that are provided under AS 14.25.180."

Renumber the following bill sections accordingly.

Page 14, line 2:

Delete "17"

Insert "18"

Page 14, line 4:

Delete "18"

Insert "19"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE ULMER

TO: HB 37

Page 2, line 5:

Delete "seven"

Insert "nine"

Delete "Three"

Insert "Four"

Page 2, lines 8 - 10:

Delete "one of the retirement systems, one must be receiving a benefit from one of the retirement systems, and one may be either an active member or receiving a benefit from one of the retirement systems."

Insert "the public employees' retirement system, one must be receiving a benefit from the public employees' retirement system, one must be an active member of the teachers' retirement system, and one must be receiving a benefit from the teachers' retirement system. A fifth elected member must be an employee who is making contributions to the supplemental employee benefits system under AS 39.30.150 - 39.30.180, and who is elected by employees making contributions to the supplemental employee benefits system. Nominations for this position shall be made by petition signed by at least 10 persons eligible to vote in that election. The division of retirement and benefits in the Department of Administration shall conduct the elections for all the elected positions."

Page 2, line 13:

Delete "six"

Insert "eight"

Page 2, line 26:

Delete "Four"

Insert "Five"

Page 13, line 29, after "(2)":

Insert "two elected members shall serve terms of three years;

(3)"

Page 13, line 30:

Delete "(3)"

Insert "(4)"

**HOUSE BILL NO. 37**

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES ULMER, Koponen, B.Davis

Introduced: 1/21/91

Referred: State Affairs, Finance

**A BILL****FOR AN ACT ENTITLED**

1 "An Act establishing the Alaska State Pension Corporation; relating to management and  
 2 investment of state pension funds and other state funds; and providing for an effective  
 3 date."

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

5 \* Section 1. FINDINGS. The legislature finds that after the Alaska State Pension Corporation has  
 6 been established and begun to manage the state pension funds, the state should develop a comprehensive  
 7 retirement organization. This organization should integrate the investment of pension funds with  
 8 retirement benefit administration responsibilities for all state related retirement systems, including the  
 9 Elected Public Officers Retirement System (former AS 39.37). Retirement benefit administration  
 10 responsibilities should be integrated into the corporation [within two years after enactment of this  
 11 legislation.]

12 \* Sec. 2. AS 37.10 is amended by adding new sections to read:

13 **ARTICLE 5. ALASKA STATE PENSION CORPORATION.**

14 **Sec. 37.10.210. ALASKA STATE PENSION CORPORATION. (a) There is established**

1 the Alaska State Pension Corporation. The corporation is a public corporation in the Department  
2 of Revenue managed by a board of trustees. The purpose of the corporation is to provide  
3 professional management and investment of state pension funds <sup>and benefit</sup> and of other state funds upon  
4 agreement with the managers of those funds.

5 (b) The board consists of seven trustees. ~~Three of the trustees shall be elected by~~ the  
6 members of the retirement systems. Nominations may be made by the teachers' retirement board,  
7 the public employees' retirement board, or by petition signed by at least 10 persons eligible to  
8 vote in the election. One of the elected trustees must be an active member of one of the  
9 retirement systems, one must be receiving a benefit from one of the retirement systems, and one  
10 may be either an active member or receiving a benefit from one of the retirement systems. ~~The~~

11 ~~governor shall appoint two trustees from a list of~~ nominees submitted by employers in the  
12 retirement systems. ~~The governor shall appoint one additional trustee~~ from a list of nominees  
13 submitted by the other ~~[six trustees]~~ ~~The commissioner of revenue serves as a trustee.~~

14 (c) The appointed and elected trustees shall serve for staggered terms of four years and  
15 may be reappointed or reelected to the board.

16 (d) The governor may remove an elected or appointed trustee for just cause, including  
17 failure to comply with AS 37.10.230, by written notice to the trustee. After a trustee receives  
18 written notice of removal from the governor, the trustee may not participate in board business  
19 and may not be counted for purposes of establishing a quorum.

20 (e) A vacancy on the board of trustees shall be promptly filled in the same manner as  
21 the seat was originally filled. A person filling a vacancy holds office for the balance of the  
22 unexpired term of the person's predecessor. A vacancy on the board does not impair the  
23 authority of a quorum of the board to exercise all the powers and perform all the duties of the  
24 board.

25 (f) The board of trustees shall annually elect a chair from among its members.

26 (g) ~~[Four]~~ trustees constitute a quorum for the transaction of business and the exercise of  
27 the powers and duties of the board.

28 (h) A trustee may not designate another person to serve on the board in the absence of  
29 the trustee.

30 (i) Trustees shall participate in financial education training.

31 Sec. 37.10.230. POWERS AND DUTIES OF THE BOARD. (a) The board shall

1 (1) hold regular and special meetings at the call of the chair or of at least four  
2 members;

3 (2) establish investment policies for the funds for which it is responsible after  
4 reviewing recommendations from the investment advisory council;

5 (3) submit long-range and quarterly investment reports to the Legislative Budget  
6 and Audit Committee;

7 (4) report to the governor, the legislature, and employers participating in the  
8 retirement systems by the first day of each regular legislative session concerning the investment  
9 of funds for which the corporation is responsible including financial and investment policies  
10 established by the board and enclose a summary of the most recent performance evaluations of  
11 the funds managed by the corporation;

12 (5) contract with external performance evaluators to review the performance of  
13 each fund for which the corporation is responsible and report each year on the fund's condition  
14 to the board of trustees and to the other appropriate boards;

15 (6) engage independent certified public accountants to prepare an annual audit of  
16 each of the funds for which the corporation is responsible and to report to the board with the  
17 results of the audit.

18 (b) The board may

19 (1) employ outside investment advisors to review investment policies and make  
20 recommendations to the board;

21 (2) employ legal counsel;

22 (3) enter into an agreement with the manager of another state fund to assume  
23 fiduciary, administrative, or management responsibilities for investing the other state fund;

24 (4) provide for actuarial valuations of the retirement systems and other entities  
25 whose funds the board manages;

26 (5) do all acts necessary, convenient, or desirable to carry out the powers  
27 expressly granted or necessarily implied in this chapter.

28 Sec. 37.10.230. CONFLICTS OF INTEREST. (a) Trustees, the executive director,  
29 investment officers, and other fiduciaries who are employees of the corporation are subject to the  
30 provisions of AS 39.50. The board may designate other employees who are also subject to the  
31 provisions of AS 39.50.

1 (b) If a trustee, officer, or employee of the corporation acquires, owns, or controls an  
2 interest, direct or indirect, in an entity or project in which assets under the control of the  
3 corporation are invested, the trustee, officer, or employee shall immediately disclose the interest  
4 to the board. The disclosure is a matter of public record and shall be included in the minutes  
5 of the board meeting next following the disclosure. The board shall adopt regulations to restrict  
6 trustees, officers, and employees from having a substantial interest in an entity or project in  
7 which assets under the control of the corporation are invested.

8 (c) Failure to comply with the requirements of this section or regulations enacted under  
9 it is grounds for termination of employment.

10 Sec. 37.10.240. REGULATIONS. The board may adopt regulations under the Admin-  
11 istrative Procedure Act (AS 44.62) to implement AS 37.10.210 - 37.10.390.

12 Sec. 37.10.250. COMPENSATION OF TRUSTEES. Trustees, other than trustees who  
13 are employees of the state or a political subdivision of the state, receive an honorarium of \$150  
14 for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or  
15 at a public meeting as a representative of the board. Trustees who are state employees are  
16 entitled to administrative leave for service as a trustee. Trustees who are employees of a political  
17 subdivision of the state are entitled to leave benefits provided by their employers comparable to  
18 those provided to state employees for service as a trustee. Trustees are entitled to per diem and  
19 travel expenses authorized for boards and commissions under AS 39.20.180.

