

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7401 SENATE HEALTH EDUCATION & SOCIAL SERVICES

Exhibit B

ACTUARIAL REVIEW

The Board shall annually evaluate and cause to be evaluated by a nationally recognized actuary the actuarial soundness of the Fund and determine the additional assets needed, if any, to defray the obligations of the trust. If there are not funds sufficient to ensure the actuarial soundness of the trust as determined by the nationally recognized actuary, the trust shall adjust payments of subsequent Purchasers to ensure its actuarial soundness. If there are insufficient numbers of new Purchasers to ensure the actuarial soundness of the Fund, the available assets of the Fund attributable to the plan shall be immediately prorated among the then existing contracts, and these shares shall be applied, at the option of the person to whom the refund is payable or would be payable under the contract upon termination of the contract, either towards the purposes of the contract for a Beneficiary or disbursed to the person to whom the refund is payable or would be payable under the contract upon termination of the contract.

Exhibit C

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR KERTTULA

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

* Section 1. AS 14.40.803 is amended to read:

Sec. 14.40.803. ALASKA EDUCATION TRUST FUND ESTABLISHED.

(a) The Alaska education trust fund is established as an endowment trust fund of the University of Alaska. The fund is established for the purpose of enhancing the ability of the University of Alaska to provide (1) higher education for the people of the state; (2) wide and affordable access to higher education; (3) an incentive for residents to achieve higher academic standards in grades 7 - 12; and (4) an incentive for

residents to continue and complete secondary and post secondary education [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) appropriations from the legislature, gifts, bequests, and contributions of cash or other assets for advance tuition payment contracts or prepaid tuition scholarships [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 payments for tuition refunds, redemptions, and awards under [UPON TERMINATION OF] an advance tuition payment contract or a prepaid tuition scholarship; and

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

* Sec. 2 AS 14.40.805 is amended to read:

Sec. 14.40.805. POWERS AND DUTIES OF THE COMMISSIONER OF REVENUE. The commissioner of revenue is the custodian [TRUSTEE] of the fund and has the powers and duties under this section to

(1) act as official custodian [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 and deposit the principal and income from investments of the fund [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 in accordance with investment objectives and in investments established by the board [AS PROVIDED FOR THE INVESTMENT OF RETIREMENT FUNDS UNDER AS 14.25.180];

(5) exercise the powers of a custodian [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 custodian [TRUSTEE], the assets of the fund;

(7) maintain accounting records of the fund in accordance with investment accounting principals [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 payments for refunds, redemptions, and awards under [IN ACCORDANCE WITH UPON TERMINATION OF] an advance tuition payment contract or a prepaid tuition scholarship; and

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

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

(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 advanced tuition payment program [TRUST FUND], including the right of a purchaser to receive a refund upon termination of an advance tuition payment contract, [AND] a disclosure that the fund has potential [OF THE POTENTIAL STATEMENT THAT THE] tax liability [OF THE FUND] and a disclosure of the possible general effect of the tax liability on the advance tuition payment program [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].

* Sec. 4. AS 14.40.809 is amended to read

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

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

(4) enter into a reciprocal agreement with another institution or state agency that maintains an advance prepaid tuition program if the agreement furthers the purpose of the fund [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].

(c) The legislature may appropriate to the fund, in any year, the amount, if any, which the Board of Regents certifies is necessary for the actuarial soundness of the fund.

(d) The Board of Regents may provide that the obligation of the University of Alaska under a contract is a general and unlimited obligation.

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

Sec. 14.40.811. ADVANCE TUITION PAYMENT CONTRACTS. (a) An advance tuition payment contract must [include] set out or include by reference to the Plan

(1) if an installment purchase program is established by the Board, the amount of payments required from the purchaser, [ON BEHALF OF THE QUALIFIED BENEFICIARY];

[(2)] the terms and conditions for making the payments[;

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

[(4)](2) the name and age of the primary and alternate [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)](3) the number of tuition credits [CREDIT HOURS] to be provided to the primary and alternate [QUALIFIED] beneficiary under the contract;

[(6)](4) [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)](5) the assumption of a contractual obligation by the board to provide tuition credits [FOR CREDIT HOURS] of higher education to the qualified beneficiary 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)](6) the period of time during which the qualified beneficiary may receive the benefits of the contract; and
(7)[(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 actuarial sound basis; or

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

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

Sec. 14.40.817. DEFINITIONS. In AS 14.40.801-14.40.817,

(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 OR THE CHILD OR LEGAL WARD OF A RESIDENT OR ALUMNUS OF THE UNIVERSITY] person who has rights under an advance tuition payment contract;

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

* Sec. 7. AS 09.38.050 is amended by adding the following paragraph (9):

(9) tuition credits or accounts established pursuant to AS 14.40.803.

* Sec. 8 This Act takes effect immediately under AS 01.10.070(c).

Exhibit D

1991 ADVANCE TUITION PAYMENT CONTRACT

I, the undersigned Purchaser of this 1991 Advance Tuition Payment Contract, have read and understand the terms contained in the Advance Tuition Payment Plan ("Plan") sent to me with this Contract, and understand that all of such terms are incorporated into this Contract as if they were set forth herein. I also understand that Alaska Statutes 14.40.803-817, as amended from time to time, and all rules adopted by the Board of Regents or Administration Committee ("Board"), as they may be amended from time to time are incorporated into this Contract. I acknowledge that the Board and the Alaska Legislature may modify or terminate the Program, or amend the Plan, and will publish any modifications periodically. I understand that, subject to these limitations, this Contract represents the entire understanding of the Purchaser and the Board and may not be modified except in writing signed by the Purchaser and an authorized representative of the Board.

If any portion of this Contract is found to be invalid or unenforceable by any court, that portion shall be severed from the Contract and the remainder of the Contract will remain in full force. This Contract is to be interpreted under the laws of Alaska.

I specifically acknowledge and certify that I have read and understand the Plan regarding the following:

1. The terms and conditions for purchase of Tuition Credits, as described in Section 3 of the Plan.
2. The restrictions on substituting another individual for the Beneficiary and the Alternate Beneficiary and transfer of benefits, as described in Section 3 and Section 6 of the Plan.
3. The redemption, refund and lapse provisions, as described in Section 3, Section 6 and Section 8 of the Plan.
4. The agreement of the Board with respect to redemption or use of the Tuition Credits purchased, as described in Section 4 of the Plan.
5. The limitation of two years on redemption after date of purchase in Section 4.1. d.
6. The other rights and obligations of the Purchaser and the Board under the Program as described throughout the Plan.

I further certify that all of the following information is true and correct as of the date below my signature. If any of the following information changes, I also promise to promptly notify the Board of those changes. (Each of the following spaces must be completed, even if it reports information supplied in prior spaces. Indicate "none" or "not applicable" if appropriate. Please print or type.)

1. PURCHASER

a. Name: _____ b. Social Security or Tax ID Number: _____
c. Address: (Street or P.O. Box No.) _____
(City) _____ (State) _____ (Zip Code) _____
d. State of Residence: _____
e. Phone: Home: () _____ Work: () _____

2. PRIMARY BENEFICIARY (May be same as Purchaser or Purchaser's Appointee.)

a. Name: _____ b. Social Security or Tax ID Number: _____
c. Address: (Street or P.O. Box No.) _____
(City) _____ (State) _____ (Zip Code) _____
d. State of Residence: _____
e. Phone: Home: () _____ Work: () _____
f. Date of Birth: _____ g. Grade in School (if currently in school): _____
h. Academic Year Beneficiary is first expected to be enrolled at an Institution of Higher Education: _____

3. Is the Purchaser's consent required for this Contract to be Terminated? YES _____ NO _____

4. Is the Purchaser's consent required for all or a portion of the Tuition Credits purchased under this Contract to be transferred to a New Beneficiary? YES _____ NO _____

5. PURCHASER'S APPOINTEE (To act on Purchaser's behalf if Purchaser dies or becomes mentally incompetent. May be same as Beneficiary or Beneficiary's Appointee, if currently at least 18 years old.)

a. Name: _____ b. Social Security or Tax ID Number: _____
c. Address: (Street or P.O. Box No.) _____
(City) _____ (State) _____ (Zip Code) _____
d. Phone: Home: () _____ Work: () _____

6. ALTERNATE BENEFICIARIES

1. a. Name: _____ b. Social Security or Tax ID Number: _____
c. Address: (Street or P.O. Box No.) _____
(City) _____ (State) _____ (Zip Code) _____
d. Phone: Home: () _____ Work: () _____

2. a. Name: _____ b. Social Security or Tax ID Number: _____
c. Address: (Street or P.O. Box No.) _____
(City) _____ (State) _____ (Zip Code) _____
d. Phone: Home: () _____ Work: () _____

3. a. Name: _____ b. Social Security or Tax ID Number: _____
c. Address: (Street or P.O. Box No.) _____
(City) _____ (State) _____ (Zip Code) _____
d. Phone: Home: () _____ Work: () _____

7. Number of Tuition Credits purchased at this time: _____ Payment enclosed: US\$ _____
Tuition Credits are priced at \$55 each through December 31, 1991. Price will be different for Tuition Credits sold in 1992. Please enclose appropriate amount of payment in personal check, cashier's check or money order.
8. Purchaser's Signature: _____
9. Date: _____, 1991
10. Redemption Period Start Date (the date by which the Primary Beneficiary or an Alternate Beneficiary is to begin to use Tuition Credits): _____

DO NOT WRITE BELOW THIS LINE

Accepted by Board: _____ Date: _____, 1991

Exhibit E

P R E A M B L E

This advanced tuition payment plan (hereinafter referred to as the "Plan", and known as the "University of Alaska Advance 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 to make available guaranteed tuition benefits at the University of Alaska to all Alaskans; and

WHEREAS, a principal objective in establishing the Plan is the enhancement of the University [of Alaska's] mission to provide for the education of 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 for Alaskans to postsecondary education at the University of Alaska; and

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

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

WHEREAS, to effectuate the Plan, the University, through the Board of Regents, establishes in the Plan 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.

