

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 86/2

7399 SENATE HEALTH EDUCATION & SOCIAL SERVICES

S B

8 4

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. 8B84

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to state coordination of health planning and development BRU: Administrative Services
 Component: Planning and Development
 Sponsor: Duncan
 Requestor: by the HESS Committee COMPONENT SERIAL NO. 0323

Expenditures/revenues: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	59.4	62.2	62.2	62.2	62.2	62.2
TRAVEL	3.2	3.3	3.3	3.3	3.3	3.3
CONTRACTUAL	20.4	20.4	20.4	20.4	20.4	20.4
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	10.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	93.5	86.4	86.4	86.4	86.4	86.4
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	93.5	86.4	86.4	86.4	86.4	86.4
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
TOTAL	93.5	86.4	86.4	86.4	86.4	86.4

POSITIONS:

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

Estimate of current year impact: **No FY91 fiscal impact.**


ANALYSIS: (Attach a separate page if necessary)

During 1991, the department completed six Certificate of Need reviews requiring the full time efforts of a Health and Social Services Planner II (R 19). If Senate Bill 84 is passed, which gives the department much broader and stricter review powers, the department estimates that Certificate of Need (CON) reviews will increase by another six to eight projects. Therefore, the department estimates that a Health and Social Services Planner II will be required to keep up with the increased workload. Duties of this position include: writing appropriate regulations; reviewing letters of intent to deter-

(Continued)

Prepared by: Janet Clarke, Director
 Division: Division of Administrative Services

Phone: 465-3082
 Date: 02/11/91

Approved by Commissioner: 
 Theodore A. Mala, MD, MPH
 Agency: Department of Health and Social Services

Date: 2/11/91

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

ANALYSIS (cont.):

mine whether a CON is required; assisting applicants through pre-application conferences in CON preparation; reviewing all data elements in CON application for completeness; preparing and submitting all advertising related to CON; holding CON public meetings; completing major CON review reports which determine whether or not a CON application is approved or disapproved; and acting as expert witness at all appeals/litigation related to CON.

DESCRIPTION	COMMENT #	FY92	FY93
Line 100 - Personal Services			
H&SS Planner II, PFT, 12 months, (R 19)-Juneau	(1)	59,438	62,172
Line 200 - Travel			
Staff Travel for Public Meetings:			
a) 3 CON Public Meetings x 1 staff x 2 days = 6 days	(2)		
b) 6 days x \$115 per diem		690	690
c) 1 staff x \$475 avg. airfare x 3 Public Meetings	(3)	1,425	1,500
d) 1 staff x \$35 misc. expense x 3 Public Meetings		105	105
Staff Travel for Hearing Appeals:			
a) 1 Hearing Appeal x 1 staff x 4 days = 4 days	(4)		
b) 4 days x \$115 per diem		460	480
c) 1 staff x \$475 airfare x 1 Hearing		475	500
d) 1 staff x \$35 misc. expense x 1 Hearing		35	35
TOTAL TRAVEL		<u>3,190</u>	<u>3,290</u>
Line 300 - Contractual Services			
a) Advertising of 6 CON reviews @ \$400 each		2,400	2,400
b) Hearing Officer, assume 1 appeal @ \$5,000		5,000	5,000
c) Attorney time and all costs related to litigation	(5)	6,000	6,000
d) Office space rental for staff		3,000	3,000
e) Communications including local, long distance, fax and postage		4,000	4,000
TOTAL CONTRACTUAL		<u>20,400</u>	<u>20,400</u>
Line 400 - Supplies			
a) Paper, office supplies, etc.		500	500
TOTAL SUPPLIES		<u>500</u>	<u>500</u>
Line 500 - Equipment			
a) Personal computer, software, printer, etc.		7,500	0
b) Desk, chair, file cabinets, calculator, etc.		2,500	0
TOTAL EQUIPMENT		<u>10,000</u>	<u>0</u>
TOTAL FOR PROJECT		<u>93,526</u>	<u>86,362</u>

- (1) The staff costs for FY93 assumes a 5% cost of living increase
- (2) This assumes that out of 6-8 additional CON reviews, that 3 will require Public Meetings
- (3) For FY93, it is assumed that average travel costs will increase from \$475 to \$500 per trip.
- (4) This assumes that Hearing Appeals will increase to one per year from the present of one every 2 or 3 years.
- (5) The \$6,000 figure was provided by the Department of Law as what they would charge to handle all costs related to litigation for 1 Hearing.

Alaska State Legislature



SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100
(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR -
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

SECTIONAL ANALYSIS

SENATE BILL NO. 84

"An Act relating to state coordination of health planning and development; abolishing the Statewide Health Coordinating Council; and providing for an effective date." By Senator Duncan.

Section 1. The legislative purpose for chapter 18.07 is to provide a rationale for the planning and development of health care services that promotes the health of the public and avoids unnecessary increases in health care costs.

Section 2. The specific designation of the Office of Planning and Research as administrator of the certificate of need program is deleted.

Section 3. A certificate of need is required for construction, conversion, or acquisition of a health care facility whose value is in excess of \$1,000,000. A certificate is also required for changes in the bed capacity of a facility or change in categories of health care services provided by a facility.

Section 4. Technical change.

Section 5. Activities authorized by the certificate are valid only for the defined scope, physical location, and person stated in the certificate.

Section 6. A certificate holder is required to apply to the department before transferring, modifying, or terminating activities authorized by the certificate.

Section 7. An application to transfer a certificate must contain information about the nature of the transfer and evidence that the transferee is able to operate the facility. The department may impose conditions on the transfer.

Section 8. Provided are the emergency conditions under which the department shall expedite review of applications for a certificate of need.

Section 9. The department shall make a final decision on a certificate of need application within 150 days. Deferral of decision beyond this limit may be made under certain conditions.

Sections 10, 11, 12, and 13. Accusatory proceedings for modification, suspension, and revocation of an existing certificate of need are amended. A competing health care facility may request a hearing for modification, suspension, or revocation. Untrue accusation charges, knowingly stated, is a class B misdemeanor.

Section 14. This section rewrites existing law and details reporting requirements of certified health care facilities, penalties for non-compliance, and adds an injunctive relief provision. Generally, it increases sanctions against non-compliance.

Section 15. Regulation authority of the department is expanded to establish variation of activity thresholds which will be permitted without requiring a modification of certificates of need.

Section 16. Definition section. Excluded from the definition of health care facility are the Alaska Pioneers' Home facilities, outpatient clinics and offices of private physicians or dentists, and office buildings used exclusively by health care providers.

Section 17. Technical change.

Section 18 and 19. The Statewide Health Coordinating Council is abolished.

Section 20. Repealer section, mostly pertaining to the Statewide Health Coordinating Council.

Section. 21. Effective date clause.

DIVISION OF LEGAL SERVICES

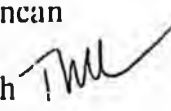
**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

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

MEMORANDUM

January 10, 1991

SUBJECT: Certificate of Need Program (7LS0407A)
TO: Senator Jim Duncan
FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is a new draft relating to the certificate of need program.

You had asked that the bill be redrafted to ensure that (1) a CON was required for equipment purchases costing \$1,000,000 or more and (2) cost limits used in the bill referred to total project costs so that a large project could not escape CON review by being split into smaller projects.

This bill has not been changed with respect to the first item requested. Equipment purchases are already covered by the definition of "construction" in AS 18.07.111, both in current law and as amended in this draft. It includes "the lease or purchase of equipment." Joanne Clark at DHSS confirmed for me that the department has already done CON reviews for equipment like the MRI's you mentioned. The only issue left in this area is not whether equipment is covered (it is), but whose acquisition of it is covered. That is, CON only covers health care facilities, so that if someone other than a health care facility acquires an MRI or other expensive equipment, a CON is not required under current law. Of course, the department looks closely at whatever relationship there might be between a neighboring health care facility and the non-health care facility to determine if, in fact, a CON is needed; in some instances, the relationship might be close enough that the department would consider the equipment to have been leased or purchased by the health care facility itself. It appears to me that the rewritten definition of "health care facility" in section 16 of the draft addresses this issue. For instance, the new definition covers "freestanding emergency care facilit[ies] and independent diagnostic laborator[ies]." These are not covered in current law.

In response to your second request, I have added a new subsection (b) in bill section 3. It is modeled after language in AS 36.30.305(c) (state procurement code).

Senator Jim Duncan
January 10, 1991
Page 2

I have enclosed for your information a 1985 Attorney General Opinion that relates to the issue of whether a CON is required when a non-health care facility acquires expensive equipment.

I hope you find the opinion and this memo helpful. Please let me know if I can be of further assistance.

TML:gc
91-012.glc

Enclosure

MEMORANDUM

State of Alaska

TO: John R. Pugh, Commissioner
Dept. of Health & Social Services

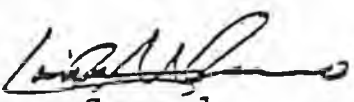
DATE: February 11, 1985

FILE NO: 366-274-85

TELEPHONE NO: 465-3603

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Does doctor group
leasing hospital
land for MRI need
CON?

By: Linda M. Cerro 
Assistant Attorney General
Human Services-Juneau

You have asked whether Diagnostic Imaging of Alaska (DIA), a 25-physician investment group, which intends to purchase and operate a magnetic resonance imaging mobile unit (MRI) at a cost of \$1.9 million, to locate on land leased from Humana Hospital-Alaska (Humana), is subject to certificate of need review. It is understood that DIA will lease space from Humana which is adjacent to but separate from the hospital facility. It is further understood that Humana is not involved in the purchase of the MRI, nor is it leasing the MRI from DIA. Humana patients requiring MRI diagnostic services will independently contract with DIA and not with Humana.

Under the facts presented, neither DIA's purchase and operation of a magnetic resonance imaging mobile unit, nor Humana's lease of land to DIA for that purpose, is subject to certificate of need review.

AS 18.07.031, which sets forth those activities requiring review, provides in pertinent part:

Certificate of Need Required. No person may make an expenditure of \$1,000,000 or more for any of the following unless authorized under the terms of a certificate of need issued by the office:

- (1) construction of a health care facility;
- (3) addition or elimination of a category of health services provided by a health care facility.

The term "health care facility" is defined at AS 18.07.111 as:

- (7) "health care facility" means a private, municipal, state or federal hospital, psychiatric hospital, tuberculosis hospital, skilled nursing facility, kidney disease treatment center (including freestanding hemodialysis units), intermediate

care facility, and ambulatory surgical facility;
the term excludes

(B) the offices of private physicians or
dentists whether in individual or group practice;

The term "category of health services" is defined as:

(8) "category of health services" means a major type, program, unit, division, or department of care provided through a health care facility whether inpatient or outpatient, including an outpatient department, psychiatric wing, kidney dialysis program, radiotherapy, burn unit, or newborn intensive care unit, except that "service" does not include the lawful practice of a profession or vocation conducted independently of a health care facility and in accordance with applicable licensing laws of the state;

You are correct that DIA is not a "group practice" of "private physicians" as intended by the Alaska Legislature when it exempted the offices of private physicians from the definition of health care facility. That exemption was intended for the typical physician's office through which a physician regularly sees outpatients for the diagnosis and treatment of illness. However, neither does DIA, a 25-physician investment group, fall within the term of "health care facility", as it is restrictively defined at AS 18.07.111(7). To encompass DIA's purchase of an MRI, the definition of health care facility would have to include a facility engaged principally in providing services for the diagnosis of human disease. 1/

1/ In *Medcor, Inc. v. Finley*, No. A-3677-79A (N.J. Super. Ct. App. Div., May 22, 1981), a mobile multiphasic health testing service which offered automated testing using mobile vans carrying medical screening equipment, brought an action seeking judicial review of a state agency determination that it was subject to certificate of need regulation. The state statutes subjected "health care facilities" providing "health care services" to CON regulation. The court held that the mobile testing service was subject to regulation because: (1) it was within the statutory definition of a health care facility ("a facility or institution ... engaged principally in providing services for ... diagnosis or treatment of human disease ...");
(footnote continued)

John R. Pugh, Commissioner
Dept. of Health and Social Services
366-274-85

February 11, 1985
Page 3

Since enactment of the National Health Planning and Resources Development Act of 1974 (NHPRDA), major medical equipment has been placed in doctor's offices, medical office buildings and in space leased from hospitals in order to circumvent review. As a result, Congress, in enacting P.L. 96-79, the 79 amendments to the NHPRDA, required state certificate of need program coverage of all major medical equipment, wherever located, if its cost exceeded the stated threshold. Until AS 18.07 is amended to more fully conform with the NHPRDA, however, DIA's \$1.9 million purchase of an MRI is outside the scope of state CON review.

Nor is the purchase and operation of an MRI by DIA a "category of health services provided by a health care facility". Aside from the fact that the physician investment group is not a health care facility, the definition of "category of health services" specifically excepts "the lawful practice of a profession or vocation conducted independently of a health care facility and in accordance with applicable licensing laws of the state".

Finally, while the definition of "construction" at AS 18.07.111(3) includes the purchase or lease of equipment, it is understood that any lease agreement between DIA and Humana is simply for the lease of the land upon which DIA plans to operate its MRI, and is not a lease of the equipment itself.

LMC:gmw

cc: Pat Alexander
Dave Williams

(footnote continued)
and (2) the state CON regulations included mobile multiphasic health testing services in their list of standard categories of health care services.

Position Paper
Senate Bill 84

"An act relating to state coordination of health planning and development; abolishing the Statewide Health Coordinating Council; and providing for an effective date."

The Department of Health and Social Services supports Senate Bill 84.

Senate Bill 84 makes substantial changes to Alaska's Certificate of Need program (AS 18.07). Senate Bill 84 significantly broadens and strengthens program coverage of hospital and nursing home development in Alaska. Senate Bill 84 would require many more types of hospital and nursing home development to come under Certificate of Need review and approval from the Department.

In the present Certificate of Need law (AS 18.07) there are "gaps" that exist that allow certain types of major hospital and nursing home developmental activities to go into effect without any Certificate of Need review. Even though no Certificate of Need review is presently required on many activities, these activities have fiscal impacts on the Medicaid budget. The Department feels that the types of activities that are presently exempted from coverage should come under Certificate of Need review. The Department feels that by strengthening the Certificate of Need program, as is done in Senate Bill 84, more containment of Medicaid costs will be achieved. Therefore, the Department supports Senate Bill 84.