20 Sec. 37.10.260. STAFF. (a) The board shall employ an executive director. The  
21 executive director must be qualified by training and experience to manage, administer, and direct  
22 the investment of funds. The board shall fix the compensation of the executive director and other  
23 employees. The executive, administrative, and investment functions of the board are vested in  
24 the executive director who serves under the supervision of the board. With approval of the  
25 board, the executive director may appoint employees of the corporation as necessary.

26 (b) The board shall adopt regulations that restrict the executive director, investment  
27 directors, other officers, and employees from having financial interest, directly or indirectly, in  
28 firms or corporations that provide services to the corporation. Officers and employees of the  
29 corporation are subject to AS 39.52.

30 (c) The executive director and each investment director shall file a bond for the faithful  
31 performance of duties in the amount and with the sureties as required by the board.

1 (d) Officers and employees of the corporation are members of the exempt service under  
2 AS 39.25.110.

3 (e) A deed, contract, or other document that must be executed by or on behalf of the  
4 corporation shall be signed by the executive director.

5 Sec. 37.10.270. INVESTMENT ADVISORY COUNCIL. The board shall appoint an  
6 investment advisory council composed of at least three and not more than five members.  
7 Members of the council shall possess experience and expertise in financial investments and  
8 portfolio management.

9 (b) Members of the council serve at the pleasure of the board for staggered terms of three  
10 years.

11 (c) The board shall establish the compensation of members of the council. Members of  
12 the council are entitled to per diem and travel expenses authorized for boards and commissions  
13 under AS 39.20.180.

14 (d) The council shall

15 (1) review the investments made by the board;

16 (2) make recommendations to the board concerning the board's investment  
17 policies, investment strategy, and investment procedures;

18 (3) advise the board on selection of performance consultants, auditors, and on the  
19 form and content of annual reports;

20 (4) provide other advice as requested by the board.

21 (e) With approval of the board, the council may contract with other state agencies to  
22 provide investment advice.

23 Sec. 37.10.280. INSURANCE. The corporation shall protect trusted assets and its own  
24 assets, services, and employees by purchasing insurance or providing for self-insurance retention  
25 in amounts recommended by the executive director and approved by the board to cover the acts,  
26 including fiduciary acts, errors, and omissions of its board members, officers, employees, and  
27 agents. Insurance must protect the corporation and the state from liability to others and from loss  
28 of trusted assets and assets of the corporation.

29 [Sec. 37.10.290. EXEMPTION FROM TAXATION. The corporation and all properties  
30 at any time owned by it, managed by it, or held by it in trust, and the income from those  
31 activities, are exempt from all taxes and assessments in the state. All security instruments issued

1 by the corporation and income from them are exempt from all taxes and assessments in the state,  
2 including transfer taxes. ]

3 Sec. 37.10.300. SURETY OR DEPOSITS WITH BANKS. Banks, trust companies,  
4 savings banks, and other persons carrying on a banking business are authorized to give sureties  
5 to the corporation. The sureties shall be approved by the corporation to the effect that the banks  
6 or banking institutions shall faithfully keep and pay over to the order of or upon the warrant of  
7 the corporation or its authorized agent all money deposited with them by the corporation and  
8 agreed interest, at the times or upon the demands agreed on with the banks or banking  
9 institutions. In lieu of these sureties, a depository bank or other banking institution shall deposit  
10 with the corporation or its authorized agent or a trustee as collateral, securities approved by the  
11 corporation. The deposits of the corporation may be evidenced by agreements in the form and  
12 upon the terms and conditions that are agreed upon by the corporation and the depository banks  
13 or banking institutions.

14 Sec. 37.10.310. LIMITATIONS. The corporation may not engage in commercial banking  
15 activity or private trust activity. The corporation may not act as a depository or trustee for a  
16 private person, association, or corporation. The corporation may not act as a lender to a private  
17 person, association, or corporation of money from any source except state funds under  
18 management by the corporation.

19 Sec. 37.10.320. LIABILITY. A liability incurred by the corporation shall be satisfied  
20 exclusively from the assets or revenue of the corporation and a creditor or other person may not  
21 have a right of action against the state because of a debt, obligation, or liability of the  
22 corporation. A liability of the corporation may not be satisfied from trust assets unless expressly  
23 authorized by law.

24 Sec. 37.10.390. DEFINITIONS. In AS 37.10.210 - 37.10.390, unless the context  
25 otherwise requires,

26 (1) "board" means the board of trustees of the corporation;

27 (2) "corporation" means the Alaska State Pension Corporation;

28 (3) "retirement systems" means the teachers' retirement system, the judicial  
29 retirement system, the Alaska National Guard and Alaska Naval Militia retirement system, and  
30 the public employees' retirement system.

31 \* Sec. 3. AS 06.05.025 is amended by adding a new subsection to read:

1 (d) At the request of the board of trustees of the Alaska State Pension Corporation or of  
2 the legislative auditor, the department shall make an examination of the corporation under this  
3 section.

4 \* Sec. 4. AS 14.25.035(d) is amended to read:

5 (d) The commissioner of administration shall report to the board concerning the condition  
6 and administration of the system. The reports shall be distributed to the members of the system.  
7 The Alaska State Pension Corporation [COMMISSIONER OF REVENUE] shall provide  
8 reports to the board on the condition and investment performance of the teachers' retirement trust  
9 fund including a summary of an annual external performance review.

10 \* Sec. 5. AS 14.25.180 is amended to read:

11 Sec. 14.25.180. MANAGEMENT AND INVESTMENT OF FUND. (a) The Alaska  
12 State Pension Corporation [COMMISSIONER OF REVENUE] is the [TREASURER OF THE  
13 SYSTEM AND THE] fiduciary of the fund. In managing the fund, the Alaska State Pension  
14 Corporation [COMMISSIONER OF REVENUE] shall

15 (1) consider the status of the fund's investments and the system's liabilities on  
16 both a current and a probable future basis;

17 (2) determine the appropriate investment objectives for the fund;

18 (3) establish investment policies aimed at achieving the objectives; and

19 (4) act only in regard to the best financial interests of the system's beneficiaries.

20 (b) The Alaska State Pension Corporation [COMMISSIONER OF REVENUE] may  
21 invest the fund on the basis of probable total rate of return without regard to the distinction  
22 between principal and income or to the generation of income.

23 (c) In carrying out investment duties under this chapter, the Alaska State Pension  
24 Corporation [COMMISSIONER OF REVENUE] has the same powers and duties in regard to  
25 the teacher's retirement trust fund as are provided in AS 37.10.071, except that the standard of  
26 prudence that the corporation [COMMISSIONER] must obey under AS 37.10.071(c) shall be  
27 in regard to the management of large trust investments rather than large investments.

28 \* Sec. 6. AS 22.25.048(c) is amended to read:

29 (c) The Alaska State Pension Corporation [COMMISSIONER OF REVENUE] is the  
30 [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund and has the same powers  
31 and duties under this section in regard to the judicial retirement trust fund as are provided in

1 AS 14.25.180.

2 \* Sec. 7. AS 26.05.228(c) is amended to read:

3 (c) The Alaska State Pension Corporation [COMMISSIONER OF REVENUE] is the  
4 [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund and has the same powers  
5 and duties under this section in regard to the fund as are provided under AS 14.25.180.

