

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7693 SENATE STATE AFFAIRS

247

The Honorable Jim Duncan
October 10, 1990
Page 2

system is "...to encourage qualified teachers to enter and remain in service with participating employers...". The question that must still be asked is whether this type of an enhancement is necessary. Certainly all indications to us by the employers are that they are not having difficulty in encouraging and retaining teachers.

I hope that this information is helpful in your deliberations. Once again, I apologize for the delay in this response. If we can be of additional help, please contact us.

Sincerely,



Robert Stalnaker
Deputy Director

RFS/ksl
RB 90-008

Parla

P.O. Box 020605
Juneau, Alaska 99802
April 22, 1990

Senator Jim Duncan
Box V
Juneau, Alaska 99811

Dear Senator Duncan:

Please initiate and/or support legislation to extend eligibility for retirement under the teachers' retirement system (TRS) to persons, like myself, who taught for many years at Alaska Methodist University.

Alaska Methodist University was a fine university and a credit to the State of Alaska. I believe AMU would have continued to flourish had it not been for the State university system moving into the Anchorage area and offering courses at prices with which we simply could not compete. Those of us who taught at AMU contributed significantly to the State of Alaska, devoting many years to university teaching in Alaska. I believe it would be reasonable and fair for the State to recognize our contribution.

I had planned to retire in the teachers' retirement system by continuing to teach at UAS, where I am presently employed, but I have just lost my job, leaving me little hope of staying in the system until vested. I have taught at the university level for 17 years, 15 of which were in Alaska (9 at AMU, and 6 at UAS). With the exception of two years (1976-1978), I have been a continuous resident of Alaska since 1963. Alaska is my home and I intend to stay here.

Thank you for your attention to this matter.

Sincerely,

Gerard Garland
Gerard Garland

Alaska State Legislature

f.n.7
Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 165-3091
Fax: (907) 163-3351

July 17, 1990

MEMORANDUM

TO: Senator Jim Duncan
ATTN: Roxanne Stewart
FROM: Carol R. Vandor *CRV*
Legislative Analyst
RE: Use of Outside Service for TRS Vesting in Other States
Research Request 91.002

You asked if Teachers' Retirement Systems (TRS) in other states allow teachers to purchase outside service and whether the outside service may be used to satisfy vesting requirements.

I spoke with John Rogers of the National Education Association in Washington, D.C. Mr. Rogers was not familiar with the specifics of each state's TRS. However, he believed that, generally, outside service may not be used to satisfy vesting requirements. He suggested I call the progressive states of California, Michigan, New York, and Ohio. I also called Montana, New Mexico, and Washington.¹ Of these seven states, only Ohio allows teachers to use outside service to satisfy vesting requirements. Following is a summary of my phone conversations with retirement representatives in these states.

California - The Teachers' Retirement System does not allow teachers to purchase outside service. The TRS requires five years of California TRS service to vest.

Michigan - The Educational Retirement System (ERS) allows teachers to purchase a maximum of 15 years of outside service. However, outside service may not be used to satisfy vesting requirements and it must be matched with service in the Michigan ERS. Teachers are allowed to purchase outside service prior to vesting, but the outside service is not added to total service until the member is vested. Ten years of Michigan ERS service is required to vest.

¹According to *1988 Comparative Survey of Major Public Pension Plans* prepared by the Wisconsin Retirement Research Committee, Arizona, Colorado, Hawaii, Idaho, Nevada, Oregon, Utah, and Wyoming do not have a separate retirement system for teachers. Teachers in these states belong to the same retirement system as other public employees.

Senator Duncan
July 17, 1990
Page 2

New York - The Teachers' Retirement System does not allow teachers to purchase outside service. To vest in TRS, a teacher must have ten years of service in the public school system.

Ohio - The Teachers' Retirement System allows teachers to purchase a maximum of five years of outside service. This service must be matched with service in the Ohio TRS. The Ohio TRS requires five years of service to vest and outside service may be used to satisfy vesting requirements. Therefore, a teacher who has three years of Ohio TRS service and purchases three years of outside service is vested in the Ohio TRS.

Montana - Teachers hired prior to July 1, 1989 may purchase a maximum of five years of outside service. The TRS requires five years of Montana TRS service to vest. A teacher must be vested prior to purchasing outside service. Teachers hired after July 1, 1989 may not purchase outside service.

New Mexico - The Educational Retirement System requires five years of New Mexico ERS service to vest. A teacher may purchase up to five years of outside service prior to vesting, but the outside service may not be used to satisfy vesting requirements.

Washington - The Teachers' Retirement System does not allow teachers to purchase outside service. The TRS requires five years of Washington TRS service to vest.

If I may be of further assistance, please contact this office.