Recommended by: J. Clarke
Janet Clarke
Director
Division of Administrative
Services

Date: 2/14/91

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

Date: 2/25/91

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 23, 1991

Senator Arliss Sturgulewski, Chair
Senate Health, Education & Social
Services Committee
Capitol Room 427
Juneau, AK 99801

Re: SB 84, Certificate of Need
Proposed Amendments

Dear Senator Sturgulewski:

The Association would like to offer the following amendments to SB 84, sponsored by Senator Duncan, amending the state "certificate of need" law.

#1 - Page 2, line 7 -- Delete subsection (2) of AS 18.07.031 entirely.

An alternative to deleting this section, that relates to the "conversion of a building for health services" would be the attached "alternate No. 1" amendment that provides amendatory language which clarifies that the cost of converting an existing building must be \$1 million or more before requiring a certificate of need.

#2 - Page 9, line 19 delete reference to "18.07.041". This would have repealed that part of the current statute which describes the standard for determining whether to issue a certificate of need.

By copy of this letter, we will alert Senator Duncan and the Department of our interest in working with them on SB 84.

Sincerely,



Harlan R. Knudson
President/CEO

Encl: (1)

cc: Senator Duncan
Tom Bergstrom, DHSS
ASHNHA Executive Committee

ALTERNATE NO. 1

ALASKA STATE HOSPITAL AND NURSING HOME ASSOCIATION

PROPOSED CHANGES TO SENATE BILL 84

March 6, 1991

1. Page 2, line 3: The Association proposes that AS 18.07.031(a), as it appears in Senate Bill 84, be revised as follows:

Sec. 18.07.031. CERTIFICATE OF NEED
REQUIRED. Unless authorized under the terms of
a certificate of need issued by the department,
a person may not

(1) make a capital expenditure of
\$1,000,000 or more for construction of a health
care facility;

(2) make a capital expenditure of
\$1,000,000 or more to convert an existing
building or part of a building to a health care
facility [CONVERT A BUILDING, IN WHOLE OR IN
PART, FOR USE AS A HEALTH CARE FACILITY IF THE
FAIR MARKET VALUE OF THE CONVERTED PART OF THE
BUILDING IS GREATER THAN \$500,000 AND THE SUM OF
THE FAIR MARKET VALUE PLUS ADDITIONAL CAPITAL
EXPENDITURES MADE TO FACILITATE THE CONVERSION
EQUALS OR EXCEEDS \$1,000,000];

(3) alter or redistribute the bed
capacity of a health care facility by more than
10 beds or 10 percent of the number of beds in
the facility, whichever is fewer, within two
years of the most recent alteration or
redistribution of bed capacity;

(4) make a capital expenditure of \$1,000,000 or more to add or eliminate a category of health services to or from those provided by the health care facility; or

(5) make a capital expenditure of \$1,000,000 or more to acquire a health care facility [AT A COST OF \$1,000,000 OR MORE].

2. Page 2, line 16: The Association proposes that AS 18.07.031(b) be amended as follows:

(b) The dollar thresholds in (a) of this section apply to total anticipated capital costs. Costs of constructing or acquiring a health care facility may not be artificially divided, fragmented, or structured or circumvent the requirements of this section.

3. Page 8, line 1: The Association proposes that AS 18.07.111(6) be revised as follows:

(6) "construction" means excavation, erection, alteration, modification, reconstruction, modernization, improvement, extension, or other development by or on behalf of a health care facility and includes the lease or purchase of equipment except when the lease or purchase of equipment is for the routine replacement of existing equipment;

PSA91:30/5951.3

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

February 11, 1991

Senator Arliss Sturgulewski, Chair
Senate Health, Education & Social
Services Committee
Capitol Room 427
Juneau, AK 99801

RE: SB 84 Certificate of Need

Dear Senator Sturgulewski:

The Alaska State Hospital & Nursing Home Association would like to request that no vote be taken to move the bill out of committee during the hearing on SB 84, amending the state certificate of need law Tuesday, February 12.

Unfortunately I must be in Anchorage that day. Hospitals and nursing homes have had little time to review SB 84, though it appears to be very similar to CSHB 399, rejected by the Legislature in 1990.

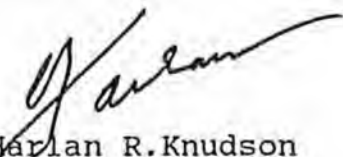
The Association believes that the "technical" amendments could be done by a cooperative effort between the Department and the Association. Any legislative changes in the certificate of need process should wait until there is state policy that clarifies the need and funding of federal/state health facilities as well as community facilities.

As you know, state and federal facilities do not need a certificate of need, nor do state outpatient programs such as in the area of mental, even though they compete and duplicate services already provided by a community hospital and nursing home.

We think the soon to be appointed Task Force on Universal Health Care (HB 581, 1990) or the Alaska State Health Resources Authority as proposed in SB 83, authored by Senator Duncan this session should be charged with recommending a health policy for this state that will maximize the use of our federal/state/community facilities and programs, and prevent unnecessary duplication and competition.

Thank you for your consideration.

Sincerely,



Harlan R. Knudson
President/CEO

HRK/ma
cc: Members, Senate HESS

Bill upsets insurers, medical industry

3-8-91

Law would put lid on medical fees charged state employees

By PATRICIA SOLOVEICHIK
TIMES BUSINESS WRITER

A proposal introduced in the state Legislature last month that would require the state of Alaska to set fees that doctors and other health-care providers charge patients has insurers, the medical community and some businesses in an uproar.

Sen. Jim Duncan, D-Juneau, author of the proposal, said Senate Bill 83 and companion legislation would create the Alaska State Health Resources Authority. If enacted, it would establish by July 1992 reimbursement rates and treatment standards that insurers must use in paying health-care providers who serve state employees.

After July 1992, ASHRA would offer comprehensive group health insurance to public employees and to businesses in Alaska that want to participate.

The legislation requires all health-care providers hoping to do business with the state's 135,000 public employees could not charge fees higher than those established by the state and would be required to meet state guidelines for treating patients, Duncan said.

Duncan said his legislation is the result of two years of study by the state Health Care Cost Containment Task Force, of which the senator was chairman.

Duncan said he hopes the state's private employers would

join the program using participating physicians and medical facilities, particularly small businesses that would be provided group coverage for their employees.

"We met with large corporate employers in December to discuss this legislation, and they indicated that without this legislation they would need to either reduce benefits or ask employees to pay more," Duncan said.

"The business community is very interested in a solution, but they have not made a definitive statement on S.B. 83," he said.

Several large local employers testified before the task force about their concerns, including

See Insure, page C5

Insure

Continued from page C1

BP Exploration (Alaska) Inc. BP Exploration officials could not be reached for comment late Thursday.

Rosa Jerrell, state director of the National Federation of Independent Businesses, said she favors the legislation as a "viable means of providing health insurance to the uninsured population in Alaska."

She said a voluntary pooling is a more acceptable alternative than a legislative mandate that all employers must provide health insurance coverage for their employees.

But she said NFIIB members are adamant that the program be voluntary and administered by private insurance companies. Duncan has said Alaska would self-insure those without coverage if insurance companies could not meet state cost expectations.

Insurers in Alaska are not pleased with state regulatory intervention. They say they would prefer to take care of the problem through the free enterprise system.

"Sen. Duncan is able, through state government, to bring a much larger solution faster,"

said Eric Rohlman, vice president of group marketing for Blue Cross of Washington and Alaska.

"But I think it's better to look to private enterprise. We hope we can be part of the solution and still believe in competition," Rohlman said.

"The disappointing part of S.B. 83 is that many feel we haven't moved fast enough," Rohlman said.

Duncan believes Alaskans do not have the time to wait for private enterprise solutions.

"If the system goes unchecked, it's in danger of collapse. As costs continue to rise, more people will drop out of insurance coverage. Those people will still go to hospitals, but the cost will be picked up by those who are able to pay.

"As the number of uninsured people rises, so will the cost of health care, which will cause more people to drop out. It's a circle that continues until at some point it collapses on us," Duncan said.

Harlan Knudson, chairman of the Alaska State Hospital and Nursing Home Association, agreed that the cost-shifting would occur, but he pointed the finger at Duncan's bill as the issue that is most disconcerting.

"The state will push down the reimbursement that hospitals

now get for state employment and public employee health care. That cost will be shifted to other buyers of health care," Knudson said.

He also charged that the program will become a "tremendously expensive undertaking."

And he said he is concerned that this bill will get the go-ahead because of public pressure on the Legislature to take some strong action on health-care costs.

In Resolution No. 5, which Knudson said he supports, Duncan said the imposition of fee schedules is necessary to get a handle on the 200 percent rise over the last 10 years in Alaska's annual expenditures for health care. The outlays have gone from \$980 million to more than \$1.5 billion.

And the state's uninsured have reached 80,000 people, or 18 percent of the total population. Duncan said a continuation of current trends would mean 23 percent of the state's residents will be unable to get insurance.

Under S.B. 83, ASHRA would be managed by a board of directors composed of nine members appointed by the governor from the executive branch, organized labor, school districts, municipalities, private sector employers and health-care providers.

FORUM

Hawaii an innovator in public health care

HONOLULU — Dr. John Lewin is a spare-time marathon runner with a long-distance vision of a nation in which everyone receives prepaid health care.

"I think basic health care is a fundamental human right," says Lewin, the state director of health in Hawaii.

But this former family physician and health officer for the Navajos is convinced this right can best be realized not through a Canadian-style government health service but by vigorous American-style competition among health-care providers. What Lewin wants the government to do is provide the incentives — or the mandates — that will require this kind of competition.

Hawaii has long been an example in the art of providing health care for working people at a price even the smallest employer can afford. Since 1974 it has been the first (and only) state requiring employers to pro-



LOU CANNON

vide health insurance to all their full-time employees. While businesses can require employees to pay half the cost of this insurance and coverage of dependents is optional, the coverage is mandatory for full-time workers. In practice, most dependents are covered by some health-insurance plan.

The results of this experiment have been significant. Life expectancy in Hawaii has increased by nearly five years to 78. Infant mortality, which had the high rate of

16 per 1,000 in 1974, is now down to 8.4 — one of the best rates in the nation. And while the rates of cancer and heart disease are similar in Hawaii to those of other states, the death rates from these diseases are lower in Hawaii. Because of its law requiring health coverage for workers, Hawaii has by far the nation's lowest "gap group" — the term applied to those insufficiently old for Medicare, insufficiently poor for Medicaid and unfortunate to work for an employer who lacks an insurance program.

And last April, at the urging of Lewin and the state's progressive Democratic Gov. John Waihee, Hawaii passed another first-of-its-kind law extending health insurance to the 35,000 persons (a little more than 3 percent of the population) who formed its gap group: the self-employed, part-time and seasonal workers, homeless unemployed and some dependent

children. When this State Health Insurance Program (SHIP) was passed, some insurers argued it would be prohibitively expensive. Lewin took the view that the group as a whole (the homeless were an exception) would be healthy and that insurers would find it worthwhile to compete for their business. The results so far suggest Lewin was right.

In comparison with other visionary health programs, notably one in Massachusetts, the emphasis in Hawaii has been on prevention through regular physical examinations, mammograms and prenatal care. The result has been not only a healthier population but low costs that have prompted competitive bids from insurance companies.

Hawaii's health care has become nearly universal at a time when most of the country is heading in the opposite direction. The number of Americans who lack any health insurance is increas-

ing. By and large, these are people who rely on hospital emergency rooms for their medical care.

According to some estimates, as many as 40 million Americans, nearly 20 percent of the population, are lost in this health-coverage gap. The numbers are particularly high in states such as California, which have a high percentage of young workers, immigrants and service industries that tend not to extend health care to employees.

Both in human and economic terms, America pays a tremendous cost for the health-care gap. In inner cities throughout the nation, hospitals and trauma centers are closing down or limiting care because of the high cost of providing uncompensated care in an emergency room. Uninsured Americans tend to wait until a health problem is life-threatening — and perhaps incurable — before they seek medical care.

In 1974, Hawaii overcame

the reservations of small-business men about health-insurance costs by establishing a "community rating." This meant that all the small employers in the state were treated as one risk pool, enabling them to obtain the rate breaks routinely available to big business.

Larger states have balked at such community ratings, although the idea is a way of enticing competitive bids from insurers that would keep costs down and improve long-range health care.

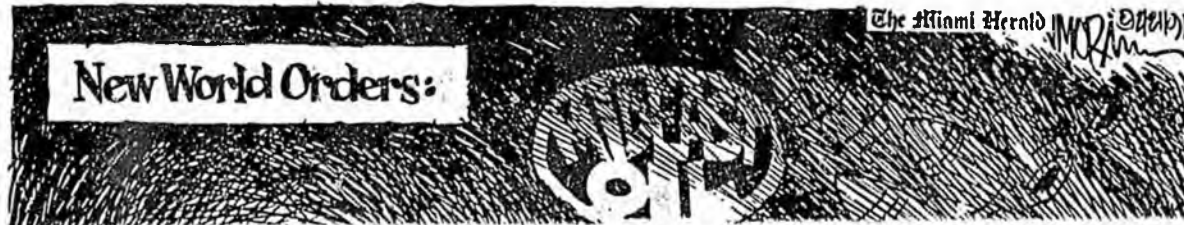
Hawaii's example ought to prove particularly tempting to governors such as Pete Wilson of California, a farsighted Republican who wants to improve preventive health care. Wilson ought to talk to Waihee and especially to Lewin. It is time to provide health care for everyone.

Lou Cannon is a Washington Post columnist and reporter.

Tax-free activism

I wish that the members of the Anchorage Baptist Temple and their ilk would obey the commandment "Thou shalt not steal" and quit taking my money to support their political agenda. Because the Anchorage Baptist Temple is a tax-free organization, some part of my taxes goes to support

New World Orders:



Who is he to question the values of the women who serve on the commission, which is devoted to promoting women's and children's interests? After reflection, I realize he is not a mean man, so the only explanation for his actions is ignorance.