S E C T I O N 1
D E F I N I T I O N S

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

- 1.1 Advance Tuition Payment Contract (Contract) - means a contract entered into by the Board and a Purchaser to provide for the higher education of a [Qualified] Beneficiary in accordance with this Plan.
- 1.2 Alternate Beneficiary - means an individual designated to receive benefits under an Advance Tuition Payment Contract if the Primary Beneficiary is ineligible to receive benefits under the Plan or has waived his/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 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 Principal plus net earnings and applicable forfeitures, less expenses of the Plan and shall reflect valuation of investments of the Plan by such method as the Board determines.
- [1.6 Contingent Beneficiary - means an individual who may have rights in the future under an Advance Tuition Payment Contract, but has not yet met the requirements to be considered a Qualified Beneficiary.]
- 1.7 Eligible Institution - means a nonprofit postsecondary institution approved by the U.S. Department of Education for receipt of Title IV funding.
- 1.8 Fund - means the Alaska Education Trust Fund established under AS 14.40.803.

- 1.9 Graduation Incentive Award - means a distribution of funds accumulated to provide a cash bonus to a specified Beneficiary upon attainment of a formal degree or certificate.
- 1.10 Immediate Family Member - means a spouse, a natural, half-, step or adopted parent or grandparent, son or daughter, grandchild or legal ward, sister or brother, or niece or nephew.
- [1.11 Participant - means an individual who meets the criteria for eligibility stated in Section 2 and participates in the Plan.]
- 1.12 Plan - means the University of Alaska Advance Tuition Payment Plan.
- 1.13 Plan Administrator or Administrative Committee - means the Advance Tuition Payment Plan Administrative Committee
- 1.14 Prepaid Tuition Scholarship - means Tuition Credits awarded to a Beneficiary in accordance with Section 8 of this Plan.
- 1.15 Primary Beneficiary - means an individual named to receive benefits under an Advance Tuition Payment Contract prior to any other Beneficiaries or a Beneficiary of a Prepaid Tuition Scholarship Award.
- 1.16 Principal - means the amount paid by the Purchaser for Tuition Credits under this Plan, exclusive of any investment earnings or forfeitures.
- 1.17 Purchaser - means a person at least 18 years of age or other entity who makes or is obligated to make payments under an Advance Tuition Payment Contract.
- [1.18 Qualified Beneficiary - means a Resident who has rights under an Advance Tuition Payment Contract or Prepaid Tuition Scholarship.]
- 1.19 Redemption Period - means the period from the Redemption Period Start Date to the Redemption Period End Date.
- 1.20 Redemption Period End Date - means the tenth (10th) anniversary of the Redemption Period Start Date or such other date as approved by the Plan Administrator.
- 1.21 Redemption Period Start Date - means July 1 of the year the Primary Beneficiary will become eligible [to claim] for benefits under the Contract or Prepaid Tuition Scholarship, the date so designated in the Contract and the date Beneficiary becomes entitled to benefits.

- 1.22 Resident - means[, for purposes of this Plan,] 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.
- 1.23 Statement of Non-Participation - means a certification by a Primary Beneficiary, submitted after the earlier of the Redemption Period Start Date, or the receipt of a high school diploma or the attainment of the age of majority, that he or she does not plan on attending or continuing to attend any Eligible Institution.
- 1.24 Tuition Credit - means one semester hour of tuition purchased under an Advance Tuition Payment Contract or awarded.
- 1.25 Tuition Value - means the value, at a given point in time, of a specified number of Tuition Credits times the lowest resident undergraduate tuition rate in effect at the University of Alaska at that time.
- 1.26 University - means the University of Alaska, including a community college affiliated with the University.

SECTION 2
PARTICIPATION

2.1 Participation:

[The following are Participants eligible to participate under this Plan:

- a. Purchasers of Contracts issued under this Plan for the benefit of (1) a Resident of Alaska or an individual who is expected to become a Resident of Alaska prior to receipt of benefits under the contract or (2) a son, daughter or legal ward of a Resident of Alaska or of an alumnus of the University of Alaska;
- b.] Participants [of] in prepaid tuition programs of other institutions or states which have reciprocal advance tuition payment plan agreements approved by the Board may be awarded Tuition Credits under terms approved by the Board;
- [c. Donors and agencies who provide funding for Prepaid Tuition Scholarships under this Plan;
- d. Beneficiaries of Contracts issued and of Prepaid Tuition Scholarships awarded under this Plan.]

SECTION 3

PURCHASE OF TUITION CREDITS

3.1 Purchase Price:

- a. Tuition Credits may be purchased at a 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.

3.2 Minimum Initial Purchase:

The minimum initial Tuition Credit purchase for opening a Contract 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.

3.3 Unnamed Beneficiaries:

Advance Tuition Payment Contracts may be purchased for unnamed Beneficiaries subject to the following:

- (i) The Contract must be approved by the Plan administrator;
- (ii) The Primary Beneficiary must be named within ten years of the initial purchase or the account balance shall be lapsed in accordance with Section 8 of this Plan; and
- (iii) No refund or redemption shall be made for Tuition Credits of unnamed Beneficiaries.

3.4 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.

SECTION 4
REDEMPTION

4.1 Tuition Credit Redemption:

- a. 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
 - (ii) Two (2) Tuition Credits for each resident graduate semester hour charge
- b. Up to fifteen Tuition Credits may be redeemed each semester (or its equivalency for trimester, quarters or other academic periods) by the Primary Beneficiary at their Cash Value, not to exceed their Tuition Value, during periods of attendance at any Eligible Institution other than the University.
- c. Tuition Credits in excess of the number of Tuition Credits required for attainment of [the] a student's planned degree or certificate may be redeemed by the Primary Beneficiary during any semester while attending an Eligible Institution. The redemption shall be limited to the Tuition Value in effect during the year of redemption totaling an amount not to exceed the designated standard cost of on-campus room and board, fees and books for a full time student at the University of Alaska as determined by the [Plan Administrator] Administrative Committee.
- d. Tuition Credits may not be redeemed for at least two full calendar year after the date of purchase as determined on a first-in first-out basis.
- e. The excess of the Cash Value over the Tuition Value of Tuition Credits redeemed shall be distributed equally to a Graduation Incentive Award account for the benefit of the Beneficiary who redeemed the Tuition Credits and to the Prepaid Tuition Scholarship account. Cash Value of Tuition Credits shall be determined once each year at a time determined by the Board.
- f. Beneficiaries under this plan [shall be considered] eligible for resident tuition status at the University of Alaska for all Tuition Credits redeemed.

- g. Three (3) months advance notice of redemption is required for redemption of Tuition Credits for attendance at Eligible Institutions other than the University of Alaska.
- h. An Alternate Beneficiary may not redeem Tuition Credits, unless the Alternative Beneficiary 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.

4.2 Graduation Incentive Award Redemption:

- a. Fifty percent (50%) of the excess of the Cash Value over the Tuition Value of the Tuition Credits redeemed, adjusted for net investment earnings, forfeitures and administrative expenses, shall be accumulated in a separate Graduation Incentive Award account for each Beneficiary redeeming Tuition Credits.
- b. The full balance of the Graduation Incentive Award account shall be paid to the named Beneficiary upon receipt by the Plan Administrator of proof of attainment of a degree or equivalent certificate at an Eligible Institution.

4.3 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 unusual circumstances which are clearly beyond the control of the Purchaser and the Beneficiary, the Plan Administrator may approve an extension of the Redemption Period End Date for Tuition Credits and Graduation Incentive Awards.

S E C T I O N 5

R E F U N D S

5.1 Refunds:

- a. Full refund of the Cash Value shall be made to the Purchaser if the University of Alaska [or its successor] determines to terminate [cannot meet its obligations under] the Plan for any reason.
- b. 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.
- c. 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.
- d. Full refund of the Cash Value, not to exceed the Tuition Value of the Tuition Credits at the effective date of the refund, may be made to the Primary Beneficiary if the Primary Beneficiary is not admitted to the University of Alaska after making proper application, and all Alternate Beneficiaries, if any, have waived in writing their rights under the Contract..
- e. Full refund of the Cash Value, not to exceed the Tuition Value of the Tuition Credits at the effective date of the refund, shall be made to the Primary Beneficiary for any unused Tuition Credits if the Primary Beneficiary submits proof of attainment of a degree or equivalent certificate at an Eligible Institution and all Alternate Beneficiaries, if any, have waived in writing their rights under the Contract..
- f. Full refund of the Principal, not to exceed the Cash Value at the effective date of the refund, shall be made to the Primary Beneficiary, if the Primary Beneficiary submits a Statement of Non-Participation and all Alternate Beneficiaries, if any, have waived in writing their rights under the Contract.
- g. An Alternate Beneficiary [may not claim] is not entitled to a refund under an Advance Tuition Payment Contract unless the Primary Beneficiary and all Alternate Beneficiaries with prior rights under the Contract are deceased or have waived their rights in

writing. The estate of a deceased Alternate Beneficiary or the guardian of a disabled Alternate Beneficiary shall have no right to a refund.