S B

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BILL SB90 DATE RECEIVED 1-31-91

TITLE ABSENCES - LONGEVITY BONUSES

CONTACT KATIE OFFICE/DEPT RODEY PHONE 3793

SPONSOR RODEY

COMMITTEE ACTION

DATE ACTION TAKEN

2-4-91 DISCUSSED, CONTINUED

2-6-91 DISCUSSED, CONTINUED (NO FN)

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

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

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

SENATE BILL 90

This bill will allow seniors who otherwise qualify for the longevity bonus to be absent from the state for a period up through 90 days (the day after departure is considered the first day of absence; the day before the day of return is considered the last day of absence) without forfeiting a longevity bonus check during the 90 day period.

Under existing law, (unless the absence is beyond a recipients control), a recipient forfeits a check if absent for more than 30 but less than 60 consecutive days. If absent more than 60 but less than 90 consecutive days, two checks are forfeited. If more than 90 consecutive days, the recipient is disqualified for a 12 month period.

Other causes for disqualification are outlined in 2AAC 40.110 (see attached regulations).

2 AAC 40.090. NOTICE AND MEASUREMENT OF ABSENCE FROM THE STATE. (a) A recipient must notify the administrator before leaving the state if an absence of more than 30 days is planned. After an absence from the state which exceeds 30 days, the recipient shall notify the administrator within 30 days after his return of the exact date of his departure and return.

(b) For the purposes of this section, the day after departure from the state is considered the first day of absence; the day before the day of return is considered the last day of absence. (Eff. 9/13/81, Register 79)

Authority: AS 47.45.030
AS 47.45.100(1)

2 AAC 40.100. INTERRUPTION OF BONUSES TO UNQUALIFIED PERSONS. (a) A bonus will not be paid for the period during which a recipient is unqualified for any of the following reasons:

- (1) absence from the state for more than 30 consecutive days;
- (2) confinement in a mental health institution as provided in AS 47.45.070, except as provided in 2 AAC 40.010(b);
- (3) confinement in a correctional institution as provided in AS 47.45.070; or
- (4) residence in a nursing home as provided in AS 47.45.070(2), except as provided in 2 AAC 40.010(b).

(b) The administrator will send written notice to the recipient within 15 days after receipt of information showing the recipient to be unqualified.

(c) Bonus payments will resume upon reapplication by the recipient showing that he meets the eligibility requirements established in this chapter. (Eff. 9/13/81, Register 79; am 6/19/85, Register 95)

Authority: AS 47.45.030
AS 47.45.070
AS 47.45.100(1)

2 AAC 40.110. CAUSES FOR DISQUALIFICATION. (a) The commissioner of administration will disqualify a recipient for a period of 12 months after the date on which the recipient would otherwise be qualified to receive bonuses if the recipient is absent from the state for one or more of the following periods, unless the commissioner of administration determines that the absence was beyond control of the recipient:

- (1) absence from the state for more than 90 consecutive days;
- (2) interrupted absences from the state over a period of more than 90 days without being present in the state for at least 30 consecutive days between the first day of the first absence and the last day

of the last absence, except that no absence of 30 days or less will be considered in calculating total absence;

(3) absence from the state for more than 90 days in a 12-month period, except that no absence of 30 days or less will be considered in calculating total absence.

(b) In computing the period of absence for possible disqualification under (a) of this section, the administrator will consider as beyond the recipient's control the days during which the recipient or his spouse or other dependent was hospitalized or, as part of a medical treatment, advised by a physician not to travel. The recipient must document the number of days to be excluded from the total period of absence by hospital bills, other hospital records or his physician's written statement.

(c) The commissioner of administration will permanently disqualify a recipient from receiving bonuses if the recipient obtains one or more bonuses to which he is not entitled by

- (1) failing to notify the administrator within 30 days after his return of his absence from the state for a period of more than 30 consecutive days;
- (2) receiving bonuses or sending reapplication stubs with the assistance of a second party during a time when the recipient is unqualified for a bonus; or
- (3) making a knowing false statement in support of an application or reapplication for a bonus.

(d) A recipient who is disqualified under (c) of this section shall make restitution to the program for bonus payments he received to which he was not entitled. (Eff. 9/13/81, Register 79; am 6/19/85, Register 95)

Authority: AS 47.45.030 AS 47.45.070(4)
AS 47.45.040 AS 47.45.100(1)

2 AAC 40.115. TRANSITION RULES REGARDING ABSENCES. (a) A recipient whose absence from the state began before June 9, 1985, will not be disqualified under 2 AAC 40.110(a)(1) or (2) unless the absence exceeds 180 days.