I will forgive Walter Hickel and I will pray for Walter Hickel's enlightenment.

FORUM

Alaska can cure health-care problems with some imagination

By RODMAN WILSON, M.D.

The legislature may soon create a Health Resources and Access Task Force to tackle the vexing problem of providing basic health care to all Alaskans at a price that we can bear.

Such appointed bodies generally conclude by recommending minor modifications to the status quo. This is the way we tend to change things in America. Let's hope that this group is more imaginative than that.

In 1965, Congress created Medicare to provide acute medical care for the elderly. It would have been better for the nation if Congress had set in place a system to finance health care for children. Children were provided for under Medicaid, also enacted in 1965, but only if poor. Medicaid, however, currently serves only 45 percent of the poor.

The first piece, then, of any plan that the new task



force fashions should be a way to pay for care of all children through at least age 18. Except for prematurity, medical care of infants and children is by and large "low-tech" and therefore relatively inexpensive. Much of it is to prevent disease and detect disorders early.

Hand in hand with financing care for children should come reproductive care for women. This includes prevention, detection and management of pregnancy and full care of a mother for a time after birth. Reproductive care is likewise mostly low-tech.

Next could come long-term care (LTC) for the elderly and totally disabled adults younger than 65. Medicare provides only limited LTC. Most employer

In 1965, Congress created Medicare to provide acute medical care for the elderly. It would have been better for the nation if Congress had set in place a system to finance health care for children.

plans do not cover it.

LTC either at home or in an institution is expensive because it is labor intensive, but it generally does not involve sophisticated equipment or complex treatment regimens.

One way to finance LTC would be to require beneficiaries of Alaska's longevity bonus program to use \$100 of their \$250 monthly stipend to purchase LTC insurance. Then when one needed home care or placement in a nursing or Pioneers home, there

would be money to pay for it.

The income stream from the Mental Health Lands Trust Fund (once it is un-snarled) could underwrite almost all psychiatric care, other counseling and most of the special needs of the mentally retarded.

We should be careful not to use the trust fund just to care for the irremediable. Much of the money should go to prevent, attenuate and cure mental and emotional disorders.

Among groups decreed eli-

gible for care by Judge Meg Greene are "chronic alcoholics suffering from psychosis" and "senile people ... who suffer from major mental illness." This quasi-medical language is confusing, for few alcoholics are psychotic and all senile people have major mental defects.

All of this needs modern definition and sharp delineation. The Mental Health Trust Coalition and others are doing this.

Illnesses and injuries afflicting adults between ages 19 and 64 remain. These are often complex to treat and costly. They constitute the biggest challenge to the Health Resources and Access Task Force.

It ought to decide early whether to base a plan or plans on employer insurance programs. Aside from governmental employees, Alaska does not have many big employee groups. There are many small businesses,

many self-employed individuals and many seasonal workers. Health insurance for these is hard to find and expensive.

It might make more sense in Alaska to craft a system based on a health tax. This would eliminate much of the cost shifting that currently abounds and should cost less overall than current overlapping mechanisms of paying for health care.

It could also lead to appealing trade-offs with employers. Money from federal medical programs would, of course, continue to be claimed to offset some of the costs.

Medical care will remain expensive no matter how we pay for it. But there are ways to save money. That's a story for another day.

□ Dr. Rodman Wilson served as public health director for the municipality from 1982-1987.

Anthropologist a great scholar

I'm disappointed with the articles criticizing Dr. Hrdlicka of the Smithsonian Institution, who collected anthropological evidence from the Aleuts.

Dr. Hrdlicka was a great scholar. He founded the American Journal of Physical Anthropology and the American Association of Physical Anthropologists.



the world. We might as well allow mining on Mount McKinley, or private industry to develop our parks. If there is money to be made, what is there to stand in the way? In pursuit of the almighty dollar, man has unnecessarily destroyed many of our national treasures. Why do you think Alaska is called "The Last Frontier"?

If we allow the encroachment of the

S B

8 7

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 87

Revision Date: 12/4/91 Department Affected: Education
 Title: An Act exempting graduate law and medicine programs from regulation BRU: Postsecondary Education Commission
 Component: Postsecondary Education Commission
 Sponsor: Senator Rodev
 Requestor: (S)HESS COMPONENT SERIAL NO.

0	2	1	2
---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.)

NO FISCAL IMPACT

Prepared By: Allan Barnes, Executive Director Phone: 465-2165
 Division: Alaska Commission on Postsecondary Education Date: 12/11/91

Approved by Commissioner: _____ Date: _____
 Agency: _____

OK

DISTRIBUTED BY SENATOR STURGULEWSKI

LETTER OF INTENT
SENATE BILL 87

It is the intent of the Legislature that the provisions of Senate Bill 87 do not apply to institutions which offer courses to prepare individuals who possess a graduate degree in law, medicine, or dentistry to take legal bar exams, medical doctor, or dental doctor licensing exams.

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

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

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

DATE : January 30, 1991

TO : Senator Arliss Sturgulewski, Chair
Senate HESS Committee

FROM : Senator Patrick Rodey

RE : Scheduling request for Senate Bill 87 - An Act
exempting certain graduate educational programs in
law and medicine from state regulation

I respectfully request that the above-referenced bill be scheduled for consideration in the HESS Committee as soon as possible.

This proposal exempts certain graduate educational programs in medicine and law from Postsecondary Education Commission regulations, provided the program does not offer educational credentials.

Currently there are tutorial courses in law and medicine which do not offer credits, degrees, certificates or credentials but are subject to regulation merely because they cost more than \$250. I believe these programs should be exempted.

I would appreciate your consideration in scheduling this bill.

Thank you.

7-LS0419A.1
Ford
02/19/91

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 87

BY SENATOR MENARD

Page 1, line 1, after "law":

Insert ", dentistry,"

Page 1, line 6, after "law":

Insert ", dentistry,"

S B

9 7

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. CSSB 97 (HESS)

Revision Date: 3/25/91 Department Affected: University of Alaska
 Title: Advance College Tuition Program; eff. date BRU: Statewide Programs & Services
 Component:
 Sponsor: Keritula
 Requestor: Senate HESS Component Serial No.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	128.9	130.7	134.8	138.7	142.8	147.1
TRAVEL	8.8	7.1	7.5	7.9	8.3	8.7
CONTRACTUAL	95.0	99.9	104.7	110.0	115.6	121.2
SUPPLIES	2.5	2.8	2.8	2.9	3.0	3.2
EQUIPMENT	30.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	281.2	240.2	249.6	259.4	289.6	280.2

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

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

FUNDING: (Thousands of Dollars)						
GENERAL FUND						
FEDERAL FUNDS						
OTHER: Interest Income	281.2	240.2	249.6	259.4	289.6	280.2
TOTAL	281.2	240.2	249.6	259.4	289.6	280.2

POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	1.1	1.1	1.1	1.1	1.1	1.1

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 Funding for this program comes from interest earned on the advance tuition payment fund and from other University of Alaska interest income. Staffing includes two permanent PCNs (reallocated from existing vacancies) and 2 temporary telephone workers. Contractual includes funding for advertising, printing, actuarial studies, and programming. Equipment includes record-keeping software.

Prepared by: Marsha A. Hubbard
 Division: Statewide Budget Office

Phone: 474-7593
 Date: 3/25/91

Approved by: Brian Rogers, Vice President for Finance
 Agency: University of Alaska

Date: 3/25/91

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



Official Business

Alaska State Legislature

Senate

Committee on Finance

Pouch V
State Capitol
Juneau, Alaska 99811

W. J. P. [Signature]

MEMORANDUM

TO: Sen. Sturgulewski, Chair
Senate HESS Committee

SUBJ: Senate Bill 97-
Educational
Trust Fund

FROM: Senator Kerttula *[Signature]*

DATE: March 14, 1991

I would appreciate it if you would schedule Senate Bill 97, relating to the Educational Trust Fund.

The Educational Trust Fund was created by legislation which I sponsored during the last year's session. Last year's Senate Bill 136 established a guaranteed tuition plan with the University of Alaska funded through contributions by parents and students.

Senate Bill 97 clarifies the broad purposes of the fund to improve access to higher education and to act as an incentive for Alaskans to pursue higher education. Senate Bill 97 also changes existing statute to enhance the fund's tax advantages. The University of Alaska has spent a great deal of time coming up with proposed revisions to last year's Senate Bill 136. These revisions conform to my intent with the original legislation and are contained within Senate Bill 97.

I have attached a copy of the University of Alaska's draft Advance Tuition Payment Plan for your information.



Alaska State Legislature

SENATE

Official Business

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

SPONSOR STATEMENT SENATOR JAY KERTTULA

SENATE BILL 97 -- ADVANCE COLLEGE TUITION PLAN

Senate Bill 97 makes revisions to legislation which I sponsored last year creating an Alaska Educational Trust Fund. Most of these revisions were recommended by the University of Alaska which has directed a significant amount of legal research into the tax implications of the fund. SB 97 will also allow Alaska's private four-year colleges -- Sheldon Jackson and Alaska Pacific University -- to participate in the prepaid tuition plan along with the University of Alaska.

Under last year's Senate Bill 136, an apparatus was set up whereby a contract would be made between the University of Alaska and a purchaser that would guarantee prepaid credits at the University, no matter how much the tuition rises by the time the beneficiary enrolls in college. Senate Bill 136 offered the option for 50 percent of a parents', grandparents', or child's permanent fund dividend to be invested in the Educational Trust Fund for prepaid tuition. Last year's legislation also allows cash contributions to the fund.

The Educational Trust Fund, whose name is being changed to the Advance College Tuition Payment Fund in Senate Bill 97, was modeled on similar programs which were adopted and implemented in other states. When Michigan adopted its plan in 1986, 44,000 people applied during a two-month period. In Florida, approximately 40,000 people applied for a similar program. Alaska's plan is unique in that it will utilize a check-off on the permanent fund dividend application, and will thus be publicized to every Alaskan resident.

The Advance College Tuition Payment Fund offers an innovative way to provide parents and students with alternatives for financing college tuition. I urge passage of Senate Bill 97.

1991 proposed
AMENDMENTS
STILL IN
COMMITTEE

SENATE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS KERTTULA, Sturgulewski

Introduced: 2/1/91
Referred: HES and Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska education trust fund; and providing for an effective date."

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

3 * Section 1. AS 14.40.803 is amended to read:

4 Sec. 14.40.803. ALASKA EDUCATION TRUST FUND ESTABLISHED. (a) The
5 Alaska education trust fund is established as an endowment trust fund of the University of
6 Alaska. The fund is established for the purpose of enhancing the ability of the University
7 of Alaska to provide (1) higher education for the people of the state; (2) wide and affordable
8 access to higher education; (3) ive for residents to achieve higher academic
9 standards in grades 7 - 12; and (4) an incentive for residents to continue and complete
10 secondary and post secondary education [SEPARATE FROM THE GENERAL FUND]. The
11 fund may be divided into separate accounts for accounting purposes.

12 (b) The fund consists of

13 (1) permanent fund dividend and cash contributions made under AS 14.40.807
14 under the terms of an advance tuition payment contract;

1 (2) appropriations from the legislature, gifts, bequests, and contributions of cash
2 or other assets for advance tuition payment contracts or prepaid tuition scholarships [FROM
3 A PERSON]; and

4 (3) income and earnings of the fund.

5 (c) Assets of the fund shall be expended [IN THE FOLLOWING ORDER OF
6 PRIORITY]:

7 (1) to make payments to the university on behalf of qualified beneficiaries;

8 (2) to make payments for refunds, redemptions, and awards under [UPON
9 TERMINATION OF] an advance tuition payment contract;

10 (3) to pay the costs of administration of the fund.

11 * Sec. 2. AS 14.40.805 is amended to read:

12 Sec. 14.40.805. POWERS AND DUTIES OF THE COMMISSIONER OF REVENUE.

13 The commissioner of revenue is the custodian [TRUSTEE] of the fund and has the powers and
14 duties under this section to

15 (1) act as official custodian [TRUSTEE] of the cash and investments belonging
16 to the fund and to secure adequate and safe custodial facilities;

17 (2) receive all items of cash and investments belonging to the fund;

18 (3) collect the principal and income from investments of the fund [ACQUIRED
19 BY THE TRUSTEE] and deposit the amounts in separate principal and income accounts [FOR
20 THE FUND];

21 (4) invest and reinvest the assets of the fund as provided in this section and in
22 accordance with investment objectives established by the board [AS PROVIDED FOR THE
23 INVESTMENT OF RETIREMENT FUNDS UNDER AS 14.25.180];

24 (5) exercise the powers of a custodian [TRUSTEE] with respect to the assets of
25 the fund;

26 (6) do all acts, whether or not expressly authorized, that the commissioner of
27 revenue considers necessary or proper in administering, as a custodian [TRUSTEE], the assets
28 of the fund;

29 (7) maintain accounting records of the fund in accordance with investment
30 accounting principles and with distinction between the principal and income accounts of the fund;

31 (8) engage an independent firm of certified public accountants to annually audit

1 the financial condition of the fund's investments and investment transactions;

2 (9) enter into and enforce contracts or agreements considered necessary for the
3 investment purposes of the fund;

4 (10) report to the university the condition and investment performance of the
5 fund;

6 (11) make payments to the university on behalf of qualified beneficiaries;

7 (12) make payments for refunds, redemptions, and awards in accordance with
8 [UPON TERMINATION OF] an advance tuition payment contract; and

9 (13) pay the costs of administration of the fund.

10 * Sec. 3. AS 14.40.807(a) is amended to read

11 (a) Contributions to the fund under the terms of an advance payment contract may be
12 made by direct cash payments or by contributions from the permanent fund dividend. The
13 Department of Revenue shall

14 (1) prepare the permanent fund dividend application to allow an applicant [,] or
15 a parent, legal guardian, or other authorized representative of an applicant who is an
16 unemancipated minor to contribute 50 percent of a dividend to the fund under the terms of an
17 advance tuition payment contract; and

18 (2) include with each application for a permanent fund dividend an explanation
19 of the advanced tuition payment program [TRUST FUND], including the right of a purchaser
20 to receive a refund upon termination of an advance tuition payment contract, [AND] a disclosure
21 of the potential [STATEMENT THAT THE] tax liability of the fund, and disclosure of the
22 effect of the tax liability on the advance tuition payment program [HAS NOT YET BEEN
23 DETERMINED; AFTER THE INTERNAL REVENUE SERVICE DETERMINES THE TAX
24 LIABILITY OF THE FUND, A STATEMENT SUMMARIZING THE TAX DETERMINATION
25 SHALL BE INCLUDED WITH EACH APPLICATION FOR A PERMANENT FUND
26 DIVIDEND].