6 \* Sec. 8. AS 36.30.850(b)(15) is amended to read:

7 (15) a contract that is a delegation, in whole or in part, of investment powers held  
8 by the commissioner of revenue under [AS 14.25.180,] AS 14.40.400, AS 14.42.200, 14.42.210,  
9 AS 18.56.095, [AS 22.25.048, AS 26.05.228,] AS 37.10.070, 37.10.071, or AS 37.14 [, or  
10 AS 39.35.080];

11 \* Sec. 9. AS 36.30.990(1) is amended to read:

12 (1) "agency"

13 (A) means a department, institution, board, commission, division,  
14 authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of  
15 the executive branch of state government;

16 (B) does not include

17 (i) [, EXCEPT FOR] the University of Alaska;

18 (ii) [.] the Alaska State Housing Authority;

19 (iii) the [AND] Alaska Railroad Corporation;

20 (iv) the Alaska State Pension Corporation;

21 (v) [IT DOES NOT INCLUDE.] a regional Native housing  
22 authority created under AS 18.55.996; [.] or

23 (vi) a regional electrical authority created under  
24 AS 18.57.020;

25 \* Sec. 10. AS 37.10.071 is amended to read:

26 Sec. 37.10.071. INVESTMENT POWERS AND DUTIES. (a) In making investments  
27 under this section, the fiduciary of a state fund [COMMISSIONER OF REVENUE] shall

28 (1) act as official custodian of cash and investments by securing adequate and safe  
29 custodial facilities for them;

30 (2) receive all items of cash and investments;

31 (3) collect and deposit the principal of and income from owned or acquired

1 investments;

2 (4) invest and reinvest the assets in accordance with this section;

3 (5) receive and spend appropriations to cover the cost of the exercise of duties  
4 under this section;

5 (6) exercise the powers of an owner with respect to the assets;

6 (7) perform all acts, not prohibited by this section, whether or not expressly  
7 authorized, that the fiduciary [COMMISSIONER] considers necessary or proper in administering  
8 the assets;

9 (8) maintain accounting records in accordance with generally accepted  
10 [INVESTMENT] accounting principles;

11 (9) engage an independent certified public accountant to conduct an annual audit  
12 of the financial condition and investment transactions;

13 (10) enter into and enforce contracts or agreements considered necessary,  
14 convenient, or desirable for the investment purposes of this section; and

15 (11) when choosing to acquire or dispose of investments, secure competitive  
16 national or international market rates or prices, or the equivalence of those rates or prices in the  
17 judgment of the fiduciary [COMMISSIONER].

18 (b) Under this section, the fiduciary of a state fund or the fiduciary's  
19 [COMMISSIONER OR THE COMMISSIONER'S] designee may

20 (1) delegate investment, custodial, or depository authority on a discretionary or  
21 nondiscretionary basis to officers or employees of the state or to independent firms, banks, or  
22 trust companies, by designation through appointments, contracts, or letters of authority;

23 (2) acquire or dispose of investments either directly, indirectly, or through  
24 investment pools or trusts, by competitive or negotiated agreements, contracts, or auctions, in  
25 public or private markets;

26 (3) concentrate or diversify investments as the fiduciary [COMMISSIONER]  
27 considers appropriate to increase the probable total rate of return or to decrease the overall  
28 exposure to potentially adverse market value risks;

29 (4) protect the market value or the rate of return of the investments by entering  
30 into forward agreements to buy or sell assets at a future date as a hedge against existing held  
31 assets or as a precommitment of future cash flows;

1 (5) lend assets, under an agreement and for a fee, against deposited collateral of  
2 equivalent market value;

3 (6) borrow assets on a short-term basis, under an agreement and for a fee, against  
4 the deposit of collateral consisting of other assets in order to accommodate temporary cash or  
5 investment needs;

6 (7) hold investments in bearer or registered form in the name of the state, a fund,  
7 or nominees authorized by the fiduciary [COMMISSIONER];

8 (8) utilize consultants, advisors, custodians, investment services, and legal counsel  
9 for assistance in investment matters on either a continuing or a limited-term basis and with or  
10 without compensation;

11 (9) declare records to be confidential and exempt from AS 09.25.110 and  
12 09.25.120 if the records contain information that discloses the particulars of the business or the  
13 affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

14 (c) In exercising investment, custodial, or depository powers or duties under this section,  
15 the fiduciary of a state fund [COMMISSIONER] shall exercise the judgment and care under  
16 the circumstances then prevailing that an institutional investor of ordinary professional prudence,  
17 discretion, and intelligence exercises in managing large investments with consideration for the  
18 purpose of the fund, the investment objectives, the continuing disposition of the fund's  
19 investments, and the probable safety of the capital as well as the probable investment returns.  
20 With respect to the Alaska State Pension Corporation, the fiduciaries of the corporation  
21 shall apply the prudent investor rule and exercise their fiduciary duty in the sole financial  
22 best interest of the funds entrusted to them and of the beneficiaries of those funds. The  
23 trustees may not make or authorize investment decisions or the voting of shares for a  
24 purpose other than the sole financial best interest of the funds or beneficiaries.

25 (d) In exercising investment, custodial, or depository powers or duties under this section,  
26 the fiduciary or the fiduciary's [COMMISSIONER OR A] designee [OF THE  
27 COMMISSIONER] is liable for a breach of a duty that is assigned or delegated under this  
28 section, or under AS 14.25.180, AS 14.40.400(b), AS 37.10.070, AS 37.14.110(c), 37.14.160,  
29 37.14.170, or AS 39.35.080. However, the fiduciary or the [COMMISSIONER OR THE  
30 COMMISSIONER'S] designee is not liable for a breach of a duty that has been delegated to  
31 another person if the delegation is prudent under the applicable standard of prudence set out in

1 statute or if the duty is assigned by law to another person, except to the extent that the fiduciary  
2 [COMMISSIONER] or designee

3 (1) knowingly participates [PARTICIPATE] in, or knowingly undertakes to  
4 conceal, an act or omission of another person, knowing that the act or omission is a breach of  
5 that person's duties under this chapter;

6 (2) by failure to comply with this section in the administration of specific  
7 responsibilities, enables another person to commit a breach of duty; or

8 (3) has knowledge of a breach of duty by another person, unless the fiduciary  
9 [COMMISSIONER] or designee makes reasonable efforts under the circumstances to remedy the  
10 breach.

11 (e) The state shall defend and indemnify the fiduciary [COMMISSIONER] or an officer  
12 or employee of the state against liability under (d) of this section to the extent that the alleged  
13 act or omission was performed in good faith and was prudent under the applicable standard of  
14 prudence.

15 (f) In this section, "fiduciary of a state fund" or "fiduciary" ["COMMISSIONER OF  
16 REVENUE" OR "COMMISSIONER"] means

17 (1) the commissioner of revenue for investments under [AS 14.25.180 OR]  
18 AS 37.10.070; [OR]

19 (2) with respect to the Alaska State Pension Corporation, for investments  
20 under AS 14.25.180,

21 (A) each trustee who serves on the corporation's board of directors;

22 (B) each officer of the corporation; and

23 (C) any other person who exercises control or authority with respect  
24 to management or disposition of assets held by the corporation or who gives  
25 investment advice to the corporation; or

26 (3) the person or body provided by law to manage the investments, for  
27 investments not subject to AS 14.25.180 or AS 37.10.070.

28 \* Sec. 11. AS 39.25.110(11) is amended by adding a new subparagraph to read:

29 (G) Alaska State Pension Corporation;

30 \* Sec. 12. AS 39.35.020 is amended to read:

31 Sec. 39.35.020. ADMINISTRATION. The commissioner of administration is responsible

1 for the administration of the system and for carrying out this chapter. In addition the  
2 commissioner shall

- 3 (1) maintain the accounts of the system;
- 4 (2) make payments for the various purposes specified;
- 5 (3) submit periodic reports or statements of account that are needed;
- 6 (4) issue a statement of account to an employee requesting it showing the amount  
7 of the employee's contributions to the system;
- 8 (5) as soon as possible after the close of each fiscal year, and not later than six  
9 months after the close of each fiscal year, send to the governor, the legislature, and the board an  
10 annual statement on the operations of the system containing
  - 11 (A) a balance sheet;
  - 12 (B) a statement of income and expenditures for the year;
  - 13 (C) a report on an actuarial valuation of its assets and liabilities;
  - 14 (D) a summary of assets held in the pension fund listed by the categories  
15 of investment, as provided by the Alaska State Pension Corporation [COMMISSIONER  
16 OF REVENUE];
  - 17 (E) other statistical financial data that are necessary for a proper  
18 understanding of the financial condition of the system and the result of its operations;
- 19 (6) establish a public employees retirement trust fund in which the assets of the  
20 system shall be deposited and held;
- 21 (7) engage an independent certified public accountant to conduct an annual audit  
22 of the system's accounts and the annual report of the system's financial condition and activity;
- 23 (8) report to the board concerning the condition and administration of the system  
24 and distribute the report to the members of the system.