5.2 Payment:

- a. Except for refunds requested for non-participation in the Plan under Section 5.1.f, all refunds shall be paid to the appropriate recipient as soon as practical after receipt and approval of a request for refund.
- b. Refund payments requested for non-participation in the Plan, under Section 5.1.f, shall be paid in four annual installments, the first of which shall be deferred for a period of twelve months to allow prospective recipients an opportunity to reconsider their decision to discontinue their education.

SECTION 6

TRANSFER OF BENEFITS

6.1 Transfers:

- a. The Purchaser may designate up to three Alternate Beneficiaries to receive benefits under the Contract in the order named at initiation of the Contract.
- b. Subject to 6.1 e., substitution of an Immediate Family Member of either the Purchaser or the Primary Beneficiary for any Beneficiary or Alternative Beneficiary originally named in the Contract [may be requested] is permitted by the Purchaser at any time.
- c. All additions, substitutions or changes in Beneficiaries (i) are 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. No substitution is effective until it has been received by the Plan Administrator.
- d. Additions and substitutions of Beneficiaries may require certification by the Purchaser and/or the new Beneficiary that no compensation or other consideration was or will be paid or received in exchange for the addition or substitution.
- e. Beneficiary substitutions after the Redemption Period Start Date will only be considered in unusual circumstances.
- f. Beneficiaries may waive their rights under this Plan, but shall have no right to transfer or designate Alternate Beneficiaries.
- g. 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, submits proof of attainment of a degree or equivalent certificate at an Eligible Institution, or waives in writing his or her rights under the Contract.

writing. The estate of a deceased Alternate Beneficiary or the guardian of a disabled Alternate Beneficiary shall have no right to a refund.

5.2 Payment:

- a. Except for refunds requested for non-participation in the Plan under Section 5.1.f, all refunds shall be paid to the appropriate recipient as soon as practical after receipt and approval of a request for refund.
- b. Refund payments requested for non-participation in the Plan, under Section 5.1.f, shall be paid in four annual installments, the first of which shall be deferred for a period of twelve months to allow prospective recipients an opportunity to reconsider their decision to discontinue their education.

S E C T I O N 7

P R E P A I D T U I T I O N S C H O L A R S H I P S

- 7.1 A Prepaid Tuition Scholarship Award account shall be established within the Alaska Education Trust Fund. Receipts from donors for prepaid tuition scholarships, distributions in accordance with Section 4.1[.b and 5.3], and lapsed balances in accordance with Section 8 shall be credited to the account.
- 7.2 [Tuition Credits which further] In furtherance of the objectives of the Plan as stated in the Preamble may be awarded as Prepaid Tuition Scholarships to primary, middle and high school students who attend school in Alaska to the extent that scholarship funds are available in the Fund.
- 7.3 Prepaid Tuition Scholarship Awards shall be approved in accordance with procedures adopted by the Board of Regents.
- 7.4 Tuition Credits received as Prepaid Tuition Scholarships under this Plan shall be redeemable in accordance with Section 4, except that:
- a. Tuition Credits received as Prepaid Tuition Scholarships shall be redeemed prior to purchased Tuition Credits; and
 - b. Tuition Credits received as Prepaid Tuition Scholarships may only be redeemed for attendance at the University of Alaska.
- 7.5 Tuition Credits received as Prepaid Tuition Scholarships are not transferable to other Beneficiaries or individuals.
- 7.6 Tuition Credits received as Prepaid Tuition Scholarships are not refundable except upon discontinuance or termination of the Plan, as provided by Section 11.5.

SECTION 8

LAPSE OF ACCOUNT BALANCES

8.1 Tuition Credits:

- a. All Tuition Credit account balances, except those received as Prepaid Tuition Scholarships and those of unnamed Beneficiaries, shall be lapsed if not redeemed or refunded within the Redemption Period.
- b. All Tuition Credit account balances of unnamed Beneficiaries shall be lapsed if not redeemed within ten (10) years of the initial purchase under the contract.
- c. All lapsed amounts shall be allocated equally to the Prepaid Tuition Scholarship Award account and to a lapse account for distribution to all Tuition Credit and Graduation Incentive Award accounts in the same manner as earnings during the period.

8.2 Prepaid Tuition Scholarships:

- a. Prepaid Tuition Scholarship accounts which are inactive for a full calendar year subsequent to their Redemption Period Start Date shall be lapsed to the Prepaid Tuition Scholarship Award account.
- b. Based on unusual circumstances beyond the control of the Beneficiary, the Plan Administrator, upon written request by the Beneficiary prior to the scheduled lapse date, may approve an extension of the normal period for redemption.

8.3 Graduation Incentive Awards:

- a. All Graduation Incentive Award account balances shall be lapsed if not redeemed within the Redemption Period.
- b. All lapsed amounts shall be allocated equally to the Prepaid Tuition Scholarship Award account and to a distribution account for the benefit of all Tuition Credit and Graduation Incentive Award Beneficiaries.
- c. Accumulated balances in the distribution account shall be allocated to account balances in the same manner as earnings during the 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, unless accepted by the Plan Administrator as an unnamed beneficiary Contract;
- (iii) The name, address, date of birth and social security number of all Alternate Beneficiaries (not more than three);
- (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 [sold, transferred or] assigned, sold, transferred, or encumbered except as otherwise required by law or provided for in this Plan.
- b. An Alternate Beneficiary may not transfer[, redeem or claim a refund for] Tuition Credits under this Plan.
- c. If a parent or legal guardian purchases Tuition Credits for a specified Beneficiary with the funds of the Beneficiary, the parent or legal guardian shall be considered the Purchaser for purposes of the Contract and this Plan.
- d. Each contract shall have, and be limited to, one named purchaser.
- e. Contract shall have no more than one Primary Beneficiary at any specified time.

- f. A Purchaser and/or Beneficiary may have more than one Contract under this Plan.

S E C T I O N 10

A D M I N I S T R A T I O N O F T H E P L A N

10.1 Advance Tuition Payment Plan Committee

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

10.2 Organization and Procedures

- (a) The President shall designate a committee chair from the members of the Administrative Committee. The chair of the Administrative 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 Administrative Committee shall appoint a secretary, who may or may not be a member of the Administrative Committee. The secretary shall have the primary responsibility for keeping a record of all meetings and acts of the Administrative Committee and shall have custody of all documents, the preservation of which shall be necessary or convenient to the efficient functioning of the Administrative Committee.
- (c) The Administrative 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 Administrative

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 Participants and the University of Alaska in accordance with the terms of the Contracts and this Plan. The Administrative 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 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 or refunds;
- (iv) approve or deny, on behalf of the Board, changes or substitutions of Beneficiaries under Advance Tuition Payment Contracts.
- (v) establish administrative fees and transaction charges for the Plan;
- (vi) establish [redemption value for] the standard cost of on-campus room and board, fees and books for a full-time student at the University;
- (vii) review the actuarial s of the Plan on a periodic basis;
- (vii) solicit nominations for and make recommendations to the Board on the award of Pre-paid Tuition Scholarships;
- (viii) employ and engage such persons, counsel and agents including, without limitation, investment managers and custodians, and obtain such administrative, clerical, le-

gal, auditing and actuarial services as it may deem necessary in carrying out the provisions of the Plan; and

- (ix) make periodic reports to the Board of Regents on the finances and actuarial status of the Plan, respond to inquiries from the Board, and recommend to the President or the Board, Plan amendments it deems necessary.

10.4 Dispute Procedure

(a) Requests for Determination

Any time a request for determination of eligibility for Participation or receipt of benefits or an interpretation of Plan provisions is disputed or a Participant 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 Administrative Committee. The Claimant shall be notified of the Administrative 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

[Any person] A claimant who has received an adverse decision from the Administrative Committee, shall have the right to request reconsideration by the Administrative Committee. Such request must be submitted in writing to the Administrative 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 [claims] 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 60 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 Administrative 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 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 [state 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 account, 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 benefit, nor any action of the University or 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 shall

be construed to expand a student's rights beyond those provided in University policies, regulations and other applicable documents.

(e) Governing Law

(1) 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 for the Fourth Judicial District, Fairbanks, Alaska.]

(f) Intentionally left blank.

(g) 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.

(h) 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.

(i) Correction of Errors

In the event an incorrect amount is paid to or on behalf of a Beneficiary, any remaining 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.