(b) For the purpose of calculating the 12-month period in 2 AAC 40.110(a)(3), a recipient will be disqualified for absence exceeding 180 days during a 12-month period ending before June 9, 1985, or, if the recipient was out of the state on June 8, 1985, the 12-month period ending with the recipient's return to the state. A recipient will be disqualified for absence exceeding 90 days during the 12-month period beginning on June 9, 1985, or, if the recipient was out of the state on June 8, 1985, beginning the day after the recipient's return to the state. (Eff. 6/19/85, Register 95)

Authority: AS 47.45.030
AS 47.45.070(4)
AS 47.45.100(1)

2 AAC 40.120. PROCEDURES FOR DISQUALIFICATION. If the administrator obtains information tending to show that a recipient should be disqualified, he will

(1) immediately notify the recipient by certified mail, return receipt requested

(A) of the reason for the proposed disqualification;

(B) of the duration and effective date of the proposed disqualification, which will be no sooner than 30 days after the mailing of the notice; and

(C) that within 30 days after the date of mailing of the notice the recipient

(i) may submit evidence in writing to show that an absence from the state was beyond his control or that for any other reason, he should not be disqualified; and

(ii) if evidence is submitted under (i) of this subparagraph, may request a hearing on the question of the proposed disqualification;

(2) grant a hearing in accordance with 2 AAC 40.070 to a recipient who requests a hearing and offers evidence to show that he should not be disqualified; and

(3) notify the recipient in writing within 30 days after the hearing or after the receipt of the recipient's evidence if there is no hearing

(A) if the recipient is disqualified, of the reasons for and the effective date and duration of the disqualification, of the steps necessary for qualification, and of his right to appeal the decision under AS 47.45.060 within 30 days after the mailing of the notice; or

(B) if the recipient is not disqualified, of the reasons for the decision and of his right to receive bonuses withheld as a result of the proposed disqualification. (Eff. 9/13/81, Register 79)

Authority: AS 47.45.040
AS 47.45.050
AS 47.45.100(1)

2 AAC 40.130. REAPPLICATION FOLLOWING DISQUALIFICATION OR INTERRUPTION OF BENEFITS. (a) A recipient whose benefits are interrupted because of an absence from the state of more than 30 days must reapply to the administrator within 30 days after his return to the state.

(b) A recipient whose benefits are interrupted because of confinement in a mental institution must reapply to the administrator within 30 days after his release from confinement.

(c) A recipient whose benefits were interrupted because of confinement in a correctional institution must reapply for benefits by providing the administrator with a copy of his release from confinement within 30 days after his release from confinement.

(d) If a recipient remains in the state less than 30 days after receipt of his first bonus following an absence of more than 30 days, he forfeits the bonus received. The recipient must return the bonus to the administrator, or the administrator will withhold the next bonus for which the recipient becomes eligible.

(e) A recipient who is disqualified because of an absence described in 2 AAC 40.110(a) may qualify for reinstatement by remaining in the state continuously for a period of 12 months. The recipient must apply in writing for reinstatement of monthly payments upon completion of the 12-month period.

(f) A recipient whose benefits were interrupted because of residence in a nursing home must reapply to the administrator within 30 days after leaving the nursing home in order to be eligible for a bonus during the first month after that change of residence. (Eff. 9/13/81, Register 79; am 6/19/85, Register 95)

Authority: AS 47.45.070(2)
AS 47.45.100(1)

2 AAC 40.140. FINAL TERMINATION. (a) The administrator will discontinue sending bonus payments to a recipient if the administrator receives notice that the recipient is deceased or has discontinued residency in the state.

(b) A bonus payment issued for a month after the month of the recipient's death must be returned to the administrator.

(c) A bonus payment issued for a month after the month during which the recipient last resided in the state must be returned to the administrator. (Eff. 9/13/81, Register 79)

Authority: AS 47.45.100(1)
AS 47.45.130

2 AAC 40.150. ACCESS TO FILES. (a) The administrator shall, upon the request of an applicant or recipient or his legal representative, and within the time limits prescribed in 6 AAC 95.070, send the applicant, recipient, or legal representative a copy of the information contained in the applicant's or recipient's file without charge for the cost of the copy or postage.

(b) Personal information contained in an applicant's or recipient's file held by the administrator will not be made available to the public without written authorization by the applicant or recipient. (Eff. 9/13/81, Register 79; am 10/8/82, Register 84)

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB90

Revision Date: _____ Department Affected: Administration
 Title: "An act relating to qualifications for a Longevity Bonus" BRU: Longevity Bonus
for a Longevity Bonus Component: Grants
 Sponsor: Senator Rodey
 Requestor: Senator Rodey COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	539.5	961.1	1,008.2	1,054.6	1,097.9	1,137.4
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	539.5	961.1	1,008.2	1,054.6	1,097.9	1,137.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: \$0.0

ANALYSIS: (Attach a separate page if necessary.)

(SEE ATTACHED)

Prepared By: Bruce Aronson Phone: 465-4400
 Division: Pioneers' Benefits Date: 2/4/91

Approved by Commissioner: Millett Keller
 Agency: Administration Date: 2/4/91

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

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB90

Revision Date: _____ Department Affected: Health & Social Services
 Title: "An Act relating to qualification for a longevity bonus." BRU: Assistance Payments
 Sponsor: Rodey Component: Old Age Assistance - Alaska Longevity Bonus Hold Harmless
 Requestor: _____ COMPONENT SERIAL NO.