25 \* Sec. 13. AS 39.35.080 is amended to read:

26 Sec. 39.35.080. DUTIES OF THE ALASKA STATE PENSION CORPORATION  
27 [COMMISSIONER OF REVENUE]. The Alaska State Pension Corporation  
28 [COMMISSIONER OF REVENUE] is the [TREASURER OF THE SYSTEM AND THE]  
29 fiduciary of the fund. The corporation [COMMISSIONER] has the same powers and duties  
30 established under this chapter in regard to the fund as are provided in AS 14.25.035(d) and  
31 14.25.180.

1 \* Sec. 14. AS 39.50.200(b) is amended by adding a new paragraph to read:

2 (52) Alaska State Pension Corporation (AS 37.10.210).

3 \* Sec. 15. AS 44.25.020 is amended to read:

4 Sec. 44.25.020. DUTIES OF DEPARTMENT. The Department of Revenue shall

5 (1) enforce the tax laws of the state;

6 (2) collect, account for, have custody of, invest, and manage all state funds and  
7 all revenues of the state except revenues incidental to a program of licensing and regulation  
8 carried on by another state department and funds managed and invested by the Alaska State

9 Pension Corporation;

10 (3) register cattle brands;

11 (4) supply necessary clerical and administrative services for the Alcoholic  
12 Beverage Control Board; and

13 (5) invest and manage the balance of the power development fund in accordance  
14 with AS 44.83.386.

15 \* Sec. 16. TRANSITION. All litigation, hearings, investigations, and other proceedings pending  
16 under a law amended or repealed by this Act, or in connection with functions transferred by this Act,  
17 continue in effect and may be continued and completed notwithstanding a transfer, amendment, or repeal  
18 provided for in this Act. Orders and regulations issued or adopted under authority of a law amended  
19 or repealed by this Act remain in effect for the term issued, or until revoked, vacated, or otherwise  
20 modified under the provisions of this Act. All contracts, rights, liabilities and obligations created by or  
21 under a law amended or repealed by this Act, and in effect on the effective date of this Act, remain in  
22 effect notwithstanding this Act's taking effect. Records, equipment, and other property of agencies of  
23 the state whose functions are transferred under this Act shall be transferred commensurate with the  
24 provisions of this Act.

25 \* Sec. 17. ORGANIZATION OF TRUSTEES. (a) Notwithstanding AS 37.10.210(c), enacted by  
26 sec. 2 of this Act, the initial terms of the members, other than the commissioner of revenue, of the board  
27 of trustees of the Alaska State Pension Corporation shall be as follows:

28 (1) one elected member and one appointed member shall serve terms of four years;

29 (2) one elected member and one appointed member shall serve terms of two years;

30 (3) one elected member and one appointed member shall serve one-year terms.

31 (b) The board of trustees of the Alaska State Pension Corporation may hold organizational

1 meetings as soon as a quorum of the board has been appointed to or selected for the board.

2 \* Sec. 18. AS 37.10.210 and 37.10.230 - 37.10.390, enacted by sec. 2 of this Act, and sec. 17 of this  
3 Act take effect July 1, 1991.

4 \* Sec. 19. Except as provided in sec. 18 of this Act, this Act takes effect on the earlier of July 1,  
5 1992, or the date established by resolution of the board of trustees of the Alaska State Pension  
6 Corporation for the transfer to it of securities and assets of the retirement funds. The board shall  
7 promptly provide the revisor of statutes and the lieutenant governor with a copy of this resolution.



# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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## FAIRBANKS REGIONAL OFFICE

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January 28, 1991

To: Representative Kubina, Chair  
Members; House State Affairs Committee

Re: HB 37; *An Act establishing the Alaska State Pension Corporation; relating to the management and investment of state pension funds and other state funds; and providing for an effective date.*

NEA-Alaska, representing members of both the TRS and PERS, supports the basic concepts contained in this legislation and commends the sponsor for this approach to the management of employee pension.

The transfer of this fiduciary responsibility from the Commissioner of Revenue to a public corporation will enhance constituent confidence in the integrity and security of their vested benefits.

We do have three (3) concerns which we wish to call to the attention of the Committee:

We recommend caution on the plan to assign, within two (2) years, responsibility for benefit administration to the ASPC. While it may be appropriate to have such a timeline as a goal it may also be wise to first attend to the management/investment responsibilities and defer the benefit administration to a later time. Both the TRS and the PERS currently have Boards with extensive benefit administration experience. Their present responsibilities in this area should continue for the time being.

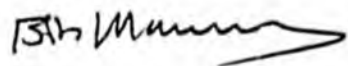
We feel very strongly that the composition of the ASPC board of trustees must consist of a majority of members who are constituents of the retirement systems. Historically, both the TRS and the PERS have been administered by Boards comprised primarily of constituent members. The system has worked effectively and we feel that it should be continued. Members will have a greater level of confidence in a new investment/management system if a majority of the board members come from their constituency and that they be both active members and those now drawing benefits from the systems.

Another concern which may only need clarification pertains to the language in Section 2, page 6, lines 19-23, Sec. 37.10.320. On its surface, this language appears to possibly diminish rights guaranteed under Article 12, Section 7 of the Alaska Constitution. NEA-Alaska would obviously oppose such a change.

- NEA Position -

Thank you for your consideration of our position. We look forward to working with the Committee on this critical legislation.

Respectfully submitted,



Bob Manners  
Executive Director

cc: Representative Ulmer



Don Oberg  
President

**ALASKA'S TEACHERS NEED AN INDEPENDENT PUBLIC CORPORATION  
TO MANAGE OUR RETIREMENT FUND**

**--Charlie Arteaga  
Chair, TRS Board**

You know that your retirement depends on the Teachers' Retirement trust fund. You may not realize that you own this retirement fund. You do, and it is time to take a hand in its management.

The Teachers' Retirement System (TRS) trust fund has now grown to more than \$1.6 billion in size. The State of Alaska and local school districts have contributed to this fund for your benefit, but no government owns this money. You own this money. By law, your pension rights are the private property of you, the individual beneficiary.

Unfortunately, some legislators do not understand this fact. Some think the State owns Teachers' Retirement and other pension funds, and some seem to think the fund could be taken or "borrowed" to help solve a fiscal crisis. To fight this kind of thinking, we need to take the TRS fund out of the political arena and put our retirement fund in an independent public corporation where we help run things.

There are other good reasons why we need to make this change now.

Right now, the Commissioner of Revenue, who is a political appointee, is in charge of your fund. (The TRS Board has no direct role in the investment of the funds, although the Board is responsible for administering retirement benefits.) The Commissioner of Revenue has divided loyalties, because the Department of Revenue must manage numerous other funds, collect state taxes, distribute Permanent Fund Dividends, and enforce child support obligations.

Investment of the TRS Fund and the other retirement and trust funds should be the only priority of the organization responsible for the funds. All these other jobs the Department of Revenue has to do tend to keep the TRS fund hidden from the public eye--and you and the other beneficiaries need to know how your retirement funds are being run.

We need to take the TRS fund out of the political arena. We also need to make sure the TRS fund gets more management attention and more visibility than it has under the present set-up. Establishing a separate public corporation for the investment of the TRS fund and other retirement and trust funds is the best way to achieve these goals. (The corporation would separately account for each of the funds, just as the Department of Revenue does now.)