(j) 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 Purchaser and Primary Beneficiary, at the address on file with the University, a report summarizing the status of their Tuition Credit. Graduation Incentive Award and Prepaid Tuition Scholarship accounts. If within 90 days after issuance of such reports, the Purchaser or Beneficiary makes no writ-

ten objection to the Administrative Committee it shall become binding on the Purchaser and any Beneficiary or Alternate Beneficiary.

(k) 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.

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 Intentionally left blank.

11.5 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, the [balance] Cash Value of all Tuition Credit accounts shall be remitted to the respective Contract Purchasers and the [balance] Cash Value of all Graduation Incentive Award and Prepaid Tuition Scholarship accounts shall be remitted to the respective Beneficiaries. Account balances for Purchasers and Beneficiaries who cannot be located and unissued Prepaid Tuition Scholarships 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 or any paid consultant or 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 shall only be effective if embodied in an appropriate agreement with a fiduciary.

The University of Alaska Advance 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

1. Plan Objectives:

- 1.1 To provide economic protection from the rising cost of tuition.
- 1.2 To fix the cost of tuition at current costs for the Purchasers of tuition at the University of Alaska.
- 1.3 Encourage enrollment at the University of Alaska.
- 1.4 Encourage completion of degree or certificate programs at Eligible Institutions.
- 1.5 Encourage elementary and high school students to achieve higher standards.
- 1.6 To provide affordable access to higher education for Alaska residents.
- 1.7 Enhance educational opportunities for the residents of the state of Alaska.

2. Tax Objectives:

- 2.1 Eliminate income tax impact on Purchaser.
- 2.2 Minimize tax impact on Beneficiary for non-cash redemptions.
- 2.3 Minimize overall tax consequences for the program.

3. Actuarial Objectives:

- 3.1 Fund tomorrow's tuition at today's cost.
- 3.2 Provide funding for graduation incentive program.
- 3.3 Provide funding for prepaid tuition scholarships.
- 3.4 Provide funding for administrative costs of the program.

Education - a Gift of Permanent Value



ACT is

guaranteed

secure & safe

affordable

transportable

What does ACT cost?

There is a one-time, nonrefundable \$25 fee. In 1991, the fixed price is \$50 a credit. Minimum initial purchase is six tuition credits. Thereafter, you can purchase in increments as small as one tuition credit. Or, you could purchase the full 120 tuition credits at one time. In 1991, the total cost would be \$6,025 ($\$50 \times 120 + \25).

Assume that the Permanent Fund dividend will always be \$952 a year and you apply the total amount - in eight years, accounting for 5% annual tuition inflation, the full 120 tuition credits could be purchased. The total cost would be \$7,003 (with an eighth-year payment of \$339).

How are credits spent?

Tuition credits may be redeemed two years after they are purchased. The beneficiary notifies ACT of intended use, naming the institution. If the student will attend any branch of the University of Alaska, ACT will make the tuition credits available to the campus admissions and records office.

Each usage will adjust the remaining balance of the student's account. *No further cost for tuition will occur.* If the student will attend another institution, in or outside of Alaska, ACT will provide a refund each semester. The student would use this check during registration.

Who can participate?

Any person, institution or business can purchase ACT. Any resident of the state of Alaska; or, any son, daughter, or legal ward of a resident of Alaska; or, any sons, daughters, or legal wards of an alumni of the University of Alaska can be a beneficiary. You can buy ACT for yourself, your

child, grandchild, expected grandchild, spouse, parent, grandparent, friend. Tuition credits would make fine gifts for friends, rewards for good employees, or incentives for many purposes and needs. No age or blood relationship restrictions exist.

How does the fund work?

Monies are invested by the staff of the Permanent Fund, with the University of Alaska as trustee, and the State of Alaska Department of Revenue as custodian. An annual audit of the fund and periodic actuarial studies will be performed to ensure the fiscal soundness of the plan.

Interest earnings pay the inflation cost difference between year of purchase and year of use. Any actuarial funding excess will be used for graduate incentive awards to beneficiaries and merit scholarships to Alaskan students.

What ... ?

the student gets a full tuition scholarship?
ACT will reimburse the student, a semester at a time, at that year's fixed cost, helping pay for room, board, books, and other fees.

the student gets a full-ride scholarship?
ACT will hold the funds for graduate school or as a graduate incentive award, for delivery upon graduation.

the student decides not to pursue further education after high school?
Assuming all listed alternates waive their rights, the student receives a refund.

the student graduates from high school, but doesn't want to go to college right away?
ACT allows ten years from the expected date of college entry to begin use. At any time during those ten years, any use immediately restarts the ten-year calendar. ACT allows special arrangements for unusual circumstances. Finally, ACT allows for a cash refund.

the beneficiary dies?
The first alternate becomes the new beneficiary. If there is no alternate, the estate of the beneficiary receives full cash.

1-800-478-0003

ACT Advance College Tuition

Who

benefits from ACT?

You The Beneficiary

with a guaranteed opportunity for college;

You The Purchaser

with peace of mind;

The University of Alaska

with improved recruitment and retention;

The State of Alaska

with citizens prepared for needed technical and professional careers.

Where

to write to or call?

ACT • University of Alaska • Fairbanks AK 99775-5260

474-7469 or 1-800-478-0003

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UNIVERSITY OF ALASKA
FAIRBANKS



Education - a Gift of Permanent Value

ACT

**Advance
College
Tuition**

Education - a Gift of Permanent Value

Most families face three major expenses—the purchase of a house, a new car, and an education. Inflation is 65% higher on tuition than on all other expenses. Will Alaskan families be able to afford college for their children?

A new law offers Alaskan families an affordable, safe solution to the college cost crunch. This law created the Advance College Tuition Payment Fund and allows use of Permanent Fund dividends or cash contributions to secure tuition credits at today's cost for use in the future.

Advance College Tuition is easy, safe, and guaranteed. You use cash contributions or a checkoff of 50% on your Permanent Fund dividend application to purchase tuition credits. The credits are sold at this year's determined price. You name the beneficiary. Next year—or when you choose—more credits are purchased. You, the purchaser, determines who receives the tuition credits.

ACT Advance College Tuition



As legal guardian, you can use your child's Permanent Fund dividend to purchase tuition credits for that child. And, you can name up to three alternate beneficiaries who would be able to use the tuition credits if your named beneficiary elected to waive their right.

You will receive a regular statement of the account. This lets you know where you stand, and helps you in planning for purchase of further credits. You will also receive a newsletter, keeping you informed of any changes in the plan and telling you in advance the cost of credits each year in time to purchase at the old price.

1-800-478-0003

1991 College Costs
1 Year Tuition, room & board

USC	\$ 19,612
Yale	\$ 20,820
UCLA	\$ 10,766
U of Wash	\$ 9,351
Ohio State	\$ 10,195
UAF	\$ 3,970

US News
1991 College Guide

S B

1 0 0

President Kelly appointed the following;

Senator Coghill, Chair

This occurred after the Special Session of the 16th Legislature and is not in the index or journal.

The only reference in the journal was June 29 when President Kelly appointed Senator Coghill to oversee the Office of the Ombudsman's Judicial Conduct Commission investigation regarding Judge Victor Carlson. (page 4423)

7-LS0594D ✓
Lauterbach
4/16/91

*Walter
OK*

CS FOR SENATE BILL NO. 100 (HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): **SENATE JUDICIARY COMMITTEE BY REQUEST**

A BILL

FOR AN ACT ENTITLED

1 "An Act eliminating a requirement that a court consider the findings and recommendations
2 of a neutral mediator when awarding shared child custody."

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

4 * Section 1. AS 25.20.090 is amended to read:

5 Sec. 25.20.090. **FACTORS FOR CONSIDERATION IN AWARDING SHARED CHILD**
6 **CUSTODY.** In determining whether to award shared custody of a child, the court shall consider

7 (1) the child's preference if the child is of sufficient age and capacity to form a
8 preference;

9 (2) the needs of the child;

10 (3) the stability of the home environment likely to be offered by each parent;

11 (4) the education of the child;

12 (5) the advantages of keeping the child in the community where the child
13 presently resides;

14 (6) the optimal time for the child to spend with each parent considering

- 1 (A) the actual time spent with each parent;
- 2 (B) the proximity of each parent to the other and to the school in which
- 3 the child is enrolled;
- 4 (C) the feasibility of travel between the parents;
- 5 (D) special needs unique to the child that may be better met by one parent
- 6 than the other;
- 7 (E) which parent is more likely to encourage frequent and continuing
- 8 contact with the other parent;
- 9 (7) [ANY FINDINGS AND RECOMMENDATIONS OF A NEUTRAL
- 10 MEDIATOR;
- 11 (8)] any evidence of domestic violence, child abuse, or child neglect in the
- 12 proposed custodial household or a history of violence between the parents;
- 13 (8) [(9)] evidence that substance abuse by either parent or other members of the
- 14 household directly affects the emotional or physical well-being of the child;
- 15 (9) [(10)] other factors the court considers pertinent.

SENATE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the factors to be considered when awarding shared child custody."