	2	2	3
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No fiscal impact

ANALYSIS: (Attach a separate page if necessary.)
 If there is any fiscal impact on the OAA-ALB Hold Harmless program, it will be too small to measure.

Prepared By: Jan J. Hansen, Director Phone: 465-3347
 Division: Division of Public Assistance Date: 2/4/91

Approved by Commissioner: [Signature]
 Agency: Department of Health & Social Services Date: 2/4/91

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

CORRECTION

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB90

Revision Date: _____ Department Affected: Administration
 Title: "An act relating to qualifications BRU: Longevity Bonus
for a Longevity Bonus Component: Grants
 Sponsor: Senator Rodey
 Requestor: Senator Rodey COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS. CLAIMS	539.5	961.1	1,008.2	1,054.6	1,097.9	1,137.4
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	539.5	961.1	1,008.2	1,054.6	1,097.9	1,137.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: \$0.0

ANALYSIS: (Attach a separate page if necessary.)

(SEE ATTACHED)

Prepared By: Bruce Aronson Phone: 465-4400
 Division: Pioneers' Benefits Date: 2/4/91
 Approved by Commissioner: Millett Keller
 Agency: Administration Date: 2/4/91

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

Fiscal Note - Senate Bill 90

The bill expands the length of time for allowable absences from Alaska and unlike the status quo, continues payments for up to 90 days when recipients are absent from Alaska. This will increase the Longevity Bonus Program's expenses.

Assumptions:

1. Based on a review of the past eight months of bonus payments, 1.67% of recipients missed only one warrant, .63% missed two warrants, and .12% missed three warrants. Applying these percentages to the approximately 20,000 recipients yields the following:

# Recipients	Warrants Missed	Cost
334	1	\$83,500
126	2	\$63,000
24	3	\$18,000
	Total	\$164,500

2. There are perhaps 250 potential recipients eligible for the program under the proposed legislation, and they may change their absences behavior to conform to the new rules. About one-half of these potential recipients may be eligible for 12 payments the first year. If so, the program would be expanded by the following amount the first year:

# Recipients	Warrants Missed	Cost
124	12	\$375,000
	Total	\$375,000

3. The total cost for FY '92 is estimated to be the sum of totals for one and two above, \$539,500, and the number of recipients would be inflated over time by about 5.1% the first year, 4.9% the second year, 4.6% the third year, 4.1% the fourth year, and 3.6% the fifth year (per Department of Labor estimates for the senior population).

bb1/0204.b

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB90

Revision Date: _____ Department Affected: Health & Social Services
 Title: "An Act relating to qualification for a longevity bonus." BRU: Assistance Payments
 Sponsor: Rodey Component: Old Age Assistance - Alaska Longevity Bonus Hold Harmless
 Requestor: _____ COMPONENT SERIAL NO.

	2	2	3
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No fiscal impact

ANALYSIS: (Attach a separate page if necessary.)

If there is any fiscal impact on the OAA-ALB Hold Harmless program, it will be too small to measure.

Prepared By: Jan J. Hansen, Director Phone: 465-3347
 Division: Division of Public Assistance Date: 2/4/91

Approved by Commissioner: [Signature]
 Agency: Department of Health & Social Services Date: 2/4/91

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

S B

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7-LS0570ND
Cook
2/13/91

CS FOR SENATE BILL NO. 98 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS SHULTZ, Frank, Adams, Sturgulewski, Uehling, Rodey, Menard, Collins, Duncan, Jones, Fischer, Halford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to eligibility for permanent fund dividends of certain individuals serving
2 in the military; and providing for an effective date."

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

4 * Section 1. AS 43.23.005 is amended by adding a new subsection to read:

5 (f) In a time of national military emergency, the commissioner may waive the
6 requirement of (a)(3) of this section for an individual absent from the state while serving in the
7 military forces of the United States, or for the spouse and dependents of that individual.

8 * Sec. 2. PERMANENT FUND DIVIDENDS FOR CERTAIN INDIVIDUALS. (a) Notwithstanding
9 AS 43.23.005(a)(3), an individual absent from the state while serving in the military forces of the United
10 States, or a spouse or dependent of that individual, is eligible to receive a 1991 permanent fund dividend
11 if the commissioner of revenue determines that the individual, spouse, or dependent is otherwise
12 qualified and was qualified to receive a dividend for 1990.