This corporation should be governed by a strong board of directors which should include representatives of you, the beneficiaries, because you have your funds at stake. The board should also include professional investors, who will provide built-in expertise in the complicated world of finance. The corporation should have its own staff, which should be dedicated to achieving the best return for the beneficiaries and not be distracted by other duties.

The TRS Board believes that these changes are overdue. Only a few other states have a single person in charge of their teacher pension plans. A 1989 report by Legislative Audit recommended that the Alaska Legislature put a board of trustees in charge of TRS and PERS. Legislative Audit's recommendations included placing on the board both representatives of the beneficiaries and financial experts.

(See Page 4, TEACHERS NEED INDEPENDENT CORPORATION)

**WHAT'S HAPPENING IN  
OTHER STATES ...**

New Jersey Retired Educators' Association is increasing its state life membership dues from \$150 to \$375 on August 31. Annual unified dues are \$35 and will increase annually with the cost-of-living adjustment.

California Teachers' Association-Retired (CTA-R) and California Retired Teachers' Association (CRTA) are joining forces as a result of an agreement between California Teachers' Association, the statewide active teachers' organization, and CRTA, the predominant association for retired teachers in California. With turf battles settled, the new organization should see rapid growth.

Arkansas Retired Educators' Association has experienced rapid membership growth since passage of legislation to permit dues transmittal through the state retirement system. Arkansas now has 1,960 NEA-R members and is eligible for two official delegates at the annual meeting.

Washington Education Association Retired has life membership dues of \$75 and annual dues of \$10. One of the goals of the organization is to up the maximum of the three percent cost-of-living adjustment for retirees.

Michigan Education Association-Retired has as a part of its pre-retirement seminars a computerized program for use in determining retirement benefits and retrieving information about specific programs in the retirement system.

**NEA-AK/R NEWSLETTER**

The official organ of NEA-Alaska/Retired, the Newsletter is published quarterly at Anchorage, Alaska.

Editor: Dr. Merritt C. Olson

**ALASKA'S TEACHERS NEED INDEPENDENT CORPORATION**

(Continued from page 1)

Legislation to accomplish this came very close to being enacted during the last session of the legislature. The bill was called Senate Committee Substitute for Committee Substitute for House Bill 580 (State Affairs). The only thing that prevented the passage of this legislation was the belief of some legislators that mixing the management of the TRS fund and other retirement funds in with the management of the Permanent Fund was a better approach. It is not.

The Permanent Fund is owned by all Alaskans. The retirement funds are owned by you and other beneficiaries. Getting mixed up with the Permanent Fund will confuse the point we need to make--that the retirement funds are our property, not the property of all Alaskans and every legislator.

Mixing the retirement funds in with the Permanent Fund would create a complicated, unwieldy creature just when we are on the verge of establishing a strong management structure for the retirement funds that will give those funds high visibility and clarity of purpose. TRS and the other retirement funds have been buried at the Department of Revenue for years. Why would we bury them now in the Permanent Fund?

The management of the retirement funds will be an important issue during next year's legislative session. I urge you to tell your legislator--and all those who want to be your legislator--that you support an independent public corporation to run your retirement fund. The Teachers' Retirement System fund belongs to you and other teachers, active and retired. Creating an independent public corporation will allow you to have a say in the management of your money, and will make the system more accountable to you. You and your money deserve nothing less.

**ALASKA TRS SAYS 'NO' TO DUES CHECK-OFF**

The Alaska Teachers' Retirement System recently denied NEA-Alaska/R's request for a membership check-off for dues payments. Sally Smith, director of the Division of Retirement and Benefits, indicated that the check-off would involve expenses in compiling lists that "would impact an already stretched operation at a cost to everyone--not just those who express interest."

Last year the Arkansas legislature enacted a measure that mandated the retirement system of the state to provide a dues check-off for the Arkansas Retired Educators' Association. It has resulted in a marked increase in membership for the Arkansas retired group.

**MEDICARE MAKES CHANGES IN CLAIMS REPORTING**

Beginning September 1, 1990, doctors providing medical treatment must prepare and submit Medicare claims for all Part B services, Medicare officials recently announced. Details of the announcement include:

- The physician, surgeon or medical supply company **MUST** prepare and submit the claim even if assignment is not accepted. A charge cannot be made for handling the claim.
- If the provider of medical services does not agree to accept the Medicare approved amount as payment in full, the patient is responsible for paying the entire bill. Medicare payment for the approved amount will be mailed directly to the patient.
- If the provider of medical services refuses to prepare and submit the Medicare claim, the patient should contact the Medicare carrier.

**NEA-ALASKA PRESIDENT'S MESSAGE . . .**

--Don Oberg

The 1989-90 success of NEA-Alaska was due to a great extent to the support and leadership of the members of NEA-AK/Retired. Your organizational talents were perhaps most evident in the political arena as we were able to gain significant improvements in our retirement programs and other NEA-Alaska legislative priorities.

We look forward to another productive and rewarding year working together to improve our Alaskan schools as well as benefits to members of our profession--past and present.

**PRE-RETIRED SEMINAR FEATURED AT NEA-AK ISSUES CONFERENCE**

NEA-Alaska/R gave two pre-retirement seminar sessions at the NEA-Alaska Issues Conference held at the Anchorage Hilton Hotel on August 9 and 10. The first sectional covered financial planning and TRS pension and Social Security coverage. The second session dealt with choosing a retirement location.

Don Schulz, Hank Harrison and Merritt Olson conducted the sessions which were attended by 35 teachers and educational support personnel from all parts of Alaska.

**MEMBERSHIP DUES:**

NEA-R Life	\$100
Annual	\$ 10
NEA-AK/R Life	\$200
Annual	\$ 25

To: The members of the Senate State Affairs Committee, the Honorable Pat Rodey, Chair

From: Terry Elder, Secretary-Treasurer  
Alaska State Employees Association

Date: January 28, 1991

Re: SB 18

Mr. Chairman, and members of the committee, thank you for the opportunity to speak with you today to share with you the position of the Alaska State Employees Association on investment management legislation.

By way of introduction, I am the secretary-treasurer of ASEA. I am a ten-year state employee, have a Ph.D. in economics, and work as an economist for the department of labor. I also have a background in investment management. I have about 12 years of experience in the investment business with major money managers in Chicago, mostly managing employee benefit portfolios. I have an M.B.A. in finance, am a Chartered Financial Analyst, and periodically teach financial management at the University of Alaska. So I speak to you both as a representative of ASEA and as a person with some expertise in investment issues.

ASEA appreciates the concern and the hard work of the legislature on this issue, last session, during the interim, and now at the beginning of a new session. This is an issue that is a vital concern to our members, and also to you. We are all members of one of these retirement systems, and we all have an interest in improving their management.

We appreciate also the past and continuing willingness of many legislators to work with us in a cooperative and positive manner on this issue. We recognize that the current version of SB 18 already reflects some of our input during the past year. We thank you for that.

In reviewing SB 18, however, we find that we have a serious concern which we believe the legislation should address. Our concern is that SB 18 does not include the Supplemental Benefits System fund. This is the fund with the most serious and immediate management problem. This is the fund which the administration calls a defined contribution fund, which implies that losses could be charged directly to member balances. Yet, this is also the fund which has been managed by the department of administration and now is managed by the PERS Board, neither of which has any representation of SBS members.

Our position is that SBS is a retirement plan, just as surely as are the Teachers Retirement System and the Public Employees Retirement System. In Senator Pourchot's letter on this legislation, mailed during the interim, called SBS a "program established to replace the state's participation in the federal social security system." This is true. It is absolutely a retirement plan, just as much as individual retirement accounts are. The only difference is that the program is not voluntary. Many employers allow employees the option to withdraw their contributions to retirement funds on termination. This option does not make these funds savings plans.