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

3 * Section 1. AS 25.20.090 is amended to read:

4 Sec. 25.20.090. FACTORS FOR CONSIDERATION IN AWARDING SHARED CHILD
 5 CUSTODY. In determining whether to award shared custody of a child, the court shall consider

- 6 (1) the child's preference ^{if the child is of sufficient age and capacity to form a}
 7 preference; ^{as set forth in L. 8.9. as det. by private center}
 8 (2) the needs of the child;
 9 (3) the stability of the home environment likely to be offered by each parent;
 10 (4) the education of the child;
 11 (5) the advantages of keeping the child in the community where the child
 12 presently resides;
 13 (6) the optimal time for the child to spend with each parent considering
 14 (A) the actual time spent with each parent;

1 (B) the proximity of each parent to the other and to the school in which
2 the child is enrolled;

3 (C) the feasibility of travel between the parents;

4 (D) special needs unique to the child that may be better met by one parent
5 than the other;

6 (E) which parent is more likely to encourage frequent and continuing
7 contact with the other parent;

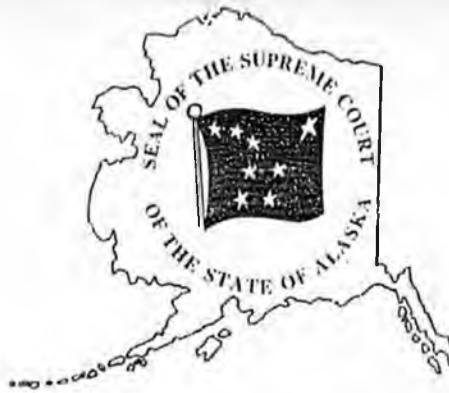
8 (7) any findings and recommendations of a custody investigator appointed by
9 the court [NEUTRAL MEDIATOR]; *et by default*

10 (8) any evidence of domestic violence, child abuse, or child neglect in the
11 proposed custodial household or a history of violence between the parents;

12 (9) evidence that substance abuse by either parent or other members of the
13 household directly affects the emotional or physical well-being of the child;

14 (10) other factors the court considers pertinent.

Revised



*Called
Chris
04 MAR 90*

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

February 15, 1991

303 K Street
Anchorage, AK 99501
(907) 264-8228

The Honorable Arliss Sturgulewski
Chairman, Senate HESS Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I am writing to request that the HESS Committee schedule a hearing on Senate Bill 100, relating to the factors for consideration in awarding shared child custody, at its earliest convenience. This bill was introduced at the request of the Alaska Court System.

In December, 1988, Chief Justice Warren Matthews created the Task Force on Mediation in response to an instruction from the Fifteenth Legislature. The purpose of the task force was to evaluate the potential benefits of mediation to consumers and to the court system. In its report, issued in June, 1990, the task force recommended the statutory change contained in SB 100.

Currently, AS 25.20.090 reads in pertinent part:

In determining whether to award shared custody of a child the court shall consider

. . . .

(7) any findings and recommendations of a neutral mediator;

. . . .

After study, the task force concluded that this statute as currently written endangers the mediation process and runs

The Honorable Arliss Sturgulewski
February 15, 1991
Page 2

contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision (even in the form of a recommendation) upon the parties if they cannot reach a decision.

To correct this problem, SB 100 would substitute the term "custody investigator appointed by the court" for the term "neutral mediator." The court system currently employs custody investigators who are appointed in specific cases to assist the court in obtaining the facts needed to make custody decisions. The findings and recommendations of a custody investigator are more appropriate for a court's consideration than are the findings of a neutral mediator.

Thank you for your courtesy. Please contact me if you have any questions or comments concerning this legislation.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh



February 18, 1991

Senator Sturgulewski, Chair
Senate H.E.S.E. Committee
PO Box V
Juneau, Ak. 99811

Re: Senate Bill 100

Dear Senator Sturgulewski,

*Dpt Nat Res
Instr.*
*Limit to ct - system
Board account
father*
*neutral mediator
investigator*
~~*investigator*~~

The purpose of this letter is to inform you that we are strongly opposed to Senate Bill 100: An act relating to the factors to be considered by the court in determining custody of a child. ~~Senate Bill 100: An act relating to the factors to be~~

As the law now stands the court can appoint a neutral mediator to interview both parents and the child(ren) to make a determination regarding if shared child custody is in the best interest of the child(ren), or the court may appoint the Custody Investigator's Office to make the recommendation.

We believe the elimination of the option to utilize a neutral mediator in these cases is a serious mistake because the Custody Investigators work for the court system, are not accountable for their decisions, are biased, and carry out their investigations in secrecy without either party having the option to record the interviews or to rebutt allegations made by the investigators.

On the other hand, neutral mediators in private practice are held accountable for their work, and if they are biased the public simply stops using them and finds one with a good reputation for objectivity.

The Custody Investigator's Office must be moved out of the secrecy of the court system before they are given any additional power over families and children in Alaska. This fact is stated clearly in testimony taken by the Senate Family Law Review Task Force. We would be happy to provide that information to you upon request.

We appreciate the opportunity to offer input on this important issue.

Sincerely,
Steven P. Strube
Steven P. Strube, President

PUBLIC OPINION MESSAGE

DEAR: SENATOR STURGULENSKI

NAME: EMIL PORTSCHELLER
TITLE: NATIONAL CENTER FAMILIES AND CHILDREN
ADDRESS: P.O. 1645
CITY: PALMER ZIP: 99645
PHONE: 746-3011
BILL NO: HB 93
SUBJECT: ~~CHILD CUSTODY~~ INVESTIGATORS
MESSAGE: & SB 100: WE STRONGLY URGE THE IMMEDIATE DEFEAT OF THE ABOVE PROPOSED
LEGISLATION. BOTH BILLS ARE A RUSE FOR STRENGTHENING THE COURTS IN FAMILY
LAW CASES, PARTICULARLY THE CUSTODY INVESTIGATION OFFICE. WE RECOMMEND AS AN
ALTERNATIVE, SEPARATING THE CUSTODY INVESTIGATION FUNCTION OUT OF THE COURTS
INTO THE PRIVATE SECTOR. PLEASE CONTACT OUR OFFICE IMMEDIATELY

POMID: 14124956
DATE: 91/02/14
TIME: 12:49:56
LIONAME: NAT-SU LIO

COPIES: REPRESENTATIVES SENATORS

CARNEY	COTTEN
LARSON	HALFORD
BARNES	PEARCE
ELLIS	FISCHER
FINKELSTEIN	HOFFMAN
LEMAN	MENARD
M.W.MILLER	RODEY
LINCOLN	ADAMS
B.DAVIS	FRANK
C.DAVIS	COLLINS
HANLEY	
M.A.MILLER	
GONZALES	
DONLEY	
GRUENBERG	
PARNELL	
MARTIN	



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

May 3, 1991

The Honorable Arliss Sturgulewski
Chair, Senate HESS Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Earlier this session, the HESS Committee held a public hearing on Senate Bill 100, relating to the factors to be considered in awarding shared child custody. As you will recall, this bill was introduced by request of the Alaska Supreme Court in response to a recommendation from the Task Force on Mediation.

The purpose of SB 100 is to advance the mediation process by amending AS 25.20.090. That statute lists the factors to be considered by a court when awarding shared custody of a child, including "any findings and recommendations of a neutral mediator." The task force concluded that this statute as written endangers the mediation process, and runs contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision, even in the form of a recommendation.

To correct this situation, the task force recommended that AS 25.20.090 be amended to substitute the phrase "custody investigator appointed by the court" for the phrase "neutral mediator." This substitution has the effect of codifying a court's inherent authority to appoint a custody investigator to assist it when determining child custody.

At the HESS Committee's first meeting on SB 100, members of non-custodial parents groups objected to this codification. On

The Honorable Arliss Sturgulewski
May 3, 1991
Page 2

review, I have determined that this codification is not needed to effectuate the purpose of the legislation; the mere deletion of the requirement that the findings and recommendations of a neutral mediator be considered by the court would suffice.

Accordingly, I would like to recommend that the HESS Committee adopt a committee substitute identical to CSHB 93 (HES). This version simply deletes from AS 25.20.090 the requirement that the findings and recommendations of a neutral mediator be considered by the court when determining child custody, without substituting a requirement that the findings and recommendations of a custody investigator be considered by the court. The court would retain the inherent authority to utilize custody investigators, but that authority would not be codified.

Thank you for your consideration. Please feel free to contact me if you have any questions or comments.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

Pamela Kirk, M.S.
Mediator
101 East 9th Avenue
Suite 5-A
Anchorage, Alaska 99501
(907) 274-2233

April 23, 1991

Senator Arliss Sturgulewski
Chairman
Senate Health, Education and Social Services Committee
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

RE: Senate Bill #100, an act relating to the factors to be considered in awarding shared child custody.

Dear Senator Sturgulewski:

My name is Pamela Kirk. I am a mediator in Anchorage, Alaska. I have been in Alaska for 11 years and have been providing mediation services for the last 2 years.

In reference to Senate Bill #100:

#7) "Any findings and recommendations of the custody investigator appointed by the Court (neutral mediator)"

I would like to indicate that a custody investigator is certainly not a neutral mediator and in no way should be considered as such. They are hired directly by the Court to do an investigation and to make recommendations to the Court. As a mediator who does divorce and dissolution mediation, the private mediation process is completely confidential and under no circumstances would I ever consider giving a recommendation to the Court if the mediation should fail and the dissolution or divorce should lead to litigation. I would ask you to please remove (neutral mediator) so that there can be no confusion that a custody investigator is considered to be a neutral party.