13 (b) Notwithstanding AS 43.23.015(c), an individual absent from the state while serving in the
14 military forces of the United States and stationed in the Persian Gulf war zone may execute a power of

1 attorney authorizing another person to apply for the 1991 permanent fund dividend on behalf of the
2 individual. An individual stationed in the Persian Gulf war zone at any time during April 1, 1991
3 through June 30, 1991, may apply for a 1991 permanent fund dividend during the 1992 application
4 period if no application was submitted on the individual's behalf during the 1991 application period and
5 the individual otherwise qualifies for a 1991 dividend. The dividend shall be paid in the same manner
6 as prior year dividends under AS 43.23.025(a)(1)(C) and 43.23.055(3) and (7).

7 (c) Notwithstanding AS 43.23.005(a) and 43.23.015(c), if an individual was killed in action while
8 serving in the military forces of the United States and stationed in the Persian Gulf war zone at any time
9 during April 1, 1991 through June 30, 1991, the personal representative of the individual's estate may
10 apply for the 1991 permanent fund dividend on behalf of the individual's estate at any time during the
11 1991 or 1992 permanent fund dividend application period.

12 (d) Notwithstanding AS 43.23.015(b), the Department of Revenue shall prescribe and furnish
13 an application form for claiming a dividend under this section. The department shall adopt regulations
14 defining the limits of the Persian Gulf war zone and prescribing any additional evidence the department
15 may require to determine eligibility, including evidence of the applicant's assignment to the Persian Gulf
16 war zone during the 1991 application period.

17 * Sec. 3. Section 2 of this Act takes effect immediately under AS 01.10.070(c).

18 * Sec. 4. Section 1 of this Act takes effect January 1, 1992.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSSB 98 (SA)

Revision Date: _____
Title: An Act relating to PFDs for
Alaskans on Military Duty
Sponsor: SHULTZ, Frank, Adams et al
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division
COMPONENT SERIAL NO. 9 8 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (PFD)	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: -0-

ANALYSIS: None required

Prepared By: Thomas C. Williams Phone: 465-2323
Division: Permanent Fund Dividend Division Date: February 13, 1991

Approved by Commissioner: [Signature] Date: 2-13-91
Agency: Revenue

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

page 1 of 1

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
POLICY ANALYSIS
CS SB 98 (SA)
As of February 13, 1991

The proposed committee substitute for SB 98 (SA) would deal with 1991 and future years' programs.

Section 2 deals with the 1991 program. It would:

1. Make the waiver of the two year return rule specific to the 1991 program.
2. Apply this one-time waiver to all Alaskan military and their dependents who are otherwise eligible and were eligible for a 1990 dividend (see Attachment).
3. Encourage those with Powers of Attorney for those Alaskan residents serving in the Persian Gulf War Zone to apply for a 1991 dividend on their behalf, but allow those residents who were stationed in the War Zone any time from April 1, 1991 through June 30, 1991 to file a 1991 application during the 1992 application period if no application was submitted on their behalf during the 1991 applications period and they were otherwise eligible for a 1991 dividend; and
4. Allow personal representatives to apply during the 1991 or 1992 period on behalf of the estate of those Alaskans killed in action during the hostilities if the Alaskan was stationed in the Persian Gulf War Zone any time from April 1, 1991 through June 30, 1991 and was killed in the War Zone.

Section 1 deals with future programs and is effective January 1, 1992. I would allow (but not require) the Department to issue a similar waiver under any similar future circumstances.

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
 CS SB 98 (SA)
TWO-YEAR RETURN RULE OPTIONS AND CONSEQUENCES
 As of February 13, 1991

<u>Group</u>	<u>Options</u>	<u>Consequences</u>
A. Gulf military unable to comply with 2-year Return Rule because of Operation Desert Shield/Storm	1. Suspend return requirement until after war ends	Substantial amount of paperwork and contacts/ Administrative Nightmare
	2. Waive for 1991	Equitable/Easy to communicate and administer/No significant harm to program integrity on <u>a one-time basis</u>
B. All other military worldwide (stateside and overseas) on call	1. Don't waive	Difficult to distinguish between <u>able</u> vs. <u>unable</u> / Substantial amount of paperwork and contacts/ Substantial amount of paperwork and contacts/ Administrative Nightmare
	2. Suspend return requirement until after war ends	Substantial amount of paperwork and contacts/ Administrative Nightmare
	3. Waive for 1991	Equitable/Easy to communicate and administer/No significant harm to program integrity on <u>a one-time basis</u>
C. Families (dependents) of Gulf military unable to comply with 2-year Return Rule	1. Don't waive	Undue burden during time of extra stress/Difficult to administer
	2. Waive for 1991	Compassionate/Easy to communicate and administer/No significant harm to program integrity on <u>a one-time basis</u>
D. Families (dependents) of all other military worldwide (stateside and overseas) on call	1. Don't waive	Difficult to determine whether their sponsoring military member was <u>able</u> vs. <u>unable</u> to return/ Substantial amount of paperwork and contacts/ Administrative Nightmare
	2. Waive for 1991	Compassionate/Easy to communicate and administer/No significant harm to program integrity on <u>a one-time basis</u>



Alaska State Legislature

SENATE

Official Business

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

Date: Monday, February 11, 1991
1:30 p.m. - Beltz Room

Senate State Affairs Committee

AGENDA

Bills previously heard

SB-44, 45, and SJR-9, (Kerttula) heard in committee last Friday, Feb. 8th, will be taken up again on Wednesday, February 13th.