Therefore, SBS is a retirement fund. It should be managed professionally, and it should be managed by the board which has oversight of other retirement funds. We hope that you will agree, and, in a committee substitute, will transfer the responsibility of SBS from the department of administration to the Alaska State Pension Corporation, created by SB 18.

If you do that, we would suggest you also deal with the question of participant representation. You could do that in one of two ways:

If you were willing to increase the number of trustees from seven to eight, you could add to Section 2 (b) a fourth trustee to be elected by members of SBS. This trustee should be active, since 85% of SBS members are, but that is not as critical as it is simply to have representation. This trustee should be elected by SBS members. This would be our preferred solution, since we believe an even division of the board between employer and employee representatives would be fair.

If you want to keep the number of trustees at seven, you could change the second sentence of Section 2 (b) to read: **ONE OF THE ELECTED TRUSTEES MUST BE AN ACTIVE MEMBER OF ONE OF THE RETIREMENT SYSTEMS, ONE MUST BE RECEIVING A BENEFIT FROM ONE OF THE RETIREMENT SYSTEMS, AND ONE [MAY] MUST BE EITHER AN ACTIVE MEMBER OR RECEIVING A BENEFIT FROM [ONE OF THE RETIREMENT SYSTEMS] THE SUPPLEMENTAL BENEFITS SYSTEM.**

We note that the other two participant representatives may not be members of SBS. They could both be members of TRS. Why should SBS members specifically be given representation?

1. Since SBS is a defined contribution plan, this is the only fund in which the participants' balances may be affected adversely by decisions of the managers.
2. The PERS Board, which currently is responsible for SBS, contains only two elected members, both are retired, and neither is a member of SBS. In contrast, 85% of SBS members are active.

If the legislature includes SBS in SB 18, and provides for SBS participant representation, we could endorse SB 18 enthusiastically. While we appreciate, sympathize and support the objectives of ~~SBS~~<sup>SBI/P</sup> as it is currently presented, we believe the SBS situation is so serious that our full support of SB 18 depends on the inclusion of SBS.

Re: SB 10

We note that SB 10 does include SBS (see Section 22). In that respect, we like SB 10. It also has appeal to some, we are sure, in that it seeks to ensure professional management of all types of investment funds with which the state must deal. That is a goal with which we sympathize.

We do not believe, however, that it is a preferred approach to SB 18. We like SB 18 because it focuses on employee benefit funds, and creates a board which includes participant and employer representatives. By mixing the types of funds with which the State Investment Board would deal, the board structure becomes confused.

In dealing with employee benefit plans, there is no reason to have representation for anyone who is not an employee or an employer. Specifically, there is no reason to have general public membership. The employers generally represent the public.

We appreciate the willingness of the sponsor of SB 10 to change the board structure to provide for better employee representation. There is no point in changing its structure, however, since employees do not need to tell the state how to manage funds like the general fund any more than employees need public members telling anybody how to invest their SBS funds. The difference is that employees own the assets of SBS, and, as a minimum, own the benefits provided by the assets of retirement funds. Employees do not own the general fund.

We would suggest that the committee use SB 18, with the changes outlined above, to deal with employee benefit funds. Separately, if so desired, the legislature could

establish a State Investment Board to manage strictly state assets. If they are only state assets, and do not impact employees, there is little reason to include employee representatives on such a board.

Before concluding, I would like to make a couple of comments generally about the situation concerning SBS. Your legislation deals only with the investment management. We support your objectives. However, we would also point out that it has been over a year since the department of administration has been able to give you, me, or my Union's members an accounting of their SBS balances. Frankly, the investment management and the administrative management of the department of administration has been a disgrace. If you do not want to deal with that through legislation, I urge you to do it through the budget review process.

Also, I want to point out that the department, with the agreement of the PERS board, is proceeding with the development of an RFP for investment management services for SBS. They also seek to develop an investment strategy for the fund. If they insist on going forward with this, we hope they will work with participant representatives, since participants will probably pay for what the department does. However, we hope that the legislature's actions to include SBS in the management structure of a State Pension Corporation will convince the PERS board and the department of administration to not do anything which locks us in to something that the new managers may want to change. They should do all things necessary to protect the assets, but, given their track record of contracting for investment services we are not anxious for them to do much else.

Thank you.

Representative Gene Kubina, Chair, House State Affairs Committee:

In response to the Committee's request for more definitive information on a number of items that were part of my testimony this morning, I submit the following:

- Sec. 2(b) Election of Board Members: 1) Elected trustees should be elected by their respective constituencies, i.e., PERKS trustees elected by PERS members; TRS trustees by TRS members; SBS trustee elected by SBS beneficiaries.
- 2) Nominations for elected trustees probably should be by petition only since nomination by PERS and TRS Boards would cease with the integration of benefits administration under the Independent Corporation. (Integration of benefits would result in the elimination of the PERS and TRS boards, I believe.)
- Sec. 2(d) Removal by the Governor: In testimony I indicated my concern about elected trustees' removal by the governor for "just cause" as too vague and open to whimsical or political reasons. The consensus of the five persons testifying today from Anchorage was that removal should be by recall by the electors--members of the retirement system who were eligible vote for the trustee. That would remove the elected trustees from political influence that might be exerted by the executive branch.

I was pleased with the changes that Representative Ulmer outlined today for HB 37, and appreciated the opportunity extended by the Committee for interested parties to express their views. Thank you.

Herritt C. Olson  
President, NEA-Alaska/R

Representative Gene Lubina, Chair, House State Affairs

Re HB 37: Another alternative to recall in the removal of trustees is: "The governor may remove an elected or appointed trustee for misconduct, malfeasance, or nonfeasance in office or incapacity." This is the language in statute 14, 200, 130 for removal of PT PC members (1966). It's less vague than "just cause."

Merritt C. Olson

# Professionals on Board

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MR. MALONE: Thank you. I think

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Mr. Ennis commented on what I was going to ask about, and that is how to use or get access to or integrate the professional investors in the board operation.

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5

6

And we were fortunate to have lunch with these

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folks. And one of the things we talked about,

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apparently there's two models or two general ways to

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do this. One is to have, maybe a couple people on

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the board who are in the investment business, and the

11

other is to have a somehow formally constituted, also

12

small group of advisors to the board. And apparently

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people kind of do that both ways.

14

And I guess I would -- my question was

15

going to be really, is, how does that work in

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practice and what sort of issues arise there? Do you

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find if you have the advisors separate from the

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board, do they report -- sit with the board, do they

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sit with a staff? How does that work? What are the

20

pros and cons of those different approaches is what

21

I'd like to ask.

22

MS. MARSHALL: I can start on that and

23

then maybe Carl or Richard can further comment.

24

At the -- the Minnesota example is an

25

interesting one. It's one of the few advisory

DEPARTMENT OF REVENUE

1 councils that -- when I was at Cal State of  
2 California we called around to pretty much all of  
3 the states and asked the investment people whether  
4 they had advisory councils and whether they worked  
5 or not.

6 And the Minneapolis advisory council is  
7 always one that is cited as being one of the most  
8 effective advisory councils. And they advised more  
9 to the staff than they do to the actual board  
10 members.

11 They also have the differentiating  
12 characteristic in that they are not the top people  
13 at the local corporations. And Minneapolis was very  
14 fortunate in having a number of large, well-run  
15 companies in the twin cities area that they could  
16 call on.

17 But the people who were on this advisory  
18 council are the investment manager types at these  
19 corporations. So several levels down, assistant  
20 treasurer type levels, and these are people who are  
21 involved on a day-to-day basis with investments and  
22 yet are not at the level where it becomes a -- you  
23 know, a power thing or sort of another trophy of I'm  
24 on this advisory council. And from people who may be  
25 very talented about managing companies or who may

DEPARTMENT OF REVENUE

1 have reached the top of companies but are not  
2 involved on a day-to-day basis with making investment  
3 decisions.