27 * Sec. 4. AS 14.40.809 is amended to read

28 Sec. 14.40.809. POWERS AND DUTIES OF THE UNIVERSITY OF ALASKA. (a)
29 The Board of Regents of the University of Alaska may contract with a purchaser for the advance
30 payment of tuition by the purchaser for a qualified beneficiary of any age to attend a branch of
31 the university to which the qualified beneficiary is admitted [, WITHOUT FURTHER TUITION

1 COST TO THE QUALIFIED BENEFICIARY]. A purchaser and a qualified beneficiary may be
2 the same person.

3 (b) The board shall

4 (1) make appropriate arrangements as necessary to fulfill the board's obligations
5 under an advance tuition payment contract;

6 (2) establish and adopt a formal plan for administration of the advance tuition
7 payment and prepaid tuition scholarship program [STANDARD PAYMENT PLANS TO BE
8 USED UNDER ADVANCE TUITION PAYMENT CONTRACTS];

9 (3) establish investment objectives for the fund based on prudent institutional
10 investor guidelines and actuarial analysis of the earnings requirements for the advance
11 tuition payment plan;

12 (4) enter into a reciprocal agreement with another institution or state agency
13 that maintains a prepaid tuition program if the agreement furthers the purpose of the fund
14 [THE CIRCUMSTANCES UNDER WHICH AN ADVANCE TUITION PAYMENT
15 CONTRACT MAY BE TERMINATED AND THE AMOUNT OF THE REFUND THE
16 PERSON ENTITLED TO TERMINATE THE CONTRACT MAY RECEIVE].

17 * Sec. 5. AS 14.40.811 is amended to read:

18 Sec. 14.40.811. ADVANCE TUITION PAYMENT CONTRACTS. (a) An advance
19 tuition payment contract must include

20 (1) the amount of payments required from the purchaser [ON BEHALF OF THE
21 QUALIFIED BENEFICIARY];

22 (2) the terms and conditions for making the payments;

23 (3) provisions for late payment charges [AND FOR DEFAULT];

24 (4) the name and age of the primary and alternate [QUALIFIED] beneficiary
25 under the contract and a statement that the purchaser, with the approval of the board, may
26 substitute another person for a [THE QUALIFIED] beneficiary originally named in the contract;

27 (5) the number of tuition credits [CREDIT HOURS] to be provided to the
28 primary and alternate [QUALIFIED] beneficiary under the contract;

29 (6) [THE NAME OF THE PERSONS ENTITLED TO TERMINATE THE
30 CONTRACT,] the terms and conditions under which the contract may be terminated, and the
31 amount of the refund to which the person terminating the contract is entitled;

1 (7) the assumption of a contractual obligation by the board to provide tuition
2 credits [FOR CREDIT HOURS] of higher education to the qualified beneficiary at the
3 university;

4 (8) [THE NUMBER OF CREDIT HOURS THE QUALIFIED BENEFICIARY
5 MAY RECEIVE IF THE QUALIFIED BENEFICIARY IS NOT ENTITLED TO IN-STATE
6 TUITION AT THE TIME OF ENROLLMENT AT THE UNIVERSITY;

7 (9)] the period of time during which the qualified beneficiary may receive the
8 benefits of the contract; and

9 (9) [(10)] other terms and conditions the board determines to be appropriate.

10 (b) An advance tuition payment contract may be terminated

11 (1) [IF THE QUALIFIED BENEFICIARY DIES OR BECOMES SO DISABLED
12 THAT THE BENEFICIARY CANNOT COMPLETE AN EDUCATION;

13 (2) IF THE QUALIFIED BENEFICIARY IS NOT ADMITTED TO A BRANCH
14 OF THE UNIVERSITY AFTER MAKING A PROPER APPLICATION;

15 (3) IF THE QUALIFIED BENEFICIARY CERTIFIES TO THE BOARD, AFTER
16 THE CONTRACTED DATE OF ENTRANCE TO THE UNIVERSITY OR AFTER THE
17 QUALIFIED BENEFICIARY HAS RECEIVED A HIGH SCHOOL DIPLOMA OR REACHED
18 THE AGE OF MAJORITY, THAT THE QUALIFIED BENEFICIARY HAS DECIDED NOT
19 TO ATTEND THE UNIVERSITY;

20 (4)] if the board determines that the number of purchasers is insufficient to
21 maintain the fund on an actuarially sound basis; or

22 (2) [(5)] under other circumstances determined by the board and set out in the
23 advance tuition payment contract.

24 * Sec. 6. AS 14.40.817 is amended to read:

25 Sec. 14.40.817. DEFINITIONS. In AS 14.40.803 - 14.40.817,

26 (1) "advance tuition payment contract" means a contract entered into by the board
27 and a purchaser to provide for the higher education of a qualified beneficiary;

28 (2) "board" means the Board of Regents of the university;

29 (3) "fund" means the Alaska education trust fund established under AS 14.40.803;

30 (4) "purchaser" means a person who makes or is obligated to make advance
31 tuition payments under an advance tuition payment contract;

1 (5) "qualified beneficiary" means a resident or the child or legal ward of a
2 resident or alumnus of the university who has rights under an advance tuition payment
3 contract;

4 (6) "university" means the University of Alaska, including a community college
5 affiliated with the university.

6 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

Sec. 14.40.701. Benefits. Payment of benefits to participants of the program is the responsibility of the company or companies designated by the board and is not the responsibility of the board, the university, or the state. The benefits are payable to participants or their beneficiaries in accordance with the terms of the annuity contract or contracts. However, retirement benefits must be paid in the form of a lifetime income. Except for death benefits, a single-sum cash payment is not permitted under this section. (§ 4 ch 104 SLA 1989)

Sec. 14.40.799. Definitions. In AS 14.40.661 — 14.40.799,

- (1) "appropriate state retirement system" means the state retirement system that includes the employee's position;
- (2) "board" means the Board of Regents of the University of Alaska;
- (3) "contribution account" means the member contribution account under AS 14.25 or the employee contribution account under AS 39.35, whichever is appropriate;
- (4) "employee" means an employee of the University of Alaska or a community college under AS 14.40;
- (5) "participating position" means a position that is a permanent position that is at least a .5 full-time appointment as
 - (A) a faculty appointment; or
 - (B) an administrator and the position has been designated by the board for inclusion in the program;
- (6) "program" means the optional university retirement program;
- (7) "state retirement system" means the teachers' retirement system under AS 14.25 or the public employees' retirement system under AS 39.35. (§ 4 ch 104 SLA 1989)

Article 6. Alaska Education Trust Fund.

Section	Section
803. Alaska education trust fund established	809. Powers and duties of the University of Alaska
805. Powers and duties of the commissioner of revenue	811. Advance tuition payment contracts
807. Contribution to the Alaska education trust fund	817. Definitions

Effective date of article. — Section 1, ch. 90, SLA 1990, which enacted this article, took effect on September 2, 1990.

PASSED LAST SESSION 1990

Sec
 (a) Tr
 trust
 into s
 (b)
 (1)
 AS 14
 (2)
 person
 (3)
 (c)
 priorit
 (1)
 ficiari
 (2)
 ment
 (3)
 1990)

Sec.
 enue.
 the po
 (1) s
 the fu
 (2) r
 (3) c
 the tru
 accoun
 (4) in
 section
 AS 14.
 (5) e
 fund;
 (6) d
 missior
 as a tr
 (7) r
 vestme
 cipal a
 (8) ei
 annual
 investr
 (9) ei
 sary fo
 (10) i
 mance

Participants of companies designated by the board, the participants or annuity contributions paid in the gle-sum cash (4 SLA 1989)

10.799, state retire-

ty of Alaska; tion account or AS 39.35,

Alaska or a

permanent

ted by the

program; ment system under

University

t contracts

Sec. 14.40.803. Alaska education trust fund established.

(a) The Alaska education trust fund is established as an endowment trust fund separate from the general fund. The fund may be divided into separate accounts for accounting purposes.

(b) The fund consists of

(1) permanent fund dividend and cash contributions made under AS 14.40.807 under the terms of an advance tuition payment contract;

(2) gifts, bequests, and contributions of cash or other assets from a person, and

(3) income and earnings of the fund.

(c) Assets of the fund shall be expended in the following order of priority:

(1) to make payments to the university on behalf of qualified beneficiaries;

(2) to make refunds upon termination of an advance tuition payment contract;

(3) to pay the costs of administration of the fund. (§ 1 ch 90 SLA 1990)

Sec. 14.40.805. Powers and duties of the commissioner of revenue. The commissioner of revenue is the trustee of the fund and has the powers and duties under this section to

(1) act as official trustee of the cash and investments belonging to the fund and to secure adequate and safe custodial facilities;

(2) receive all items of cash and investments belonging to the fund;

(3) collect the principal and income from investments acquired by the trustee and deposit the amounts in separate principal and income accounts for the fund;

(4) invest and reinvest the assets of the fund as provided in this section and as provided for the investment of retirement funds under AS 14.25.180;

(5) exercise the powers of a trustee with respect to the assets of the fund;

(6) do all acts, whether or not expressly authorized, that the commissioner of revenue considers necessary or proper in administering, as a trustee, the assets of the fund;

(7) maintain accounting records of the fund in accordance with investment accounting principles and with distinction between the principal and income accounts of the fund;

(8) engage an independent firm of certified public accountants to annually audit the financial condition of the fund's investments and investment transactions;

(9) enter into and enforce contracts or agreements considered necessary for the investment purposes of the fund;

(10) report to the university the condition and investment performance of the fund;

(11) make payments to the university on behalf of qualified beneficiaries;

(12) make refunds upon termination of an advance tuition payment contract; and

(13) pay the costs of administration of the fund. (§ 1 ch 90 SLA 1990)

Sec. 14.40.807. Contribution to the Alaska education trust fund. (a) Contributions to the fund under the terms of an advance payment contract may be made by direct cash payments or by contributions from the permanent fund dividend. The Department of Revenue shall

(1) prepare the permanent fund dividend application to allow an applicant, or a parent, legal guardian, or other authorized representative of an applicant who is an unemancipated minor to contribute 50 percent of a dividend to the fund under the terms of an advance tuition payment contract; and

(2) include with each application for a permanent fund dividend an explanation of the trust fund, including the right of a purchaser to receive a refund upon termination of an advance tuition payment contract, and a statement that the tax liability of the fund has not yet been determined; after the Internal Revenue Service determines the tax liability of the fund, a statement summarizing the tax determination shall be included with each application for a permanent fund dividend.

(b) The Department of Revenue shall pay contributions directly to the fund. (§ 1 ch 90 SLA 1990)

Sec. 14.40.809. Powers and duties of the University of Alaska.

(a) The Board of Regents of the University of Alaska may contract with a purchaser for the advance payment of tuition by the purchaser for a qualified beneficiary of any age to attend a branch of the university to which the qualified beneficiary is admitted, without further tuition cost to the qualified beneficiary. A purchaser and a qualified beneficiary may be the same person.

(b) The board shall

(1) make appropriate arrangements as necessary to fulfill the board's obligations under an advance tuition payment contract;

(2) establish standard payment plans to be used under advance tuition payment contracts;

(3) establish the circumstances under which an advance tuition payment contract may be terminated and the amount of the refund the person entitled to terminate the contract may receive. (§ 1 ch 90 SLA 1990)

Sec. 14

vance tuit

(1) the ;

of the qu

(2) the

(3) prov

(4) the r

and a stat

may subst

named in

(5) the r

ciary unde

(6) the r

terms and

and the an

contract is

(7) the e

vide for cr

(8) the r

if the qua

time of en

(9) the p

receive the

(10) othe

prate.

(b) An a

(1) if the

beneficiary

(2) if the

university

(3) if the

tracted dat

ciary has r

ity, that th

sity;

(4) if the

cient to m

(5) unde

in the adv

Sec. 14.

(1) "adv

into by the

of a qualif

(2) "boar

Sec. 14.40.811. Advance tuition payment contracts. (a) An advance tuition payment contract must include

- (1) the amount of payments required from the purchaser on behalf of the qualified beneficiary;
- (2) the terms and conditions for making the payments;
- (3) provisions for late payment charges and for default;
- (4) the name and age of the qualified beneficiary under the contract and a statement that the purchaser, with the approval of the board, may substitute another person for the qualified beneficiary originally named in the contract;
- (5) the number of credit hours to be provided to the qualified beneficiary under the contract;
- (6) the name of the persons entitled to terminate the contract, the terms and conditions under which the contract may be terminated, and the amount of the refund to which the person terminating the contract is entitled;
- (7) the assumption of a contractual obligation by the board to provide for credit hours of higher education at the university;
- (8) the number of credit hours the qualified beneficiary may receive if the qualified beneficiary is not entitled to in-state tuition at the time of enrollment at the university;
- (9) the period of time during which the qualified beneficiary may receive the benefits of the contract; and
- (10) other terms and conditions the board determines to be appropriate.

(b) An advance tuition payment contract may be terminated

- (1) if the qualified beneficiary dies or becomes so disabled that the beneficiary cannot complete an education;
- (2) if the qualified beneficiary is not admitted to a branch of the university after making a proper application;
- (3) if the qualified beneficiary certifies to the board, after the contracted date of entrance to the university or after the qualified beneficiary has received a high school diploma or reached the age of majority, that the qualified beneficiary has decided not to attend the university;
- (4) if the board determines that the number of purchasers is insufficient to maintain the fund on an actuarially sound basis; or
- (5) under other circumstances determined by the board and set out in the advance tuition payment contract. (§ 1 ch 90 SLA 1990)

Sec. 14.40.817. Definitions. In AS 14.40.803 — 14.40.817,

- (1) "advance tuition payment contract" means a contract entered into by the board and a purchaser to provide for the higher education of a qualified beneficiary;
- (2) "board" means the Board of Regents of the university;

(3) "fund" means the Alaska education trust fund established under AS 14.40.803;

(4) "purchaser" means a person who makes or is obligated to make advance tuition payments under an advance tuition payment contract;

(5) "qualified beneficiary" means a resident who has rights under an advance tuition payment contract;

(6) "university" means the University of Alaska, including a community college affiliated with the university. (§ 1 ch 90 SLA 1990)

Chapter 42. Postsecondary Education.