New Agenda Items

- SB-51 (Duncan) An Act relating to transfer of service credit by active and inactive members and former members of the teachers' retirement system and the public employees' retirement system. (Sen. Duncan has a CS to offer).
- SB-98 (Shultz) An Act relating to eligibility for permanent fund dividends of certain individuals serving in the military.

Next Meeting:

Wednesday, February 13, 1991 - 1:30 p.m. Beltz Room

- SB-44, 45, HJR-9 (Kerttula) Relating to a State Veterans Home
- SB-53 (Duncan) An Act relating to retirement credit in PERS for employees of the former Alaska State Development Corp.
- SB-99 (Judiciary by Request) An Act establishing an exemption for the judicial retirement system.



Alaska State Legislature

SENATE

Official Business

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

MEMORANDUM

TO: SENATOR RODEY
FROM: SENATOR SHULTZ *DS*
DATE: FEBRUARY 1, 1991
RE: SCHEDULING OF SB 98

I have introduced Senate Bill 98 to alleviate the problem our military personnel are having as a result of the Persian Gulf crisis. With a freeze on all leave, some Alaskan service people will not be able to meet the statutory requirements for receiving their PFD.

My legislation is very specific and is intentionally narrow so as to minimize controversy. With the war in full swing this small but important gesture would be very timely and supportive.

I would appreciate a hearing and prompt action on this legislation if at all possible.

Thank you.

S B

q q

**CS FOR SENATE BILL NO. 99 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE SENATE STATE AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing an exemption for the judicial retirement system and the former
2 elected public officers' retirement system."

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

4 * Section 1. AS 09.38.015(b) is amended to read:

5 (b) The right to benefits held by the state on behalf of an individual that [WHICH] may
6 become payable by reason of disability, unemployment, or illness, amounts held in the teachers',
7 judicial, or public employees' retirement system, or in the elected public officers' retirement
8 system under former AS 39.37, and child support collections made by the child support
9 enforcement agency are exempt.

10 * Sec. 2. AS 22.25 is amended by adding a new section to read:

11 Sec. 22.25.100. EXEMPTION OF RETIREMENT FUNDS AND BENEFITS. Employee
12 contributions and other amounts held in the judicial retirement system and benefits payable under
13 this chapter are exempt from garnishment, execution, and levy as provided in AS 09.38 (Alaska
14 Exemptions Act).

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____
Title: An act establishing an exemption for the judicial retirement system.

Department Affected: Administration
BRU: Retirement and Benefits

Sponsor: Senate Judiciary Committee

Component: Retirement and Benefits

Requestor: _____

COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of dollars)

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

POSITIONS

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

Estimate of current year impact: _____

ANALYSIS: (attach a separate page if necessary.)

We do not anticipate any fiscal impact to the Judicial Retirement System.

Prepared By: Gary Bader *Gary M. Bader*
Division: Retirement and Benefits

Phone: 465-4460
Date: _____

Approved by Commissioner: Millett Keller *Millett Keller*
Agency: Department of Administration *Lee MK*

Date: 2/13/91

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



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

February 11, 1991

The Honorable Pat Rodey
Chairman, Senate State
Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Rodey:

Thank you for scheduling Senate Bill 99, relating to the Judicial Retirement System (JRS).

SB 99 proposes amendments to AS 09.38.015(b), a provision of the Alaska Exemptions Act. As you know, that act provides debtors with certain protection from creditors. AS 09.38.015(b) specifically provides that a creditor (other than a bankruptcy creditor) may not seize amounts held in an individual debtor's Teacher' Retirement System (TRS) account or Public Employees' Retirement System (PERS) account.

Through an oversight, this statute does not provide the same protection to participants in the JRS. SB 99 merely adds the JRS to the existing exemption list, giving participants in that system the same protection currently granted to participants in the TRS and PERS.

The Conference of Alaska Judges passed a resolution in support of the judicial exemption in 1986; a copy of this resolution is attached. The bill has no fiscal impact.

The Honorable Pat Rodey
February 11, 1991
Page 2

Please feel free to contact me if you have any questions or comments.

Very truly yours,

A handwritten signature in cursive script, appearing to read "C. S. Christensen III".