On a larger scale, Alaska utilizes ADR (Alternative Dispute Resolution) techniques infrequently. We are many years behind most of the other states in the development of ADR programs connected with the courts and not connected with the courts. Alaska could benefit by studying the other ADR programs developed in other states so that we would not have to "reinvent the wheel" and would profit from other research and mistakes.

It would be a shame not to have a well thought out plan on the establishment of ADR programs in the state from community justice centers to handle "small" disputes to mediation of multimillion dollar civil cases and everything in between. This "implementation of ADR in Alaska plan" would function so much better than a piecemeal, patchwork of various pieces of legislation submitted having to do with various ways of implementing various types of ADR in various places on various levels.

I was a member of the Alaska State Task Force on Mediation which was created under a mandate of the Alaska Supreme Court. The Task Force report contained a variety of recommendations. However, so far the Supreme Court Justice has yet to communicate with any of the former Task Force members regarding whether a permanent committee on ADR would be appointed to oversee the implementation of the Task Force recommendations.

It appears to me that a statewide task force on ADR would be a perfect forum to develop an "ADR implementation plan for Alaska." Enclosed you will find copies of some information on how Hawaii does "ADR."

Thank you very much for your consideration of these comments. If I can be of any further assistance, you may reach me directly at 274-2233.

Sincerely,



Pamela Kirk

PK/sr
Enclosures

CENTER FOR



ADR



The Judiciary, State of Hawaii

A N N U A L R E P O R T

Fiscal Year 1989-1990

Center for Alternative Dispute Resolution
The Judiciary
Ali'iolani Hale
417 S. King Street
Honolulu, Hawaii 96813

Phone: 808/548-3080

Fax: 808/548-6002



SUPREME COURT OF HAWAII

ALIHOLOANI HALE

P. O. BOX 2560

HONOLULU, HAWAII 96804

CHIEF JUSTICE
HERMAN LUM
ASSOCIATE JUSTICES
FRANK D. PADGETT
YOSHIMI HAYASHI
JAMES H. WAKATSUKI
RONALD T. Y. MOON

January 25, 1991

Ladies and Gentlemen,

It gives me great pleasure to convey to you the second annual report of the State of Hawaii's Center for Alternative Dispute Resolution. In keeping with Act 346, the Center has brought a critical new dimension of dispute resolution services to the people and institutions of our State. Important and far-reaching cases have been resolved through the Center's services and many new and innovative uses of mediation have been pioneered. As you probably know, the State of Hawaii has a national and international reputation for leadership in this area. I am most proud of the role the Judiciary in general and the Center in particular has played in achieving this reputation and I commend the Center to you.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Lum", written over a light-colored background.

HERMAN LUM
Chief Justice

"Our society is at a critical juncture.
Constructive approaches for confronting
difficult social problems are essential
to managing our global future."

- Barbara Gray

Part I

OVERVIEW:

THE CENTER FOR ALTERNATIVE DISPUTE RESOLUTION

Hawaii's Center for Alternative Dispute Resolution was formally established by the Hawaii State Legislature in 1989. Prior to that, it was known as the "Program on ADR" which was started in 1985 with the assistance of the National Institute for Dispute Resolution. Its purpose is to mediate disputes that affect the public interest or that involve the agencies of state or local government. It also promotes the use of dispute resolution alternatives for conflicts that involve government agencies and educates government and community decision-makers and the public-at-large about the availability of dispute resolution options in the State of Hawaii.

The Center handles various types of disputes involving actual or threatened court action over the allocation of scarce resources or the siting of public facilities which involve government agencies, private interest groups, and community or environmental action groups. It also handles complex litigation cases in which a court, regulatory, or administrative agency has determined that the dispute involves multiple parties, formidable factual or legal questions, or unwieldy scientific or technical issues. The Center also convenes and chairs policy roundtables on matters pertaining to standards, rules, and regulations as well as other cases which have been referred by judges, legislators, agency heads, or elected or appointed government officials.

To accomplish its objectives, the Center uses various ADR methods including mediation, negotiation, expert fact-finding, neutral evaluation, mediated policy roundtables, mini-trials, and special proceedings tailored to individual case needs. Generally the Center becomes involved in a case or project at the request of an official from one of Hawaii's three branches of government. Once a request is received, one of the Center's staff members consults with all of the parties involved and assesses the potential for the use of ADR. The Center then assists them in identifying and selecting the best type of ADR process to be used, helps to develop ground rules and procedural agreements, facilitates the selection and appointment of an appropriate third party neutral(s), and provides administrative, case management, and backup support until the ADR process is completed.

To assist with its cases, the Center maintains a panel of qualified neutrals, all of whom have extensive training and experience in ADR methods, and all of whom mediate under the "Standards for Private And Public Mediators In The State Of Hawaii" promulgated by the State of Hawaii's Supreme Court in 1986. Approximately half of

the panel are attorneys and the rest bring expertise from other business or scientific disciplines. Center staff also serve as mediators on some cases. Normally, mediators work in teams and are selected and appointed in accordance with the wishes of the parties. Compensation for members of the panel is arranged on a case-by-case basis with the cost of mediation typically being shared by all participating parties on a pro-rata basis. Where one or more parties lacks the capacity to pay, the Center will make special arrangements to insure that ADR is available.

In addition to its case work, the Center gathers state-of-the-art information on ADR methods and applications and makes it available to state and local government agencies and the general public through its published reports and directories, and newsletters. The Center also assists the courts and other branches of government in the development of pilot ADR projects. It offers technical assistance by providing advice and consultation to government departments and administrative agencies that are considering ways of adding ADR protocols to their existing rules and procedures. For state or county government groups interested in strengthening their ADR capabilities, the Center provides brief training and education programs. The Center is also available to assist with research and evaluation efforts that promote the use of dispute resolution in cases affecting the public or the state and local government.

Part II

CASES AND PROJECTS

CASES

Since its inception in 1986, the Center has sought to make mediation services more broadly available to cases that directly involve the agencies of State and County government or that may be referred to it by governmental officials. More than 75 cases -- most of them involving large numbers of people and complex legal and technical issues -- have been handled by the Center's Panel of Mediators. The majority of these were either settled or streamlined to the satisfaction of all parties.

In Fiscal Year 89/90, the Center, in addition to its pending, carry-over load of nearly a dozen different cases, took in seventeen new cases. Two were filed law suits. Three were actions pending or destined to be heard before administrative and regulatory agencies. Another four were policy mediations referred to the Center by legislative resolutions and seven other cases involved the design and implementation of facilitated public participation procedures. One case was a pre-litigation matter. The new cases undertaken by the Center were as follows:

- * Lanaians for Sensible Growth (LSG) v. Castle and Cooke, Inc. Mediation of permitting disputes pending before the State Land Use Commission and the Maui Planning Commission over a proposed golf course and housing development on the island of Lanai. Agreements were reached and threatened administrative and judicial litigation was avoided.

- * Psychotropic Medication Roundtable (HR 334-90). A legislatively requested policy discussion centering on prospective prescriptive privileges for psychologists. Mediated discussions took place between June and December, 1990 and a report containing several consensus-based recommendations for improving the treatment of mental illness in Hawaii was forwarded to the Legislature.

- * Hawaii Medical Association (HMA) / Hawaii Academy of Plaintiff Attorneys (HAPA) HMA/HAPA. Informal discussions aimed at improving the definition of medical tort policy issues were convened and moderated by the Center at the request of a State Senator. Discussions are continuing.

- * Uninsured Motorist Roundtable (HR 253-90). A legislatively requested policy discussion aimed at clarifying issues and recommendations pertaining to public and private access to information on driving records. Meetings were held and a consensual report was forwarded to the Legislature.

- * Alternative Dispute Resolution Roundtable (HR 176-90). A legislatively requested policy discussion involving judges, attorneys, and private ADR providers focusing on proposed steps that would increase the use of mediation and arbitration in the courts. Discussions are still underway and a report to the Legislature will be made in February, 1990.

- * Strategic Planning, Department of Psychiatry, School of Medicine, University of Hawaii. A facilitated planning retreat requested by the Chairman and aimed at updating the department's mission statement and establishing departmental consensus on goals and objectives for the 1990s. Completed.

- * Files Hawaii v. Havlin Witkin et al. Mediation of a construction and product defects litigation involving multiple issues and parties. Mediation is still in progress.

- * Developmental Disabilities Roundtable. A policy dialogue requested by the Governor and involving State, County, and private, non-profit organizations. The Roundtable met in small and large group processes between May and December, 1990 and focused on issues relating to the improvement of purchase of services, agency coordination, and the delivery of services to the developmentally disabled. Consensual recommendations were reached and a report forwarded to the Governor.

- * Kamoe Family Lands. Mediation of a threatened litigation over rights to a large track of ancestral land inherited by an extended family of native Hawaiians. Agreements were reached and litigation was avoided.

- * Waikiki Community Center. Facilitation of a series of meetings between board members and United Way representatives over property management and service

planning issues. Issues were narrowed and agreements were reached.