Article

1. Alaska Commission on Postsecondary Education (§ 14.42.015)
2. Alaska Student Loan Corporation (§§ 14.42.200, 14.42.210)

Article 1. Alaska Commission on Postsecondary Education.

Section

15. Creation, composition, appointment of members

Sec. 14.42.015. Creation, composition, appointment of members. (a) There is in the Department of Education the Alaska Commission on Postsecondary Education consisting of

(1) two members of the Board of Regents of the University of Alaska designated by the members of that body;

(2) one person representing private higher education in the state selected jointly by the Boards of Trustees of Alaska Pacific University and Sheldon Jackson College from among their membership;

(3) one person representing the Department of Education selected by the state Board of Education;

(4) four persons broadly and equitably representative of the general public appointed by the governor;

(5) one member of the state Advisory Council on Vocational Education designated by the members of that body;

(6) one person from the members of the local community college advisory councils appointed by the governor;

(7) two members from the legislature, one of whom shall be appointed by the president of the senate and one by the speaker of the house of representatives;

(8) one person appointed in accordance with (e) of this section who is a full-time student as defined in AS 14.43.160(4);

(9) one administrator appointed by the governor from a proprietary institution of postsecondary education that has an authorization to operate in the state issued under AS 14.48.

(b) No governing body member, trustee, official or employee of either a public, private or proprietary institution of postsecondary or higher education in the state may be appointed to membership on the

University of Alaska
Advance College Tuition
Payment Plan

Effective July 1, 1991

Approved by the University of Alaska Board of Regents

, 1991
(version 2.4a after revisions)

SECTION 1 DEFINITIONS

The terms and phrases defined in this section have the following meanings throughout this plan document.

- 1.1 Advance College Tuition Payment Contract (Contract) - means a contract entered into by the Board and a Purchaser to provide for the higher education of a Beneficiary in accordance with this Plan.
- 1.2 Alternate Beneficiary - means an individual designated to receive benefits under an Advance College Tuition Payment Contract if the Primary Beneficiary is ineligible to receive benefits under the Plan or has waived his or her rights under the contract. An Alternate Beneficiary must be a Resident or an individual expected to become a Resident prior to receipt of benefits under the Contract, or the child or legal ward of a resident, or of an alumnus of the University.
- 1.3 Beneficiary - means an individual who has rights under an Advance College Tuition Payment Contract or a Prepaid Tuition Scholarship issued in accordance with this Plan. A Beneficiary must be a Resident or an individual expected to become a Resident prior to receipt of benefits under the Contract, or the child or legal ward of a Resident, or of an alumnus of the University.
- 1.4 Board - means the Board of Regents of the University of Alaska.
- 1.5 Cash Value - means the the value of a Tuition Credit, as determined annually by the Board, based on market value of investments of the fund, the Tuition Value of outstanding Tuition Credits and adjustments for any actuarially determined funding excess or deficiency.
- 1.6 Eligible Institution - means a nonprofit postsecondary institution approved by the U.S. Department of Education for receipt of Title IV funding.
- 1.7 Fund - means the Advance College Tuition Payment Fund established under AS 14.40.803.
- 1.8 Graduation Incentive Award - means a refund by the University paid to or on behalf of a specified Beneficiary upon notice of attainment of a formal degree or certificate.
- 1.9 Plan - means the University of Alaska Advance College Tuition Payment Plan.

University of Alaska
Advance College Tuition
Payment Plan

Effective July 1, 1991

Approved by the University of Alaska Board of Regents

, 1991
(version 2.4a after revisions)

P R E A M B L E

This advance college tuition payment plan (hereinafter referred to as the "Plan", and known as the "University of Alaska Advance College Tuition Payment Plan"), is adopted to be effective July 1, 1991 by the University of Alaska (hereinafter referred to as the "University").

W I T N E S S E T H;

WHEREAS, the University by resolution of the Board of Regents is establishing this Plan for the primary purpose of enhancing the University's ability to provide for the education of the the people of Alaska; and

WHEREAS, the Plan is intended to provide an incentive for younger Alaskans to achieve higher academic standards of performance in middle and high school; and

WHEREAS, the Plan is intended to provide an incentive for Alaskans of all ages to continue and complete their secondary and postsecondary education; and

WHEREAS, the Plan is intended to provide affordable access to postsecondary education at the University of Alaska; and

WHEREAS, the Plan is intended to make guaranteed tuition benefits at the University of Alaska available to all Alaskans; and

WHEREAS, the Plan is intended to provide prepaid tuition scholarships benefits for Alaskan youths; and

WHEREAS, the Plan is intended to be exempt from income tax under the Internal Revenue Code, Section 115, as an integral program of the University of Alaska, an instrumentality of the State of Alaska; and

WHEREAS, to effectuate the Plan, the Board of Regents establishes an Administrative Committee to carry out the day-to-day administration of the Plan at the direction of the President; and

WHEREAS, the Plan is established pursuant to Alaska Statutes, including AS 14.40.803 et seq. as currently adopted or as may subsequently be amended; and

NOW, THEREFORE, effective _____, the University does hereby adopt and establish the Plan.

SECTION 1

DEFINITIONS

The terms and phrases defined in this section have the following meanings throughout this plan document.

- 1.1 Advance College Tuition Payment Contract (Contract) - means a contract entered into by the Board and a Purchaser to provide for the higher education of a Beneficiary in accordance with this Plan.
- 1.2 Alternate Beneficiary - means an individual designated to receive benefits under an Advance College Tuition Payment Contract if the Primary Beneficiary is ineligible to receive benefits under the Plan or has waived his or her rights under the contract. An Alternate Beneficiary must be a Resident or an individual expected to become a Resident prior to receipt of benefits under the Contract, or the child or legal ward of a resident, or of an alumnus of the University.
- 1.3 Beneficiary - means an individual who has rights under an Advance College Tuition Payment Contract or a Prepaid Tuition Scholarship issued in accordance with this Plan. A Beneficiary must be a Resident or an individual expected to become a Resident prior to receipt of benefits under the Contract, or the child or legal ward of a Resident, or of an alumnus of the University.
- 1.4 Board - means the Board of Regents of the University of Alaska.
- 1.5 Cash Value - means the the value of a Tuition Credit, as determined annually by the Board, based on market value of investments of the fund, the Tuition Value of outstanding Tuition Credits and adjustments for any actuarially determined funding excess or deficiency.
- 1.6 Eligible Institution - means a nonprofit postsecondary institution approved by the U.S. Department of Education for receipt of Title IV funding.
- 1.7 Fund - means the Advance College Tuition Payment Fund established under AS 14.40.803.
- 1.8 Graduation Incentive Award - means a refund by the University paid to or on behalf of a specified Beneficiary upon notice of attainment of a formal degree or certificate.
- 1.9 Plan - means the University of Alaska Advance College Tuition Payment Plan.

University of Alaska Advance College Tuition Payment Plan
3/4/91 11:59 AM (version 2.4a)

- 1.10 Plan Administrator, Plan Administrative Committee or Committee - means the Advance College Tuition Payment Plan Administrative Committee.
- 1.11 Prepaid Tuition Scholarship - means Tuition Credits awarded to a Beneficiary in accordance with Section 7 of this Plan.
- 1.12 Primary Beneficiary - means an individual named to receive benefits under an Advance College Tuition Payment Contract prior to any other named Beneficiaries or a Beneficiary of a Prepaid Tuition Scholarship Award. A Primary Beneficiary must be a Resident or an individual expected to become a Resident prior to receipt of benefits under the Contract, or the child or legal ward of a resident, or of an alumnus of the University.
- 1.13 Principal - means the amount paid by the Purchaser for Tuition Credits under this Plan, exclusive of any transaction fees, investment earnings or forfeitures.
- 1.14 Purchaser - means a person, at least 18 years of age or an emancipated minor, or other entity obligated to make payments under an Advance College Tuition Payment Contract.
- 1.15 Redemption Period - means the period from the Redemption Period Start Date to the Redemption Period End Date.
- 1.16 Redemption Period End Date - means the later of the fifteenth (15th) anniversary of the Redemption Period Start Date or such other date as approved by the Plan Administrator.
- 1.17 Redemption Period Start Date - means July 1 of the year the Primary Beneficiary will become eligible for benefits under the Contract or a Prepaid Tuition Scholarship. The date so designated in the Contract or the Prepaid Tuition Scholarship award shall be the date Beneficiary becomes entitled to benefits. If no date is designated, July 1 of the year following the Primary Beneficiary's eighteenth birthday or such other date as approved by the Plan Administrator shall be considered the Redemption Period Start Date.
- 1.18 Resident - means an individual who is living in the State of Alaska and has declared the intent to remain in Alaska indefinitely or is an unemancipated person under the age of 18 who has a parent or legal guardian who is living in the State of Alaska and has declared the intent to remain in Alaska indefinitely.
- 1.19 Statement of Non-Participation - means a certification by a Primary Beneficiary, submitted in a form acceptable to the Plan Administrator, that he or she does not plan on attending or continuing to attend any Eligible Institution. Such certification shall not be accepted as effective prior to the earlier of the Redemption Period Start Date, the receipt of a high school diploma or the attainment of the age of majority.

University of Alaska Advance College Tuition Payment Plan
3/4/91 11:59 AM (version 2.4a)

- 1.20 Tuition Credit - means one semester hour of tuition purchased under an Advance College Tuition Payment Contract or awarded as a Prepaid Tuition Scholarship.
- 1.21 Tuition Value - means the value of a Tuition Credit, as determined by the board, based on a weighted average of the University of Alaska resident undergraduate tuition rates in effect at that time.
- 1.22 University - means the University of Alaska, including a community college affiliated with the University.
- 1.23 Waiver - means a written statement, submitted in a form acceptable to the Plan Administrator, that the Beneficiary has relinquished all rights to a specified Contract or to specified Tuition Credits.

SECTION 2

TUITION CREDITS

2.1 Purchase Price

- a. Tuition Credits may be purchased at the rate established effective each January 1 by the Board.
- b. Tuition Credits purchased at any time during the calendar year shall be issued at the rate in effect for that calendar year.

2.2 Minimum Initial Purchase

The minimum initial Tuition Credit purchase for opening a Contract, unless otherwise approved by the Plan Administrator, shall be six (6) Tuition Credits. Additional purchases may be made in units not smaller than one (1) Tuition Credit. The Board may set a maximum number of Tuition Credits which may be purchased for any Beneficiary.

2.3 Purchase Limitation

The purchase of Tuition Credits is subject to the terms and conditions of both the Plan and the Contract between the University and the Purchaser.

2.4 Reciprocal Agreements

Participants in prepaid tuition programs of other institutions or states which have reciprocal advance tuition payment plan agreements approved by the Board may purchase Tuition Credits under terms approved by the Board,^e.

SECTION 3

REDEMPTION

3.1 University of Alaska Guarantee

The University of Alaska guarantees that, subject to the terms and conditions of the Contract and this Plan, the Primary Beneficiary will receive credit for one full semester charge by the University of Alaska for each Tuition Credit purchased under an Advance College Tuition Contract regardless of the amount paid for such Tuition Credit, the investment earning of the Fund or cost of tuition at the time of redemption.

3.2 Tuition Credit Redemption Equivalencies

Tuition Credits shall be redeemed by the University of Alaska within the Redemption Period for tuition charges at the following equivalencies:

- (i) One (1) Tuition Credit for each resident undergraduate semester hour charge, or
- (ii) Two (2) Tuition Credits for each resident graduate semester hour charge.

3.3 Resident Tuition Status

Beneficiaries under this plan shall be eligible for resident tuition status at the University of Alaska for all Tuition Credits redeemed.

3.4 Waiting Period

Tuition Credits may not be redeemed for at least two full calendar years after the date of purchase as determined on a first-in first-out basis.

3.5 Alternate Beneficiary Redemption

An Alternate Beneficiary may not redeem Tuition Credits, unless he or she presents proof satisfactory to the Plan Administrator that the Primary Beneficiary and all prior Alternate Beneficiaries are deceased or have waived their rights, in writing, under the Contract. The determination of the Plan Administrator under this subsection is conclusive.

3.6 Redemption Period Extension

- a. The Redemption Period End Date for Tuition Credits and subsequently earned Graduation Incentive Awards shall be automatically extended to June 30 of the sixth calendar year after appointment of a new Primary Beneficiary under a Contract.

- b. Based on circumstances which are clearly beyond the control of the Beneficiary, the Plan Administrator may approve an extension of the Redemption Period End Dates for Tuition Credits and Graduation Incentive Awards.

SECTION 4

REFUNDS

4.1 Disability

Full refund of the Cash Value shall be made to any Primary Beneficiary who, in the opinion of the Plan Administrator, becomes so disabled that he or she can no longer complete his or her education.

4.2 Death

Full refund of the Cash Value shall be made to the estate of the Primary Beneficiary on the death of the Primary Beneficiary, unless an Alternate Beneficiary had previously been designated.

4.3 Attendance At Other Eligible Institutions

A refund of the Tuition Value for up to fifteen Tuition Credits, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested for each semester (or its equivalency for tri-semester, quarters or other academic periods) by the Primary Beneficiary during periods of attendance at any Eligible Institution other than the University of Alaska. Three (3) months advance notice is required to allow timely processing of refund requests.