C. S. Christensen III
Staff Counsel

CSC:bh

Attachment


CONFERENCE OF ALASKA JUDGES

Resolution No. 86 - 03

A RESOLUTION SUPPORTING EXEMPTION OF JUDICIAL RETIREMENT
FUNDS FROM EXECUTION

IT IS HEREBY RESOLVED by the Conference of Alaska Judges
that the Court Administration propose the amendment of Alaska Statutes
Section 09.38.015 to exempt funds held in the Judicial Retirement System
from execution.

PASSED this 2nd day of July, 1986, at Anchorage, Alaska, by
the members of the Conference of Alaska Judges.


HERSCHEL "ED" CRUTCHFIELD
President

ATTEST:


Acting Secretary

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. SB 99

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act establishing an exemption for BRU: Trial Courts
the Judicial Retirement System Components: _____
 Sponsor: Judiciary
 Requestor: Judiciary Committee COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *C. S. Christensen* Phone: 264-8228
 Division: Alaska Court System Date: 02/08/91

Approved by: Arthur H. Snowden, II, Administrative Director *Stephanie Pelt*
 Agency: Alaska Court System Date: 02/08/91

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

CSSB-99

Pat: For CSSB-99, Judicial Retirement System and Elected Public Officials Retirement System exemption under AS 09.38.015 (b)...

CS adds both JRS and EPORS to exemptions granted in statute. Law currently covers TRS and PERS.....this action would bring all state public employees under provisions of law treats everyone equally

Similar bill SB-252 almost made it through in '90.....passed Senate, no final action in House at end of session.

EPORS covers those elected officials in office prior to 1976 when system was stopped.

If Snowden is here he can answer questions for JRS

SB

104

7-LS055
Bannister
5/6/91

CS FOR SENATE BILL NO. 104 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS RODEY, Halford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking, acquisition, and compensation for damage of property by
2 state agencies, municipalities, and other entities; amending Alaska Rule of Civil Procedure
3 72; and providing for an effective date."

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

5 * Section 1. AS 09.55.300(b) is amended to read:

6 (b) If the court determines that the property is to be taken for a public use [,] and if all
7 parties to the action agree [DO NO OBJECT], the court shall appoint a master to determine the
8 amount to be paid by the plaintiffs to each owner or other person interested in the property as
9 compensation and damages by reason of the appropriation of the property. If a party [ALL
10 PARTIES] to the action objects [OBJECT] to the appointment of a master, the court shall
11 proceed with a jury trial, unless the jury is waived by all parties to the action.

12 * Sec. 2. AS 09.55.310(a) is amended to read:

13 (a) The jury or master shall hear the allegations and evidence of persons interested and
14 shall ascertain and assess the following:

1 (1) the value of the property sought to be condemned, and all improvements on
2 it pertaining to the realty, and of each separate estate or interest in it; if it consists of different
3 parcels, the value of each parcel and each estate or interest in each parcel shall be separately
4 assessed;

5 (2) if the property sought to be condemned constitutes only a part of a larger
6 parcel, the damages that [WHICH] will accrue to the portion not sought to be condemned by
7 reason of its severance from the portion sought to be condemned, and the construction of the
8 improvements in the manner proposed by the plaintiff;

9 (3) separately, how much the portion not sought to be condemned and each estate
10 or interest in it will be benefited, if at all, by the construction of the improvements proposed by
11 the plaintiff; and, if the benefit is equal to the damages assessed under (2) of this section, the
12 owner of the parcel may not [SHALL] be allowed [NO] damages except for the value of the
13 portion taken; but if the benefits are less than the damages [SO] assessed, the former shall be
14 deducted from the latter and the remainder shall be the only damages allowed in addition to the
15 value;

16 (4) if the property sought to be condemned is for a railroad, the cost of good and
17 sufficient fences along the line of the railroad, and the cost of cattle guards where fences may
18 cross the line of the railroad;

19 (5) the full amount of business loss caused by taking or damaging the
20 property.

21 * Sec. 3. AS 09.55.330 is amended to read:

22 Sec. 09.55.330. COMPENSATION AND DAMAGES. For the purpose of assessing
23 compensation and damages, the right to compensation and damages [THEM] accrues at the date
24 of issuance of the summons, and their [ITS] actual value at that date is the measure of
25 compensation of the property, except business loss, to be actually taken, and the basis of
26 damages to property, except business loss, not actually taken but injuriously affected in the cases
27 where the damages are allowed. The amount of business loss to be awarded as just
28 compensation is the amount of actual or projected loss that is proved by a party in interest
29 by a preponderance of the evidence at a master's hearing or at trial. If an order is made
30 letting the plaintiff into possession, as provided in AS 09.55.380, the compensation and damages
31 awarded shall draw lawful interest from the date of the order. No improvements put upon the

1 property after the date of the service of summons shall be included in the assessment of
2 compensation or damages.