4 Having said that, we tried an advisory  
5 council in California and it was not terribly  
6 successful. It did have staff reporting to it so it  
7 could ask for information, and we suggested different  
8 topics that the board might like to have their advice  
9 on and they did report to the board.

10 They were compensated, I have forgotten  
11 what the compensation was now, but I remember it was  
12 a big issue at the time. And I don't think the  
13 compensation ever amounted to a great deal. But  
14 there was never a close relationship established  
15 between that advisory council and the board, and so  
16 they were never effective and they finally were just  
17 sort of dropped or faded away.

18 I don't think anybody make a deliberate  
19 effort to eliminate them, but they just stopped  
20 calling meetings. And it disappeared.

21 I feel strongly that the advisors ought  
22 to be on the board and have fiduciary  
23 responsibility. Then you have to be careful that  
24 it's clearly understood that they're not going to use  
25 that position in order to get business in the future,

DEPARTMENT OF REVENUE

1 and certainly during the time they're serving on the  
2 board, they should not have any fee based income from  
3 that particular -- from that board or any other  
4 related boards.

5  
6 the TRS chair. And I guess I was thinking in terms  
7 of our existing situation, where you have the TRS  
8 board and TRS board, and I envision in my own vision  
9 of a new structure with the company, public company  
10 to handle the trust, I guess I envision the boards as  
11 they currently are composed serving that function,  
12 continuing in that function as advisory council, if  
13 you will. Representation from the boards to that as  
14 constituent representation.

15 And then as an offshoot to the main  
16 question, I guess in my mind, there's a selection of  
17 a CEO and then the creation of the investment group,  
18 if you will, and the selection of brokerage firms and  
19 what have you. Typically, I guess the question I  
20 have, typically, what size are we looking at? Once  
21 you've got the board itself in place and decided  
22 whether it's going to be seven or nine members, and  
23 then you said okay now we hire a CEO to oversee  
24 this. After that, what would be the typical type  
25

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## ORGANIZATION AND FUNCTION

The Department of Revenue, Division of Treasury (Treasury) is responsible for, and has sole discretion over, the prudent investment and management of the Public Employees' Retirement Fund (PERS) and the Teachers' Retirement Fund (TRS).

Chapter 141, SLA 1988 amended PERS and TRS statutes by designating the funds as retirement trust funds and appointing the commissioner of Revenue as treasurer of the retirement systems and fiduciary of the funds. Under the amending legislation, the commissioner of Revenue shall:

1. Consider the status of the funds' investments and the system's liabilities on both a current and a probable future basis.
2. Determine the appropriate investment objectives for the funds.
3. Establish investment policies aimed at achieving the objectives.
4. Act only in regard to the best financial interests of the system's beneficiaries.

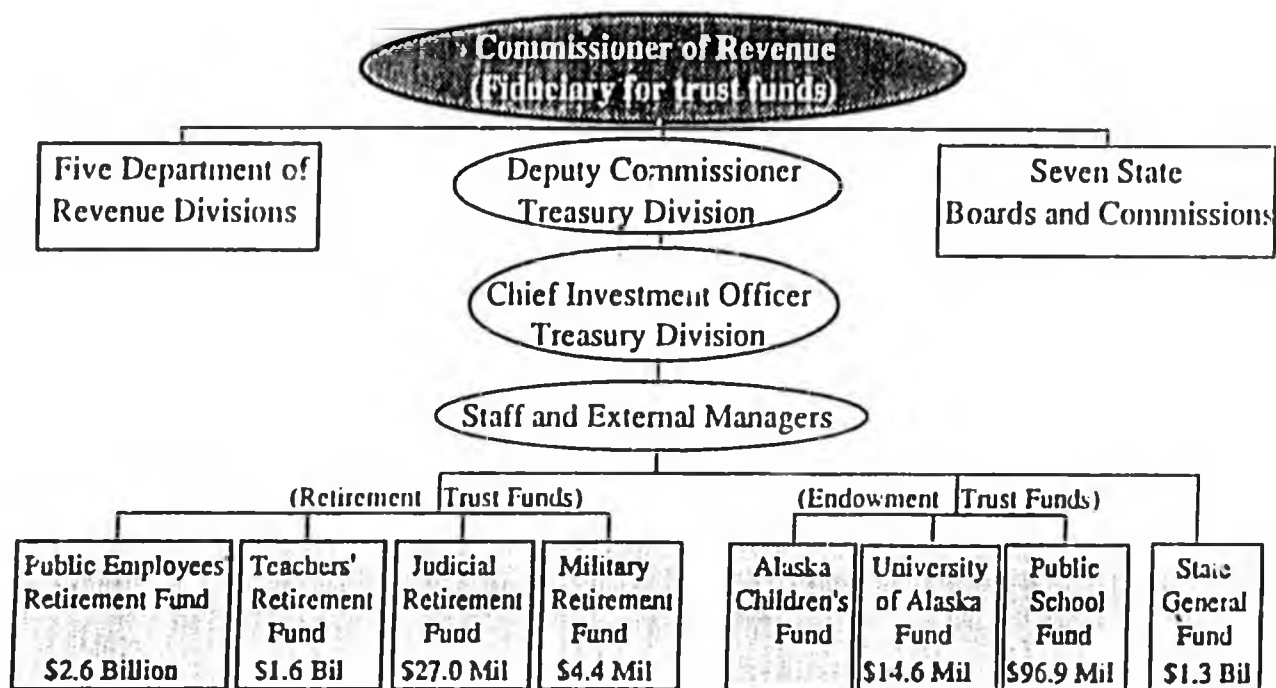
The amendments also repealed the "legal list" of investments the retirement funds were restricted to and placed upon the commissioner of Revenue, or his designee, the responsibility of fund fiduciary. Treasury also employs external investment managers who manage a substantial portion of the retirement funds.

Additionally, there are two boards which oversee the administrative aspects of the retirement systems. The Public Employees' Retirement Board is composed of five members, three of whom are members of the Department of Administration personnel board and two who are members of the system and elected by the membership of the system. The Teachers' Retirement Board consists of five members appointed by the governor. Both boards are mostly administrative in nature, being responsible for governing the regulatory aspect of the retirement systems.

The Alaska Permanent Fund is managed by an executive director, who reports to a six-member board of trustees appointed by the governor.

CURRENT LAW  
(FIGURE 1)

**INVESTMENT OF STATE FUNDS**



ONLY 6 STATES STILL HAVE A SOLE INDIVIDUAL AS FIDUCIARY.

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INVESTMENT OF STATE FUNDS

<u>ISSUE</u>	<u>HB 37.</u> <u>ASPC</u>
1. Number of board members	7
2. # of governor appointed seats	4
3. # of elected seats	3
4. Board members are fiduciaries	yes
5. Board make-up:	
PERS/TRS representation	yes
Access to trustee seats by other fund participants	yes
Commissioner of Revenue	yes
Commissioner of Administration	no
Employer representation	yes
6. "Just cause" required for removal from board.	yes
7. Financial training required for board members	yes
8. Board honorarium	yes
9. Board terms by years	4
10. Designees allowed for trustees	no
11. Funds to be managed:	
PERS	yes
TRS	yes
Judicial Retirement	yes
Military Retirement	yes
U of A Endowment	no
AHFC	no
Budget Reserve Fund	no
AK Marine Vessel Replace Fund	no
Public School Trust Fund	no
Childrens Trust Fund	no
SRS	no
PFD fund	no
AEA fund	no
HESS self sufficiency fund	no
General Fund/residual	no

- |  |     |
|--|-----|
| 12. Professionals on board                             | no  |
| 13. Professional advisory council                      | yes |
| 14. Separate corporation                               | yes |
| 15. Executive director hired by board                  | yes |
| 16. Accountability to:                                 |     |
| LB & A   | yes |
| Governor   | yes |
| Legislature  | yes |
| Employers  | yes |
| Appropriate fund boards                                | yes |
| 17. Required to provide outside performance evaluation | yes |

Board of Trustees  
Marc Langland,  
Chairman  
Charles H. Parr,  
Vice-Chairman  
Douglas B. Baily  
John T. Kelsey  
Byron I. Mallott  
Hugh Malone



Alaska Permanent Fund Corporation  
P.O. Box 4-1000 Juneau, Alaska 99802-4100  
(907) 463-2047

October 2, 1990

The Honorable  
Pat Pourchot  
Alaska State Senator  
3111 "C" Street, Suite 545  
Anchorage, Alaska 99503

Re: Position of the Board of Trustees of the Alaska Permanent Fund Corporation on the Management of the PERS/TRS Funds.