4.4 Tuition Credits In Excess Of Tuition Need

- a. A refund of the Tuition Value of Tuition Credits in excess of the number of Tuition Credits required for attainment of a student's planned degree or certificate, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested by the Primary Beneficiary during any semester while attending an Eligible Institution. The refund shall be limited to the amount designated by the Plan Administrator as the standard cost of on-campus room and board, fees and books for a full-time student at the University of Alaska. Three (3) months advance notice is required to allow timely processing of refund requests.
- b. A refund of the Tuition Value for any unredeemed Tuition Credits, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested by the Primary Beneficiary. The Primary Beneficiary must submit proof, to the satisfaction of the Plan Administrator, of attainment of a degree or equivalent certificate at an Eligible Institution.

4.5 Failure To Be Admitted

Full refund of the Tuition Value for any unredeemed Tuition Credits, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested by the Primary Beneficiary if not admitted to the University of Alaska after making proper application. The Primary Beneficiary must submit proof, to the satisfaction of the Plan Administrator, of failure to be admitted and that all Alternate Beneficiaries, if any, have completed a Waiver of their rights under the Contract.

4.6 Non-Participation

Full refund of the Principal for any unredeemed Tuition Credits, not to exceed the Cash Value of the Tuition Credits at the effective date of the refund, may be requested by the Primary Beneficiary if he or she decides not to attend college or participate in the program. The Primary Beneficiary must submit a Statement of Non-Participation and proof that all Alternate Beneficiaries, if any, have completed a Waiver of their rights under the Contract. Payment of refunds for non-participation, as provided in Section 5.8, shall be deferred to allow recipients an opportunity to reconsider their decision to discontinue their education.

4.7 Contract Initiation or Time of Purchase

Full refund of the Principal for purchased Tuition Credits, The Primary Beneficiary may request a refund of the Principal paid for the purchase of Tuition Credits at the time of purchase. Such refund must be requested, in a form satisfactory to the Plan Administrator, within sixty (60) days of issuance by the University of notice of purchase to the Primary Beneficiary.

4.8 Alternate Beneficiaries

An Alternate Beneficiary is not entitled to a refund under an Advance College Tuition Payment Contract, unless the Primary Beneficiary and all Alternate Beneficiaries with prior rights under the contract are deceased or have completed Waivers of their rights under the contract. The estate of a deceased Alternate Beneficiary or the guardian of a disabled Alternate Beneficiary shall have no right to a refund.

4.9 Payment

- a. Except for refunds requested for non-participation in the Plan under Section 4.6, all refunds shall be paid to the appropriate recipient as soon as practical after receipt and approval of a request for refund.
- b. Refunds requested for non-participation in the Plan under Section 4.6 shall be paid in four annual installments. Payments shall commence twelve months following approval of the refund request and include a provision for interest at 5% from the date approved for refund until the date of actual payment. Undisbursed installments may be reinstated as Tuition Credits without penalty at any time prior to payment.

SECTION 65

TRANSFER OF BENEFITS

5.1 Alternate Beneficiaries

A Purchaser, at the initiation of a Contract, may designate up to three Alternate Beneficiaries to receive benefits under the Contract in the order named.

5.2 Addition or Substitution of Beneficiaries

- a. All additions, substitutions or changes in Beneficiaries (i) shall be subject to the approval of the Plan Administrator, (ii) must be in writing, in a form approved by the Plan Administrator, and (iii) bear the acknowledged signature of the Purchaser and the Primary Beneficiary. No substitution shall be effective until it has been received by the Plan Administrator.
- b. A Purchaser may only add or substitute Beneficiaries under a Contract if such addition or substitution is approved in writing by the Primary Beneficiary or his or her legal guardian if under the age of majority.
- c. Additions or substitutions of Beneficiaries may require, at the discretion of the Plan Administrator, certification by the Purchaser and/or the Beneficiary (Beneficiaries) that no compensation or other consideration was or will be paid or received in exchange for the addition or substitution.

5.3 Replacement of a Primary Beneficiary

- a. The next named Alternate Beneficiary shall be substituted for the Primary Beneficiary under a Contract at such date and time as the previous Primary Beneficiary dies, submits a Statement of Non-Participation, is not admitted to the University after proper application, or completes a Waiver of his or her rights under the Contract.

- b. A Primary Beneficiary may be replaced by the next Alternate Beneficiary under a Contract, if there has been no activity under the contract for a period of six years subsequent to the Redemption Period Start Date and the Primary Beneficiary fails to comply with a notice, issued by the Plan Administrator, of the intent to substitute the next named Alternate Beneficiary for the Primary Beneficiary if use of the Tuition Credits is not initiated within one year. The date of substitution may be extended at the discretion of the Plan Administrator. The determination of the Plan Administrator under this subsection is conclusive.

5.4 Transfers by Beneficiaries

Beneficiaries may waive their rights under a Contract and this Plan, but shall have no right to transfer or designate Alternate Beneficiaries.

SECTION 6

Graduation Incentive Award Credit

6.1 General

Effective each January 1, the Board of Regents shall allocate a portion of any actuarial excesses of the fund, if any, to a Graduation Incentive Award account within the Advance College Tuition Payment Fund and establish the refund value (Refund Value) of each Graduation Incentive Award Credit.

6.2 Credits Earned

A Beneficiary may earn one Graduation Incentive Award Credit for each Tuition Credit redeemed for payment of tuition at an Eligible Institution.

6.3 Redemption

Upon submission of proof, to the satisfaction of the Plan Administrator, of attainment by the Beneficiary of a degree or equivalent certificate at an Eligible Institution, the Beneficiary may request redemption of Graduation Incentive Award Credits at the following equivalencies:

- (i) 2 times their Refund Value for the purchase of Tuition Credits or an Advance College Tuition Payment Contract for another Beneficiary;
- (ii) 2 times their Refund Value for the payment of graduate tuition at the University of Alaska;
- (iii) 1.5 times their Refund Value for the payment of graduate tuition at an eligible institution other than the University of Alaska; or
- (iv) 1.5 times their Refund Value for the payment of principal and/or interest on an Alaska Student Loan.

6.3 Refund

Upon submission of proof, to the satisfaction of the Plan Administrator, of attainment by the Beneficiary of a degree or equivalent certificate at an Eligible Institution, the Beneficiary may request the full Refund Value of any unredeemed Graduation Incentive Award Credits for which he or she is the Beneficiary.

SECTION 7

PREPAID TUITION SCHOLARSHIPS

7.1 General

A Prepaid Tuition Scholarship Award account shall be established within the Advance College Tuition Fund. Receipts from appropriations and donors for prepaid tuition scholarships shall be deposited to the account. In addition, effective each January 1, the Board of Regents shall allocate a portion of any actuarial excesses of the fund, if any, to the Prepaid Tuition Scholarship Award account.

7.2 Award

- a. In furtherance of the objectives of the Plan as stated in the Preamble and to the extent that funds are available in the account on an actuarially sound basis, Tuition Credits may be awarded as Prepaid Tuition Scholarships to students in grades seven through twelve who attend school in Alaska.
- b. Prepaid Tuition Scholarship awards shall be approved in accordance with procedures adopted by the Board of Regents.

7.3 Redemption

Tuition Credits issued as Prepaid Tuition Scholarships under this Plan shall be redeemable in accordance with Section 3, except that:

- (i) Tuition Credits issued as Prepaid Tuition Scholarships shall be redeemed prior to purchased Tuition Credits; and
- (ii) Tuition Credits issued as Prepaid Tuition Scholarships may only be redeemed for attendance at the University of Alaska.

7.4 Refunds

Tuition Credits issued as Prepaid Tuition Scholarships are not refundable, except upon termination of the Plan, as provided in Section 11.

7.5 Transfers

Tuition Credits issued as Prepaid Tuition Scholarships are not transferable to other Beneficiaries or individuals.

SECTION 8

Expiration of Benefits

8.1 Tuition Credits:

All Tuition Credits, except those issued as Prepaid Tuition Scholarships, shall expire if not redeemed or refunded within the Redemption Period.

8.2 Prepaid Tuition Scholarships:

- a. Tuition Credits for Prepaid Tuition Scholarships which are inactive for a full calendar year subsequent to their Redemption Period Start Date shall expire as of December 31.
- b. The Plan Administrator, upon written request by the Beneficiary prior to the scheduled expiration date, may approve an extension of the expiration date based on circumstances beyond the control of the Beneficiary

8.3 Graduation Incentive Awards:

All Graduation Incentive Award Credits shall expire if not redeemed within the Redemption Period.

SECTION 9 CONTRACTS

9.1 Contract Requirements

The Purchaser must designate:

- (i) The name, address and social security or tax ID number of the Purchaser;
- (ii) The name, address, date of birth and social security number of the Primary Beneficiary and his or her legal guardian;
- (iii) The name, address, date of birth and social security number of all Alternate Beneficiaries (not more than three) and their legal guardians;
- (iv) The Redemption Period Start Date; and
- (v) Date of issue.

9.2 Other Provisions

- a. Contracts and rights or privileges under the Contracts may not be assigned, sold, transferred, or encumbered except as otherwise required by law or provided for in this Plan.
- b. An Alternate Beneficiary may not assign, sell, transfer or encumber his or her interest in a Contract, Tuition Credits or other benefits issued under this Plan.
- c. For purposes of the Contract and this Plan, the parent or legal guardian shall be considered the Purchaser, if he or she purchases Tuition Credits for a Beneficiary with the funds of the Beneficiary.
- d. Each contract shall have, and be limited to, one named Purchaser.
- e. A Contract shall have no more than one named Primary Beneficiary at any specified time.
- f. A Purchaser and/or Beneficiary may have more than one Contract under this Plan.
- g. A Contract may be terminated if the Contract has been inactive for a period of six years and none of the named Beneficiaries can be located by the Plan Administrator.

SECTION 10

ADMINISTRATION OF THE PLAN

10.1 Advance College Tuition Payment Plan Committee

The Advance College Tuition Payment Plan Administrative Committee (Committee) is established to carry out the day to day administration of the Plan at the direction of the University President (President). The Committee, through the President, is delegated the responsibilities and duties as set out in this section. The President shall appoint three or more persons as members of the Committee to carry out the day-to-day administration of the Plan. Any member may resign by delivering written resignation to the President and to the Committee chair. The President may remove or replace any member of the Committee at any time. No member of the Committee who is an employee shall receive additional compensation with respect to such service.

10.2 Organization and Procedures

- (a) The President shall designate a committee chair from the members of the Administrative Committee. The chair of the Committee shall be the agent of the Plan for service of legal process. All reports required by law may be signed by the chair on behalf of its members.
- (b) The Committee shall appoint a secretary, who may or may not be a member of the Committee. The secretary shall have the primary responsibility for keeping a record of all meetings and acts of the Committee and shall have custody of all documents, the preservation of which shall be necessary or convenient to the efficient functioning of the Committee.
- (c) The Committee shall adopt such bylaws and procedures as it deems desirable for the conduct of its affairs.

10.3 Authority and Duties

(a) Authority

The Administrative Committee shall have all powers necessary or appropriate to carry out its duties. Any interpretation or action by the Committee with respect to the Plan and its administration shall be conclusive and binding upon any and all parties and persons affected hereby, subject to the exclusive procedures set forth in Section 10.4 of the Plan.

(b) Duties

The Administrative Committee shall administer the Plan in a nondiscriminatory manner for the benefit of the Beneficiaries, the University and the State of Alaska in accordance with the terms of the Contracts and this Plan. The Committee shall perform all such duties as are necessary to supervise the administration of the Plan and to control its operation in accordance with the terms thereof, including, but not limited to, the following:

- (i) interpret the Plan provisions and determine any question arising under the Plan, or in connection with the administration or operation thereof;
- (ii) determine the eligibility for participation in the Plan;
- (iii) determine the eligibility of any Beneficiary for benefit redemption, refund or transfer;
- (iv) approve or deny, on behalf of the Board, additions, substitutions or changes of Beneficiaries under Advance College Tuition Payment Contracts;
- (v) establish fees and transaction charges for the administration of Contracts and the Plan;
- (vi) establish each semester a standard cost of on-campus room and board, fees and books for a full-time student at the University;
- (vii) solicit nominations for and make recommendations to the Board on the award of Prepaid Tuition Scholarships;
- (viii) conduct its Committee meetings in accordance with the Alaska Open Meetings Statute (AS 44.62.310);
- (ix) review and report to the Board the finances and the actuarial soundness of the Plan on a periodic basis;
- (x) respond to inquiries from the President and the Board regarding the Plan and related activities;
- (xi) recommend to the President or the Board, Plan amendments it deems necessary; and

- (xii) in accordance with University employment and procurement policies, regulations and procedures employ and engage such persons, counsel and agents, and obtain such administrative, clerical, legal, auditing and actuarial services as it may deem necessary in carrying out the provisions of the Plan.

10.4 Dispute Procedure

- (a) Requests for Determination

Any time a request for determination of eligibility for participation, transfer or receipt of benefits or an interpretation of Plan provisions is disputed or a Purchaser or Beneficiary is adversely affected by an action of the University or the Administrative Committee, the individual (hereinafter "Claimant") may submit a claim to the Committee. The Claimant shall be notified of the Committee's decision within 90 days after receipt of the claim. Such notice will indicate the basis for the decision or interpretation and an explanation of the procedure for requesting reconsideration.

- (b) Request for Reconsideration

A claimant who has received an adverse decision from the Administrative Committee, shall have the right to request reconsideration by the Committee. Such request must be submitted in writing to the Committee within 30 days after issuance of the adverse decision. The request must fully explain the basis for the request, all pertinent facts and the proposed remedy. If a written request for reconsideration is not received within such 30-day period, the Claimant shall forfeit his or her right to reconsideration. The Claimant or a duly authorized representative of the Claimant may review all pertinent documents.

- (c) Reconsideration of Claim

The Administrative Committee shall reconsider an adverse decision upon request for reconsideration received under Section 10.4(b) of this Plan. It may hold a hearing if it deems it necessary and shall issue a written decision reaffirming, modifying or setting aside its former action within 60 days after receipt of the written request for reconsideration or 120 days if special circumstances, such as the need for a hearing, require an extension. The Claimant shall be notified in writing of any such extension within 30 days following the request for reconsideration. A copy of the decision shall be furnished to the Claimant. The decision shall set forth its reasons and pertinent Plan provisions on which it is based. The decision shall be final and binding upon the Claimant, the University, the Committee and all other persons involved to the maximum extent permitted by law.