- * Puna Planning. Facilitation and process design assistance to the County of Hawaii Planning Department regarding the organization and implementation of public input meetings centering on the Puna Community Development Plan. In progress.
- * Energy Interagency Role Clarification Task Force. Facilitation and mediation of a policy dialogue requested by the Department of Business and Economic Development and aimed at improving the coordination of agencies involved in energy and energy delivery services. Meetings successfully completed and a report was forwarded to DBED.
- * Kauai Sexual Assault and Rape Services. Mediation between two agencies involved in the delivery of State-funded sexual assault and family treatment services on Kauai. Working agreements reached.
- * State of Hawaii v. Kuliouou Valley Associates, et al. Appointment of a "Special Master" to manage and mediate a soils engineering and construction defects case involving a 20-home subdivision built under a turnkey contract for the State of Hawaii. Ongoing.
- * Commission on Persons with Disabilities. Mediation of an employer and employee dispute. Mediation process completed resulting in procedural agreements between the parties.
- * Waikiki Improvement Association. A series of facilitated input sessions for business, community and government leaders sponsored and requested by the Office of State Planning (OSP) and focused on the development of a long-range plan for the Waikiki area. Process completed.
- * Friends for Ewa. A series of facilitated meetings involving residents, specialists, government officials, unions, and landowners. Discussions focused on historic preservation of the Ewa Plantation Village and resulted in broad agreements between the participants.

TECHNICAL ASSISTANCE - TRAINING,
EDUCATION, AND SYSTEM DESIGN

In addition to its day-to-day work on mediation cases, the Center for ADR also provides various kinds of short and long-term technical assistance to the agencies and organizations of government. Routinely, the Center responds to informational requests from State and County departments seeking information on mediation, arbitration, and other dispute resolution methods. The Center also publishes various newsletters and directories aimed at enhancing public understanding about the availability and efficacy of ADR methods.

In the last fiscal year, the Center was involved in the following other activities and projects:

- * Court-Annexed Arbitration. Provided fiscal management of the First Circuit's CAP program. Planned, implemented, and helped conduct arbitrator trainings for 800 attorneys in the First, Second, Third, and Fifth Circuits. Advised the Judicial Arbitration Commission on rule and policy changes. Administered the external evaluation of the CAP by the University of Hawaii Program on Conflict Resolution.

- * District Court: Small Claims Mediation. Assisted the District Court of the First Circuit in the planning and implementation of a pilot mandatory small claims mediation project now underway in Oahu's urban and rural courts.

- * Family Courts: Divorce Mediation. Provided assistance to the Board of Family Court Judges and Directors regarding the development of a "second generation" divorce mediation program. The Center is currently helping to write standards and procedures for the pilot phase which is expected to begin in the Second Circuit in the next fiscal year.

- * Training: Intensive Mediation Course for Elected and Appointed Public Officials. The Center organized

and implemented its first intensive mediation skills training for 50 judges, legislators, and departmental administrators working in State and County Government. In conjunction with its Puna Planning project, the Center also trained 25 large-group facilitators in Hilo. Other trainings included mediation and meeting management for the Hawaii Housing Authority and a course on mediation for the Hawaii State Bar Association's Fee Dispute Program.

* Contracts for Private Providers. The Center administered -- and helped restructure -- the Judiciary's purchase-of-service contracts with the five State supported community mediation centers located on Oahu, Maui, Molokai, East and West Hawaii, and Kauai. It facilitated the development of a future master contract with a newly formed entity called Mediation Centers of Hawaii.

* National and International Assistance. The Center provided consultative, training, and technical assistance to the following other groups and organizations: the Center for International Commercial Dispute Resolution in Honolulu, Hawaii; the Australia Commercial Disputes Center and the State governments of New South Wales and Queensland; the Ohio Commission on Dispute Resolution and Conflict Management; the National Institute for Dispute Resolution in Washington, D.C.; and the State of Oregon's Dispute Resolution Commission.

During Fiscal Year 1989-1990, the Center was pleased to receive an Honorable Mention Justice Achievement Award from the National Association for Court Management and the Public Policy Award from the Mental Health Association of Hawaii.

Part III

LOOKING AHEAD

In the coming fiscal year, the Center intends to further develop and perfect its mediation, facilitation, and consensus-building resources and to make these methods available to a larger number of cases. To accomplish this goal, Center staff are planning to:

- * identify and train additional qualified mediators and facilitators, particularly on the islands of Kauai, Maui, and Hawaii;
- * take in and help resolve at least 25 new cases that are referred by the agencies of State and local government or that affect the public interest;
- * help pilot a new civil mediation project that would make mediation services more accessible in the Circuit Courts;
- * complete the evaluation and probable institutionalization of the pilot Small Claims Mediation Program now underway in the District Court of the First Circuit; and
- * assist the Board of Family Court Judges and Directors with the implementation of new statewide mediation procedures scheduled to begin on Maui in Fiscal Year 1990-1991.

The Center welcomes comments, inquiries, and suggestions by Hawaii's citizens and public officials.

Part IV

FINANCIAL STATEMENT

FY89-90 *

	FY89-90 APPROPRIATED	FY89-90 ALLOCATED	FY89-90 EXPENDED	FY89-90 LAPSED
PERSONAL SERVICES	\$232,712.00	\$173,989.00	\$101,326.00	\$72,663.00
OTHER CURRENT EXPENSES	\$569,628.00	\$635,794.00	\$599,282.00	\$36,512.00
EQUIPMENT	\$4,330.00	\$5,330.00	\$4,975.00	\$355.00
MOTOR VEHICLES	\$0.00	\$0.00	\$0.00	\$0.00

NOTES:

- * This Fiscal Year 1989-1990 financial statement reflects combined funds for the Center for Alternative Dispute Resolution (CADR) and the Court Annexed Arbitration Program (CAAP) of the First Circuit.
- * Lapsed funds in the Personal Services category reflect CAAP positions not fully filled through 6/30/90.
- * Funds from the Personal Services category were moved to the Other Current Expenses category to cover personal services contracts for staff members of CAAP (7/1/89-6/30/90) and CADR (7/1/89-9/30/89).
- * Because the CAAP was developmental during FY89-90, there was no historical basis for budgeting of CAAP Arbitrator honorarium funds (\$204,000.00). Revision of CAAP rules and the development of guidelines/procedures for case stipend payments needed to be completed prior to implementation of a statewide arbitrator training and an arbitrator case stipend payment system.

Part V

LEADERSHIP

Herman Lum, Chief Justice
Supreme Court of Hawaii

ADVISORY BOARD

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Department of Commerce and Consumer Affairs

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Office of the Ombudsman

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Maui County Council

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Native Hawaiian Legal Corporation

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University of Hawaii at Manoa

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William A. Stricklin, Esq.

STAFF

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Director

Dorothy D. Letts
Assistant Director

Karen T. Takahashi
Program Specialist

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David Chandler	James H. Lawhn
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Steven P. Golden	Susan J. Tius
Max W.J. Graham	

Center for Alternative Dispute Resolution
The Judiciary
417 S.King Street, Suite 207
Honolulu, Hawaii 96813

808/548-3080

C A S E L O G

December, 1990

Code

LS = Law suit
PM = Policy mediation
F = Facilitation
A/R = Administrative/Regulatory
O = Other

CASE NO.	TYPE	DESCRIPTION
90-32	O	<u>Yukimura v. Kauai County Council.</u> Mediation of an impending lawsuit over interpretation of the County Charter vis-a-vis competing FY 90 administration and council budgets.
90-31	A/R	<u>Integrated Resource Planning Collaborative Process (IRPCP).</u> A facilitated consensus-building process aimed at narrowing differences of opinions regarding demand-side energy planning. Formal Hearings are being conducted by the Public Utilities Commission.
90-30	F	<u>Department of Agriculture and Livestock Industry.</u> Facilitation of a DOA organized meeting to consider the implications of a slaughterhouse and feedlot closing on Oahu. Short and long-term strategies were developed and a new livestock cooperative was formed.
90-29	F	<u>Waikiki Master Plan.</u> At the request of the Department of General Planning, facilitation of working groups (physical environment, transportation, and economics) for the purpose of developing a new master plan and investment strategy for the Waikiki district.
90-28	F	<u>Western Pacific Regional Fishery Management Council.</u> Facilitation of public input meetings for the Fishery Management Council.
90-27	LS	<u>Wai Utilities.</u> A multiparty law suit voluntarily referred by the Corporation Counsel and other parties who are seeking resolution of a complex contract litigation centering on material services to the Board of Water Supply.
90-26	F	<u>Life Foundation.</u> Design and implementation of two facilitated planning retreats (staff and board of directors) for the state-supported AIDS foundation.
90-25	O	<u>Bearrineu v. Animal Quarantine.</u> Mediation of a prospective lawsuit concerning animal care at the State's animal quarantine facilities.
90-24	F	<u>Kilauea Master Plan.</u> Facilitation and mediation assistance between developers, community groups and

the County of Kauai regarding the development of a master plan for the Kilauea area.