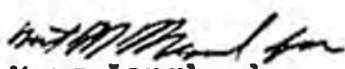
Dear Senator Pourchot:

At your request, the Board of Trustees discussed and voted on its position concerning the possible management of the PERS/TRS funds by the Alaska Permanent Fund Corporation. It was the unanimous vote of the Board that the Trustees have no interest in assuming responsibility for the management of PERS/TRS and other state investment funds that have actuarial and different liability obligations than the Alaska Permanent Fund.

In general, it is the view of the Trustees, as well as staff, that the management of the Alaska Permanent Fund involves very different management philosophies and policies than are involved in the management of retirement funds. The potential mixing of the two types of policies in one organization was felt to be detrimental for both types of funds.

I have enclosed the verbatim transcript of the portion of the Board meeting where the Trustee position was raised, discussed, and voted upon. If you have any questions, please do not hesitate to call.

Sincerely,

  
Marc Langland  
Chairman

# Alaska Municipal League

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## Policy Statement 1991

Adopted at the Business Meeting  
of the 40th Anniversary Local Government Conference  
of the  
Alaska Municipal League  
Anchorage, Alaska  
November 16, 1990



*AML/AARP/AAF Positions*

retirement benefits. Additionally, in order to assist municipalities and the Legislature in evaluating changes to the retirement systems, fiscal notes accompanying such legislation should include an analysis of the fiscal impact on each of the participating municipalities.

**2. Separate PERS/TRS Corporation:** The League supports the establishment of a separate corporation for the management and investment of state trust funds, including the trust funds of the Public Employees' Retirement System and the Teachers' Retirement System, insofar as the board of the corporation includes representatives of trust beneficiaries and employers. The League urges that legislation establishing such a corporation include a provision that foreclosed real property held as assets by funds managed by the corporation be subject to municipal property taxes.

Alaskan municipalities make over half of all employer contributions to the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) and are directly affected by the performance of these funds because of the effect fund earnings have on employer contribution rates and, thus, on local tax rates. At present, both PERS and TRS funds are managed by the Department of Revenue, with the Commissioner of the Department as the sole fiduciary.

Creation of a separate corporation would give visibility to and strengthen the trust status of these trust funds. It would increase accountability, continuity, and public disclosure for the investment management of the funds by establishing a board of directors as fiduciary, incorporating professional investment managers and trust administrators, as well as representatives of beneficiaries, on the corporation's board, and providing for the exercise of fiduciary powers through the forum of regularly scheduled public meetings rather than administrative actions. A corporation would give management the authority to act in a timely manner and compete fully with other professional institutional investors. It would also allow the trust fund managers to have direct access to various Federal Reserve System services, increasing the security, earnings, and efficiency of trust fund investments and reducing the costs for intermediary custodian bank services.

In keeping with the League's general policy opposing exemption from taxation of foreclosed real property held as assets by state and federal agencies, the League supports inclusion of a provision making such assets held by the new corporation subject to municipal taxation.

#### **E. GOVERNMENT MANDATES**

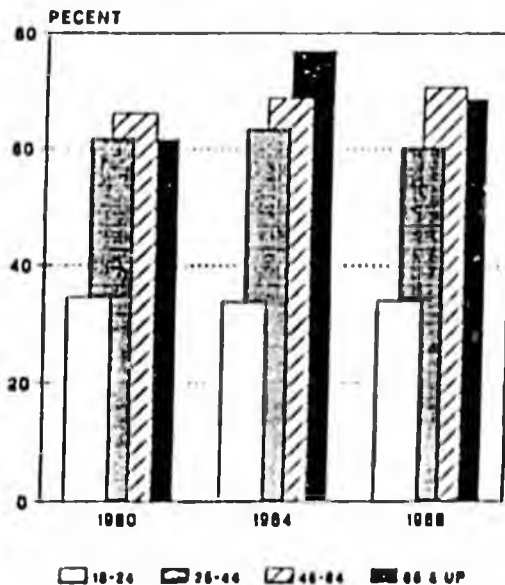
The League urges passage of legislation that would require a government agency unilaterally transferring responsibility for a program to a municipality or imposing regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or regulations.

## OLDER VOTERS

Older people are generally eager to participate in all facets of political life. Older persons are often involved in registering voters, assisting voters in traveling to polls, and actually conducting poll operations on election day. They believe in the Eisenhower adage, "Politics should be the part-time profession of every citizen."

The voter turnout graph illustrates the participation rate of four age groups of Alaska voters in elections held between 1980 and 1988.

VOTER TURNOUT GRAPH



Prepared for AARP by Election Data Services

## 1991 ALASKA LEGISLATIVE PROGRAM

### PRIORITIES

#### HEALTH

- Increase access to appropriate and affordable health care for all Alaskans by:
  - advocating formulation of a health policy for Alaska
  - supporting concept of state-mandated insurance for the uninsured
  - seeking legislation and appropriations for a comprehensive and coordinated program of home-, community-, and institutionally-based services throughout the state
  - supporting availability of adequate health insurance for all, including those uninsured

#### ECONOMIC SECURITY AND BUDGET

- Strengthen programs which will provide economic security for all Alaskans by:
  - supporting legislation to stabilize the Longevity Bonus Program
  - advocating recognition of the economic and social value of the retirement community by supporting programs to encourage retirees to remain in Alaska
  - supporting full funding of present property tax relief to senior citizen homeowners and renters

#### SUPPORT ITEMS

- Support legislation to provide separate management of public pension funds
- Support efforts to improve availability of insurance by means of tort reform and/or increased regulations consistent with adequate consumer protection

SL1003AK(1090)

## ALASKA

State Legislative Committee

# 1991 FACTS & LEGISLATIVE PRIORITIES



American Association  
of Retired Persons

The UAF Staff Council approved the following at its Meeting #29 on December 7, 1990:

**MOTION PASSED** (unanimous approval)

The UAF Staff Council moves to endorse the following position paper regarding the PERS/TRS fund:

1. PERS funds should be managed and invested by a separate public corporation. This corporation should be developed for the specific purpose of managing the investment and benefit administration of public pension funds within the state of Alaska.
2. The Corporate Board of Trustees should have fiduciary responsibility for the PERS fund and any other public pension fund managed by the corporation.
3. The Board should be composed of: elected representatives of the beneficiaries of the various funds; the Commissioner of Revenue (nonvoting); and gubernatorial appointees from fund employers. There should be equal representation between employers and employees.
4. An Advisory Council of investment experts should be established by the Board. The purpose of the Council should be to provide information to the Board based on its cumulative expertise in investment matters.
5. The Board should be responsible for hiring an Executive Director for the corporation who in turn should hire his/her staff for administration of operational and investment matters.
6. Under no circumstances should the PERS funds be co-mingled with the Alaska Permanent Dividend Fund.

**RATIONALE:** PERS funds are currently managed by the Commissioner of Revenue, a gubernatorial appointee. This places the fund in possible jeopardy because of political pressure. Fiduciary responsibility for funds of this magnitude should not be placed in the hands of just one person. The management board for the PERS/TRS fund should be separate from the Permanent Fund