10.5 Miscellaneous

(a) Expenses and Assistance

All reasonable expenses which are necessary to operate and administer the Plan as determined by the Administration Committee may be paid from earnings of the Fund.

(b) Limitations on Assignments

Benefits under the Plan and a Contract may not be assigned, sold, transferred or encumbered except as provided by law and this Plan, and any attempt to do so shall be void. The interest of a Primary Beneficiary or Alternate Beneficiary in benefits under the Plan or Contract shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment or other legal process, except as provided by Alaska Statute or federal law

(c) Masculine and Feminine, Singular and Plural

Whenever used herein, the masculine pronouns shall include the feminine, and the singular shall include the plural whenever the context shall plainly so require.

(d) No Additional Rights

No person shall have any right in or to a Beneficiary's interest in a Contract, or any part thereof, or under the Plan, except as, and only to the extent expressly provided for in the Plan. Neither the establishment of the Plan, the granting of a tuition or scholarship benefit, nor any action of the University related to the Plan or of the Administrative Committee shall be held or construed to confer upon any person any right to be or continue to be a student at the University. Nothing in this Plan or a Contract shall be construed to expand a student's rights beyond those provided in University policies, regulations and other applicable documents.

(e) Governing Law

This Plan shall be construed in accordance with applicable federal law and the laws of the State of Alaska. Jurisdiction for any litigation arising out of this Plan shall be solely in the District or Superior Court in Anchorage or Fairbanks, Alaska.

(f) Income Tax Withholding Requirements

Benefit payments made under the Plan may be subject to income tax reporting or withholding requirements. For this purpose, the University shall provide the recordkeepers, custodians and tax officials with any information in its custody needed to satisfy such obligations.

(g) Severability

If any provision of this Plan shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of this Plan which shall be construed as if said illegal or invalid provision had never been included.

(h) Correction of Errors

In the event an incorrect amount is paid to or on behalf of a Beneficiary, any remaining balances or payments may be adjusted to correct the error. The processing of adjustments resulting from clerical errors or other causes which are *de minimus* in amount may be waived at the discretion of the Administrative Committee.

(i) Reports

Records for each Contract and Beneficiary under this Plan shall be maintained on a calendar-year basis. As of December 31 each year the University will send each Primary Beneficiary, and each Purchaser if he or she purchased Tuition Credits during the year, at the address on file with the University, a report summarizing the status of their Tuition Credits, Graduation Incentive Awards and Prepaid Tuition Scholarships. If within 90 days after issuance of such reports, the Beneficiary, or Purchaser, makes no written objection to the Administrative Committee it shall become binding on the Purchaser and any Beneficiary or Alternate Beneficiary.

(j) Plan Year

The plan year shall be the twelve consecutive month period beginning January 1 and ending December 31. There shall be a short plan year from July 1, 1991 to December 31, 1991.

(k) Notices to Purchasers and Beneficiaries

Notices and other communications to the Purchaser, the Beneficiaries or the legal guardians of Beneficiaries, required or contemplated under the Contract or this Plan shall be effective when mailed, postage prepaid, to the address of the Purchaser, the Beneficiaries or the legal guardians of Beneficiaries on file with the Plan Administrator. It shall be the responsibility of the Purchaser and the Beneficiary, or his or her legal guardian, to notify the Plan Administrator of all changes in name, address or legal guardian.

(l) Notices to the Plan Administrator

Notices and other communications to the Plan Administrator or Plan Administrative Committee required or contemplated under the Contract or this Plan shall be effective when at the Office of The Plan Administrator, Advance College Tuition Payment Plan, University of Alaska, Butrovich Building, 910 Yukon Drive, Fairbanks, AK 99775.

SECTION 11

AMENDMENT AND TERMINATION

11.1 Amendment

- (a) Subject to any advance notice or other requirements of law, the President is delegated the authority to amend this Plan at any time, except for provisions which further delegate the duties and responsibilities of the Board under law and this Plan or may result in full or partial termination of the Plan.
- (b) All proposed amendments shall be prepared at the direction of the Administrative Committee and submitted for approval to the President and the Board of Regents if applicable.

11.2 Limitation

Notwithstanding the provisions of Section 11.1 of this Plan, no amendment will deprive, take away, or alter any accrued right of any Purchaser or Beneficiary under a Contract issued prior to the effective date of the amendment.

11.3 Termination of the Plan

- (a) The Board of Regents shall have the right to fully or partially terminate this Plan or merge or consolidate this Plan with another plan at any time, subject to any requirements of law.
- (b) Upon termination of this Plan, the Administrative Committee shall continue to act for the purpose of complying with the prior paragraph and shall have all powers necessary or convenient to the winding up and dissolution of the Plan. While so acting, they shall be in the same status and position with respect to other persons as if the Plan remained in existence.

11.4 Distribution of the Fund on Discontinuance or Termination of Plan

In the event of discontinuance or suspension of the Plan, the University of Alaska or its successor shall honor all Contracts, Graduation Incentive Awards and Prepaid Tuition Scholarships previously issued. If the University of Alaska or its successor cannot meet its obligations under the Contracts or this Plan, or the Plan is terminated for any reason, the Cash Value of all Tuition Credits, Graduation Incentive Awards and Prepaid Tuition Scholarships shall be remitted to the respective Primary Beneficiaries at the addresses on file with the University. Distributions for Beneficiaries who cannot be located and unencumbered Prepaid Tuition Scholarship funds shall be forfeited to the University or its successor for the purpose of awarding scholarships to Alaska Residents.

SECTION 12

FIDUCIARIES

12.1 Limitation of Liability of the University and Others

The University, its Board of Regents, officers, employees, agents or representatives or the Administrative Committee shall not incur any liability to any person for any action taken or suffered or omitted to be taken by them under the Plan in good faith.

12.2 Indemnification of Fiduciaries

In order to facilitate the recruitment of competent fiduciaries, the University agrees to provide the indemnification as described herein. This provision shall apply to the Administrative Committee, or any other individuals who are considered Plan fiduciaries. Notwithstanding the preceding, this provision shall not apply and indemnification will not be provided for the Department of Revenue, its employees, agents or representatives or any paid consultant, independent contractor or other agent appointed in accordance with this Plan.

12.3 Scope of Indemnification

The University agrees to indemnify the fiduciaries as described above for all acts taken in carrying out their responsibilities under the terms of this Plan to the fullest extent provided by law. This indemnification is intentionally broad but shall not provide indemnification for embezzlement or diversion of Plan funds for the benefit of the fiduciary. The University agrees to indemnify the fiduciaries described herein for all expenses of defending an action, including all legal fees and other costs of such defense. The University shall also indemnify the fiduciary for any monetary recovery in any court or arbitration proceeding. In addition, if the claim is settled out of court with the concurrence of the University, the University shall indemnify the fiduciary for any monetary liability under said settlement.

This provision as to indemnification, except as it applies to the Administrative Committee, the Board, University employees and agents or representatives serving without compensation (excluding the Department of Revenue, its employees, agents and representatives) shall only be effective if embodied in an appropriate agreement with a fiduciary.

University of Alaska Advance College Tuition Payment Plan
3/4/91 11:59 AM (version 2.4a)

The University of Alaska Advance College Tuition Payment Plan is adopted and established effective July 1, 1991.

IN WITNESS WHEREOF, the University has caused this Plan to be duly executed on this _____ day of _____, 1991.

For the UNIVERSITY OF ALASKA

President of the Board of Regents

Secretary of the Board of Regents

Coopers
& Lybrand

certified public accountants

400 Renaissance Center
Detroit, Michigan 48243

telephone (313) 446-7100
twx 810-221-1690
cables Colybrand

in principal areas of the world

February 22, 1991

PERSONAL & CONFIDENTIAL

Mr. James Lynch
Associate Vice President/Finance
University of Alaska
910 Yukon Drive
Fairbanks, Alaska 99775

Dear Mr Lynch:

We are pleased to present this report analyzing the application of Federal income, excise and gift tax to the Alaska Education Trust Fund and the contract purchasers and beneficiaries. The University of Alaska joins a handful of other prepaid tuition programs now being subjected to rigorous scrutiny by the Treasury Department and the Internal Revenue Service. We believe that this analysis of tax law and its application to the Alaska program presents the foundation for a dialogue regarding future actions to maximize the chances of obtaining favorable tax treatment.

We appreciate the opportunity to be of service and would welcome any questions or comments. Please feel free to call Gary Postlethwait at (907) 274-3602 or Bernie Kent at (313) 446-7380.

Very truly yours,



BSK

TABLE OF CONTENTS

	<u>Page</u>
Conclusions and Recommendations (An Executive Summary)	2
Taxation as an Integral Part of the State of Alaska	8
Taxation as an Instrumentality of the State of Alaska	18
Taxation as an Exempt Organization Under Section 501(c)(3) of the IRC	26
Taxation as a Subchapter C Corporation	31
Taxation as a Trust	37
Taxation of Contract Beneficiaries and Purchasers	45
Gift Taxation	51
Alaska Permanent Fund Dividend Checkoff Participation	62

CONCLUSIONS AND RECOMMENDATIONS

AN EXECUTIVE SUMMARY

The Alaska Educational Trust Fund (Fund) is established by state statute as an endowment fund of the University of Alaska. The statute provides that the Board of Regents of the University will administer an advance tuition payment and prepaid tuition scholarship plan in connection with the fund. The Fund and the implementing tuition plan constitute a program within the University. As an integrated part of the University, the status of the Fund for purposes of Federal income Taxation is determined under the law applicable to the University.

There are three legal theories under which income of the University may be exempt from taxation: 1) integral part of the state (Intergovernmental Immunity), 2) instrumentality of the state, (Section 115 of the Internal Revenue Code of 1986 (Code or IRC), 3) an organization operated exclusively for educational purposes (Section 501(c)(3) of the Code).

If the University is the state or an integral part of the state, it would be exempt from Federal income taxation under the Constitutionally based Doctrine of Intergovernmental Immunity. While the Internal Revenue Service does not apply that doctrine as the basis for exempting the income of states or integral parts of states, it acknowledges that income of a state may not be taxed absent specific statutory authorization. An example of such statutory authorization is that Section 511(a)(2)(B) of the Internal Revenue Code imposes a tax on unrelated trade or business income of a state college or university. Whether

the University is exempt from taxation as an integral part of the state or as an instrumentality of the state, the University would nonetheless be subject to tax on its unrelated trade or business income.

The University may also be exempt from taxation under Section 115 of the Internal Revenue Code as an instrumentality of the state. This section excludes from gross income the income derived from the exercise of essential governmental functions that accrues to a state or political subdivision of a state. The Internal Revenue Service has previously stated that the University is exempt from taxation under this section. Whether that exemption extends to income of the Fund will depend upon the Internal Revenue Service determining that the private economic benefit received by participants is incidental to the public benefit provided by the University. Private letter rulings issued by the Internal Revenue Service with respect to tuition prepayment programs in Michigan and Indiana indicate that the Internal Revenue Service may not treat the income of the Fund as exempt under Section 115 of the Code because of the element of private benefit. However the University of Alaska has better facts than the Michigan or Indiana rulings.

The third basis for tax-exemption is qualification under Section 501(c)(3) of the Code as an organization organized and operated exclusively for educational purposes. A prior application by the University for exemption under this section was denied by the Internal Revenue Service on the grounds that the University was already exempt under Section 115 of the Internal Revenue Code. If the University were granted exemption under this section, it would be subject to the provisions of Section 501(m) of the Code which taxes income from providing commercial-type insurance, including annuity contracts, under the tax

provisions applicable to insurance companies. If the University were exempt under Section 501(c)(3) of the Code, it would be subject to the tax imposed by Section 511 of the Code on unrelated trade or business income or taxed as an insurance company under Section 501(m) of the Code.

The Michigan and Indiana private letter rulings issued by the Internal Revenue Service are the best current indication of how tuition prepayment programs will be taxed. There are several requests for rulings currently pending before the Internal Revenue Service regarding such programs, including ones where the program is part of a governmental entity. The Internal Revenue Service position on these ruling requests should be clarified within the next few months. It is recommended that a request for a ruling that the University and the Fund are exempt from taxation under Section 115 of the Code be submitted, but the request be submitted after the Internal Revenue Service position is clarified since this will provide valuable guidance as to how to structure the request for a ruling and possible modifications to the Fund.

There is no benefit to the University in reapplying for exemption under Section 501(c)(3) of the Code and viability of the Doctrine of Intergovernmental Immunity is not as clear as the exemption provisions of Section 115 of the Code. The position that the University is an integral part of the state may be used as an alternative basis for the exemption of the University and the income of the Fund. If the Internal Revenue Service determines that the Fund is within the exemption of Section 115 of the Code, the tax on unrelated trade or business income would not apply since inherent in that determination would be the

conclusion that the Fund activity is not an unrelated trade or business within the meaning of the Code. Therefore, the recommendation is to present the request for a ruling without reference to the provisions of Section 511 of the Code.

If the University is successful in obtaining a private letter ruling characterizing the Fund's income as tax-exempt, the consideration of whether the Fund might be treated as a trust or corporation for tax purposes has little significance. However, if the Fund is taxable, the University can attempt to structure the Fund as either a corporation or a trust. Legal status as a trust or corporation will assist the Fund in establishing its taxable identity, but it would not control the tax status. An entity may be taxed as a trust or corporation based upon an evaluation of attributes found under Treasury Regulations supporting IRC Section 7701.

Of the Regulations Section 301.7701 attributes, only two are pertinent in distinguishing a trust from a corporation. First, any profit motive ascribable to a particular enterprise is an attribute indicative of corporation status. The ability to manipulate the mix of investments held in a trust relationship is presumed sufficient to support taxable status as a corporation under the Regulations. Therefore, the Fund is a corporation having a profit motive.

The second attribute used by the Internal Revenue Service to determine trust versus corporate status is a finding of whether or not "associates" are present in the affairs of the Fund. The position of the Internal Revenue Service in private letter rulings is at odds with Internal Revenue Service stances in recent caselaw on whether or not mere investor status is sufficient to find participation rising to the level of an associate. In the former, overt

participation by "investors" sufficient to find taxable corporation status has been found by presumption. In the latter, actual characteristics of participation have been required to convince the courts that a corporation exists rather than a trust. The Internal Revenue Service has acquiesced in the court decisions.