- 90-23 F Kauai Growth Management Plan. Design and implementation of a collaborative planning process using facilitated focus groups, a planning conference, and mediation assistance aimed at the development of a comprehensive growth management plan for the County of Kauai.
- 90-22 A/R Fazadin v. DLNR. Assistance requested by the Department of Land & Natural Resources for a dispute over a conservation district use application (CDUA) for a proposed single family use on Mount Olomana on the Island of Oahu.
- 90-21 A/R Takamoto v. Okamura. A client-lawyer fee dispute referred to the Center pursuant to the Mediation and Arbitration Rules of the Hawaii State Bar Association.
- 90-20 F UH Gender Issues Forum. Facilitated discussions between faculty and graduate students over gender issues in the Department of Political Science. Discussions emanate from prior grievances and disputes.
- 90-19 O Ocean Farms of Hawaii, Inc. Mediation of a threatened lawsuit between shareholders, directors, and officers in a multi-national high technology company.
- 90-18 PM Kalaupapa Child Visitation. Mediation among the residents of Kalaupapa concerning proposed policies of child visitation.
- 90-17 O H-3 Historic Site Interchange. Facilitated meeting over highway construction and historic sites preservation between the Department of Transportation and members of the Hawaiian community.
- 90-16 F CZM Assessment. Facilitation of statewide large and small group processes to identify issues, concerns, problems and solutions to be addressed in the evaluation of the Coastal Zone Management program.
- 90-15 F Ocean Resources Management Council. Facilitation of

statewide meetings dealing with approaches for identifying and protecting ocean resources.

- 90-14 A/R Lanaians for Sensible Growth (LSG) v. Castle and Cooke. Mediation of permitting disputes pending before the State Land Use Commission and the Maui Planning Commission over a proposed golf course and housing development on the Island of Lanai.
- 90-13 PM Psychotropic Medication Roundtable. A legislatively requested policy discussion centering on prospective prescriptive privileges for psychologists (HR 334-90).
- 90-12 PM Hawaii Medical Association (HMA) / Hawaii Academy of Plaintiff Attorneys (HAPA)MA/HAPA. Informal discussions over medical tort policy issues convened and moderated at the request of Senator Andy Levin.
- 90-11 PM Uninsured Motorist Roundtable. A legislatively mandated policy dialogue involving public and private agencies and organizations and dealing with the issue of access to information on driving records and the design of insurance rating alternatives.
- 90-10 PM ADR Roundtable. A legislative requested policy discussion involving judges, attorneys, and private ADR providers and focusing on proposed rule and statute changes aimed at increasing the use of mediation and arbitration in the courts (HR 176).
- 90-09 F Strategic Plan Development, School of Psychiatry, University of Hawaii. A facilitated planning retreat aimed at updating the department's mission statement and establishing goals for the 1990s.
- 90-08 LS Files Hawaii v. Havlin Witkin et al. Mediation of a construction and product defects litigation involving multiple issues and parties.
- 90-07 F Developmental Disabilities Roundtable. A policy dialogue with state, county, and private, non-profit organizations centering on issues relating to the improvement of purchase of services, agency coordination, and the delivery of services to the developmentally disabled.

- 90-06 O Kamoe Family Lands. Mediation of a threatened litigation over a large track of ancestral land inherited by a family native Hawaiians.
- 90-05 F Waikiki Community Center. Facilitation of meetings between board members and United Way representatives over property management and service planning issues.
- 90-03 F Puna Planning. Assistance to the County of Hawaii Planning Department with the design and implementation of facilitated public meetings centering on the Puna Community Development Plan.
- 90-02 F Energy Interagency Coordinating Committee. A policy dialogue requested by the Department of Business and Economic Development aimed at coordination of agencies involved in energy and energy delivery services.
- 90-01 A/R Kauai Sexual Assault and Rape Services. A mediation concerning the delivery of sexual assault and family treatment services on Kauai.
- 89-12 LS State of Hawaii v. Kuliouou Valley Associates, et. al.. Appointment of a special master to discovery to help facilitate resolutions in a soils engineering and construction defects case involving a 20-home subdivision built under a turnkey contract for the State of Hawaii.
- 89-11 A/R Commission on Persons with Disabilities. Mediation of a dispute arising from mutual grievances between an employer and employee.
- 89-10 F Waikiki Improvement Association. A series of facilitated input sessions for business, community and government leaders sponsored by the Office of State Planning (OSP) and focused on the development of a long-range plan for the Waikiki area.
- 89-08 F Friends of Ewa. A series of facilitated participation meetings aimed at involving residents, specialists, government officials, unions, and landowners in discussions over historic preservation of an old Plantation Village.

- 89-07 A/R Puna Geothermal Venture (Geothermal). Mediation conducted under County of Hawaii Rule 12 concerning the development of a well field and a 25 megawatt commercial geothermal power plant.
- 89-06 A/R Scientific Observation Holes (Geothermal). Mediation conducted under County of Hawaii Rule 12 concerning an application to drill four test bores to research underground steam resources.
- 89-05 F State Conference on Renewable Energy. Design and facilitation assistance to the Department of Business and Economic Development regarding participation programs for hydro, wind power, geothermal, and ocean thermal energy production.
- 89-04 A/R Port Pilots. Mediation of a lawsuit and regulatory conflicts concerning Hawaii's harbor pilots.
- 89-03 A/R Hanalei Boats. Mediation between the boat operators, the County of Kauai and a community group over tour boat impacts on the north shore of Kauai.
- 89-02 FM Mental Health Roundtable. A legislatively mandated policy dialogue involving state agencies and consumer and advocacy groups and centering on issues related to involuntary civil commitment and the delivery of services to the seriously disabled mentally ill.
- 89-01 A/R Mental Health Alliance and Department of Health. A mediation requested by State Senator Andy Levin involving the Mental Health Division (DOH) and mental health advocates. Issues centered on the development of budget provisos for the division's budget.
- 88-19 LS Airport Associates 1981 v. Theo Davies, Inc. A lawsuit over construction and defective performance of a large industrial air conditioning system.
- 88-18 A/R Liedke v. State of HI (Department of Education). Mediation of a dispute involving the development of individual educational plans (IEPs) and the provision of special education resources by the State of Hawaii.

- 88-17 LS Osborne v. Kaapuni Community Association, et al. A lawsuit over street and beach access encroachments in a private subdivision.
- 88-16 PM Geothermal Roundtable. A facilitated information exchange process between the state agencies and community advocacy organizations focusing on the development of geothermal energy on the Island of Hawaii.
- 88-15 O Hakipuu Stream. Mediation of a dispute between the community and the UH Aquaculture facility concerning noise and operations.
- 88-14 A/R Hasegawa v. State of Hawaii. Mediation of a dispute involving the development of an individual educational plan (IEP) and the provision of special education resources by the State of Hawaii.
- 88-13 LS Kapoho Beach Community Assn. v. Kapoho Land & Development. mediation of a class action lawsuit over road maintenance and road maintenance contributions in an unincorporated subdivision.
- 88-12 PM Family Court Strategic Planning Process. Facilitated planning and goal setting for the State's Family Courts and the development of consensus-based management objectives for the 1990s.
- 88-11 A/R Waimano Home Parent Association v. State of Hawaii. Mediation of a pre-litigation lawsuit over de-institutionalization of a state-run special care facility.
- 88-10 O Dispute between Kaluhiwas and HECO, Heeia Kea evictions. Mediation concerning the conditions of eviction from a utility-owned landholding.
- 88-09 + LS Kaiser Development Co. v. Stringer, et al. Mediation of a lawsuit over design and construction defects in a 25-home subdivision.
- 88-08 LS Nelson v. University of Hawaii Student Loan. Mediation of a dispute arising from repayment of a student loan.

- 88-07 LS State of Hawaii v. Haines. Mediation of a dispute over the alleged confiscation of commercial operator's equipment and harassment charges.
- 88-06 PM Condominium Leasehold Conversion Discussion Group. Mediation of a pending legislative matter centering on the issue of leasehold condominium conversion
- 88-05 LS Kahala Community Association v. Collin Fritz, et al. Mediation of a class action lawsuit concerning setback provisions affecting 800 homes.
- 88-04 O Kewalo Tenants and New Landlords. Conciliation meetings over rule enforcement, maintenance and eviction policies between residents and a new building owner.
- 88-03 LS Adams, et al. v. City and County of Honolulu. Mediation and formal arbitration of a lawsuit involving 200 property damage claims arising from the 1987 New Year's Eve Flood.
- 88-02 LS AOAO Park at Pearlridge v. Honfed Development et al. An assisted settlement conference process for a complex litigation case alleging construction defects and consequent water damage in a large condominium.
- 88-01 LS Powers, et al. v. Bergier, et al. Mediation of a multi-party and multi-issue lawsuit involving defamation and conflict of interest allegations by the Board of Directors of a large housing project.
- 87-11 PM Helicopter Roundtable. A 6 month mediation involving the County of Kauai, representatives of private helicopter companies, and environmental and community advocates and focusing on the regulation of the tour helicopter industry on the island of Kauai.
- 87-10 LS Kishi Trustees, et al. v. Peacock. Mediation of a complex business litigation case referred by Circuit Court judge on the Island of Maui and involving lessor and lessee issues.