The Fund may be able to distinguish itself as a trust due to its purpose and the nature of the obligations to contract beneficiaries. No profit expectation is present in a program designed to provide tuition benefits. In addition, the Fund may be able to take advantage of acquiescences to caselaw by the Internal Revenue Service. Recent cases indicate that the presumption of associates is not sufficient; proof of participation is needed to find a taxable corporation. Fund beneficiaries clearly do not directly or indirectly influence the establishment and operation of the prepaid tuition program as associates. A legal declaration of trust with supporting language in the enabling legislation noting fiduciary relationships would support this position.

If the Fund is taxable as a corporation, its status parallels that of the Michigan program. As such, the question of whether or not tuition payments constitute deductible expenses arises. Without that deduction, corporate status would probably be less favorable for the Fund than trust status.

Taxation as a complex trust with separate share reporting is the alternative available to the Fund if it is not taxed as a corporation. This treatment is beneficial as it allows the lowest effective tax rate while avoiding the issue of deductible tuition payments. Reporting requirements are more onerous for the Fund as a trust, however.

The Internal Revenue Service has two options with regard to taxing contract beneficiaries and contract purchasers. The Internal Revenue Service now allows the beneficiary to defer income taxation until the onset of tuition payments. The beneficiary could expect to be taxed on the net accretion of income no matter what form of entity the Fund becomes.

The Internal Revenue Service is considering changing its ruling position regarding the tax status of purchasers and beneficiaries by applying the original issue discount rules to prepaid tuition programs. Income would accrue annually over the term of the contract in amount representing the prorated excess of tuition benefits over contract price.

Contract purchasers are unlikely to pay gift tax on the gift of contracts to beneficiaries due to the \$192,800 unified credit against gift tax which is equivalent to a \$600,000 exclusion. Nonetheless, there may be a filing requirement to report a gift that uses this credit.

The proposed contract could be modified to create a completed gift of a present interest which would not be subject to any gift tax filing if the gift is less than \$10,000 per donee in each year.

TAXATION AS AN INTEGRAL PART OF THE STATE OF ALASKA

Statement of Law

The Doctrine of Intergovernmental Immunity is implied from the Constitution and imposes restrictions on the taxing authority of the Federal and state governments. The Federal government is restricted in taxing the property and instrumentalities of a state in the same manner that a state's authority to tax operations and property of the Federal government is limited. The doctrine rests on the implied constitutional guarantee of the self-preservation of the state and Federal governments.

Section 511 of the Internal Revenue Code of 1986 (hereinafter referred to as the Code or IRC) imposes a tax on the unrelated trade or business income of any college or university which is an agency or an instrumentality of any government or political subdivision thereof.

Section 512(b) of the Code excludes interest income from the computation of the tax on unrelated trade or business income.

Section 513 of the Code provides that the term "unrelated trade or business" means any trade or business the conduct of which is not substantially related (aside from the organization's need for funds) to the exercise or performance by such organization of an exempt purpose within Section 501(c)(3) of the Code. The Section specifically excludes any trade or business that is carried on by a state college or university for the convenience of its students or employees. Section 1.512(a)-1(b) of the Treasury Regulations (hereinafter referred to as

the Regulations) provides that expenses, depreciation and other items attributable solely to the conduct of an unrelated trade or business are approximately and primarily related to that business activity and therefore deductible from gross income to the extent they satisfy the provisions of Section 162, Section 167 and other relevant Sections of the Code.

Section 1.512(a)-1(c) of the Regulations provides that where facilities are used to carry on both exempt activities and an unrelated trade or business, expenses and similar items attributable to such facilities are to be allocated between those two uses. Similarly, items attributable to personnel who are employed in connection with both exempt and unrelated business activities are allocated between those activities.

Section 1.513-1(a) of the Regulations states that unless one of the specific statutory exceptions applies, the gross income of an exempt organization which is subject to the tax on unrelated trade or business income includes income from the conduct of a trade or business, which is regularly carried on, and the conduct of which is not substantially related (other than through the production of funds) to the performance of an exempt purpose.

Section 1.513-1(b) of the Regulations provides that the term "trade or business" has the same meaning it has in Section 162 of the Code and generally includes any activity carried on for the production of income from the sale of goods or performance of services, provided that no part of a trade or business will be excluded from that classification merely because it does not result in a profit.

Section 1.513-1(c) of the Regulations states that specific business activities of an exempt organization will ordinarily be deemed to be "regularly carried on" if they show a frequency and continuity and are pursued in a manner generally similar to comparable commercial activities of non-exempt organizations.

Section 1.513-1(d) of the Regulations states that for the conduct of a trade or business to be considered "substantially related," the activity must contribute importantly to the accomplishment of an exempt purpose, with there being a substantial causal relationship between the activity and achievement of an exempt purpose.

Application of the Law

The Alaska legislature established the Alaska Education Trust Fund (Fund) by AS 14.50.803 as an endowment fund of the University of Alaska for the purpose of enhancing the University's ability to provide education for state residents, providing broad and affordable access to education at the University, and providing incentives for students in middle and high school to achieve higher academic standards and for students to complete their secondary and postsecondary education. In accordance with that statute, the Fund consists of cash and permanent fund dividends received in connection with tuition prepayment contracts, state appropriations, contributions, and the income earned by the Fund. Pursuant to the proposed revision to AS 14.50.805, the state's Commissioner of Revenue serves as the custodian of the Fund and exercises authority over the maintenance and investment of the moneys in the fund. The statute provides further at Section 14.40.809 that the Board of Regents of the University will develop and administer an advance tuition payment and prepaid tuition scholarship program in connection with the Fund, entering into contracts

with purchasers for advance tuition payments which fully obligate the University to provide the applicable tuition credits.

The Fund and the implementing tuition payment plan developed by the University establish a program within the University. As structured by state statute, the Fund is an integrated part of the University and its operations. In contrast to the advance tuition payment programs in Michigan and Indiana which were found by the Internal Revenue Service in recent private letter rulings to be separate legal entities, the statute establishing the Fund does not create a corporation or a trust which is authorized to operate independently of the state or a state agency. See Private Letter Ruling 8825027 (March 29, 1988) and Private Letter Ruling 8901027 (September 30, 1988). Investments with respect to the Fund are controlled and handled by the University and the state's Commissioner of Revenue. There is no independent board of directors or trustees to direct the affairs of the Fund, their decisions unchecked by a state agency or officer. In accordance with the enabling legislation, the Fund is an endowment fund of the University and its proceeds are held by the state. In addition to receiving state appropriations, the obligations of the Fund with respect to agreements to provide tuition credits are guaranteed by the University.

The Fund is established in such a manner as to be fully integrated with the state rather than a distinct legal entity which operates independently. Each of these factors was considered by the Internal Revenue Service in its private letter rulings in determining whether the particular programs were part of the state. The important differences which exist between the Fund and the programs

in Michigan and Indiana should lead to the conclusion that the Fund is clearly part of the University.

As part of the University, the tax-exempt status of the Fund's income may be determined by the Internal Revenue Service on the basis of the University being an integral part of the state. A state or an integral part of a state has been historically exempt from federal income taxation under the doctrine of intergovernmental immunity. The foundation for this doctrine is language in an 1819 decision of the United States Supreme Court. Although long-standing, the doctrine has been modified and limited over the years so that its exact scope is unclear. In a 1934 General Counsel Memorandum, the Treasury Department based the tax-exempt status of the states on this doctrine. That position was subsequently changed when the Treasury Department reached the same result but based on a construction of the Internal Revenue Code rather than the doctrine. In General Counsel Memorandum 39315 (1984) the stated position of the Internal Revenue Service was that "except where specifically provided otherwise, federal income tax is levied on only corporations, associations, trusts and individuals, and such laws do not tax the direct income of any state or municipality, whether derived from essential or nonessential activities."

The Internal Revenue Service has stated in both revenue rulings and private letter rulings that income earned by a state or an integral part of a state is generally exempt from federal income taxation. That exemption, however, is not unlimited. In Revenue Ruling 87-2, 1987-1 C.B. 18, the Internal Revenue Service stated that income earned by a state or an integral part of a state is not taxable absent specific statutory authorization for imposing a tax on the particular income. The Internal Revenue Service stated further that "[a]n

example of a statutory exception to this general rule is found in Section 511(a)(2)(B) of the Code, under which the unrelated business taxable income of colleges and universities that are state agencies or instrumentalities is taxable." Regardless of its status as a part of the state, the University is subject to the tax imposed by Section 511(a) of the Code in connection with income derived from unrelated trade or business activities.

As provided in Section 513 of the Code, an unrelated trade or business is any trade or business the conduct of which is not substantially related to the exercise or performance of an exempt purpose described in Section 501(c)(3) of the Code. The purpose of the tax is to eliminate unfair competition by placing the unrelated business activities of tax-exempt organizations on the same footing as comparable commercial activities of non-exempt organizations. The University is subject to the tax imposed by Section 511 of the Code in connection with the Fund if its activities constitute a trade or business which is regularly carried on and the conduct of which is not substantially related to an exempt purpose or function. None of the exceptions in Section 513(a) of the Code would appear to apply since the Fund is not operated for the convenience of current students at the University but for potential students.

Although not precedential, the Internal Revenue Service response to an application by the Michigan Education Trust for exemption under Section 501(c)(3) of the Code was that the advance tuition payment contracts issued by the program resembled commercial financial products which were offered in a commercial manner. The University would be regularly carrying on a trade or business through its issuing contracts and generating income through investment of money in the Fund. The third requirement for an unrelated trade or business

-- that the activity does not have a substantial causal relationship to the achievement of an exempt purpose -- is arguably not met in the case of the University's activities in connection with the Fund.

As indicated in the Regulations, the activity itself must contribute importantly to an educational or other exempt purpose. The Fund can be considered as providing a necessary vehicle or means for residents of Alaska to attend college. Section 1.501(c)(3)-1(d) of the Regulations defines an exempt charitable purpose as including the advancement of education. That same section of the Regulations defines an exempt educational purpose as relating to providing education for individuals. The activity of the Fund is to provide a means to fund the cost of education for students. This activity contributes importantly to charitable and educational exempt purposes. The function or purpose of the University to afford educational opportunities to the residents of the state is advanced by the activity in connection with the Fund.

In a series of revenue rulings issued in 1969, the Internal Revenue Service determined that the operation of a gift shop, cafeteria and parking lot by a tax-exempt hospital were not unrelated trades or businesses since each activity contributed to the physical comfort or mental well-being of the patients as well as contributing to the efficient operation of the hospital. Both the effect on patients and the hospital's efficiency were found to substantially relate to the achievement of the hospital's exempt purpose. In Revenue Ruling 78-435, 1978-2 C. B. 181 the Internal Revenue Service stated that "the sale of hearing aids as an integral part of an organization's program to test and evaluate patients with hearing deficiencies contributes importantly to the organization's purpose of promoting the health of such persons." The primary activity of the exempt

hospital was the operation of a clinic that provided rehabilitation services to handicapped persons, including those with hearing problems; and the sale of hearing aids was in connection with the tests and evaluations performed by the hospital. By the same reasoning, it may be argued that the University's activity in connection with the Fund contributes importantly to its purpose of advancing education and providing education for residents of the state. The activity contributes importantly to assuring that the University continues to have students to instruct and that students are encouraged to complete their education.

To the extent the Internal Revenue Service determines that the activity of the Fund is subject to the tax imposed by Section 511 of the Code on unrelated trade or business income, investment income earned by the Fund should be excluded as interest or dividend income under Section 512(b) of the Code, provided that the Internal Revenue Service does not treat the investment income as part of the unrelated business activity. The only indications currently available regarding how the Internal Revenue Service would treat the other receipts paid to the Fund are the two private letter rulings regarding the Michigan and Indiana programs. In both rulings the Internal Revenue Service determined that the money received from the contract purchaser and from the state did not constitute gross income. While these rulings are not binding other than with respect to the parties receiving the rulings, they provide guidance as to the thinking of the Internal Revenue Service. If this continues to be the position taken by the Internal Revenue Service, the potential tax liability under Section 511 of the Code would be limited since the money received from contract purchasers and state appropriations would be excluded from gross income.

Recommendations

There is no tax benefit to establishing the Fund as a separate legal entity rather than part of the University. The position taken by the Internal Revenue Service in rulings with respect to the Michigan Education Trust has been that the Trust is a separate legal entity which does not qualify for tax-exempt status under provisions of the Code. It is assumed that the Fund, if a separate entity, would also be non-exempt. Treatment as a taxable corporation or possibly under the provisions governing insurance companies is less favorable to the Fund than the tax consequences of remaining a part of the University.

If the legislation were changed to make the Fund part of the State of Alaska rather than a program of the University, the ability to obtain tax-exempt status would be greater. The intergovernmental immunity position would be stronger with a state agency. While Section 511 of the Code imposes a tax on unrelated trade or business income of state colleges and universities, there is no comparable provision with respect to the state or other agencies. There may, however, be program or administrative considerations which dictate that the Fund should properly be part of the University.

A ruling may be requested that the University is exempt from federal income taxation because it is an integral part of the State of Alaska, relying on the doctrine of intergovernmental immunity. However, the doctrine has been changed and its application limited over time so that its current effect is not clear. The application of Section 115 of the Code is more certain since the Internal Revenue Service and the courts tend to look to the statutes in resolving issues rather than constitutional theories. Both legal theories should be presented in

the alternative, but the stronger position is based on the specific statutory provision which is more defined than the doctrine of intergovernmental immunity. This recommendation would be the same whether the Fund were part of the University or a state agency. The Constitutional doctrine is not as strong or definite as the statutory provisions.

In view of the fact that tuition prepayment programs are relatively new and there is not an established body of law or rulings governing how they are taxed, it is strongly recommended that a private letter ruling be requested from the Internal Revenue Service. For this reason, this report focuses on the positions taken by the Internal Revenue Service. Even though a court of law may come to a different conclusion than the Internal Revenue Service, we have not tried to guess what a court would do since the Fund is unlikely to litigate this issue.