3 * Sec. 4. AS 09.55.440(b) is amended to read:

4 (b) Upon motion of a party in interest and notice to all parties, the court shall
5 expeditiously [MAY] order that the money deposited [OR A PART OF IT] be paid immediately
6 to the person or persons entitled to it for or on account of the just compensation to be awarded
7 in the proceedings. If the compensation finally awarded exceeds the amount of money deposited,
8 the deposit shall be offset against the award. If the compensation finally awarded is less than
9 the amount of money deposited, the court shall enter judgment in favor of the plaintiff and
10 against the proper parties for the amount of the excess.

11 * Sec. 5. AS 09.55.450(a) is amended to read:

12 (a) Upon the filing of the declaration of taking and the deposit of the estimated
13 compensation, the court may, upon motion, fix the time during which and the terms upon which
14 the parties in possession are required to surrender possession to the petitioner. However, the
15 right of entry may [SHALL] not be granted the plaintiff until after the running of the time for
16 the defendant to file an objection to the declaration of taking or until after the hearing on an
17 [ANY] objection to the declaration of taking if the objection is made in the time allowed by law.
18 In addition, the court may not grant the right of entry until the court determines that the
19 amount of the deposit of the estimated just compensation for all property that has been
20 taken or damaged is substantiated by one or more appraisals prepared in good faith.
21 Where the party in possession withdraws a [ANY] part of the award and remains in possession,
22 the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff
23 during the [SUCH] possession.

24 * Sec. 6. AS 09.55.460(b) is amended to read:

25 (b) The plaintiff may not be divested of a title or possession taken unless [ACQUIRED
26 EXCEPT WHERE] the court finds that the property was not taken by necessity for a public use
27 or purpose in a manner compatible with the greatest public good and the least private injury, the
28 amount of estimated just compensation deposited under AS 09.55.440(a) is not adequate,
29 the state failed to comply with AS 34.60, the plaintiff is a municipality that failed to comply
30 with AS 34.60, or the plaintiff failed to comply with AS 09.55.275. In the event of that
31 finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to

1 it for the period during which the property was in the possession of the plaintiff, (2) recover for
2 the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to
3 the condition in which it existed at the time of the filing of the declaration of taking unless
4 [SUCH] restoration is impossible, in which case the court shall award damages to the proper
5 persons as compensation for a [ANY] diminution in the value of the property caused by the
6 plaintiff's wrongful possession.

7 * Sec. 7. AS 09.55 is amended by adding a new section to article 3 to read:

8 Sec. 09.55.465. DEFINITIONS. In AS 09.55.240 - 09.55.465,

9 (1) "business loss" includes short-term loss of profits, long-term loss of profits,
10 and the loss of goodwill;

11 (2) "private injury" includes business loss caused by the taking of or damage to
12 property.

13 * Sec. 8. AS 29.10.200(25) is amended to read:

14 (25) AS 29.35.030 (eminent domain, relocation assistance, and real property
15 acquisition practices)

16 * Sec. 9. AS 29.35.030(a) is amended to read:

17 (a) A municipality may, only within its boundaries, exercise the powers of eminent
18 domain and declaration of taking in the performance of a power or function of the municipality
19 and shall use [UNDER] the procedures set out in AS 09.55.250 - 09.55.460 and AS 34.60,
20 regardless of the source of funding. In addition, in the case of a second class city, the exercise
21 of the power of eminent domain or declaration of taking must be by ordinance that is submitted
22 to the voters at the next general election or at a special election called for that purpose. A
23 majority of the votes on the question is required for approval of the ordinance.

24 * Sec. 10. AS 34.60.010 is amended to read:

25 Sec. 34.60.010. PURPOSE. The purpose of this chapter is to establish a uniform policy
26 for the fair and equitable treatment of persons displaced as a result of activities undertaken by
27 state agencies [FEDERALLY ASSISTED PROGRAMS] in order that the displaced persons will
28 not suffer disproportionate injuries as a result of programs designed for the benefit of the public
29 as a whole.

30 * Sec. 11. AS 34.60.020 is amended to read:

31 Sec. 34.60.020. STATE AGENCIES TO ESTABLISH PROGRAM. State agencies shall

1 establish and provide the means for implementing a program providing fair and reasonable
2 relocation and other payment for persons displaced as a result of [FEDERALLY ASSISTED]
3 activities undertaken by state agencies, to carry out relocation assistance programs for persons
4 displaced, and to provide payments to persons as a result of the acquisition, taking, or damaging
5 of [REAL] property for activities of state agencies.

6 * Sec. 12. AS 34.60.040(a) is amended to read:

7 (a) When the acquisition, taking, or damaging of [REAL] property for a [FEDERALLY
8 ASSISTED] program or project undertaken by a state agency will result in the displacement of
9 a person, the state agency responsible for the program or project shall make payment to the
10 displaced person, upon proper application as approved by the state agency, for

11 (1) actual reasonable expenses in moving a person, the person's family, business,
12 farm operation, or other personal property;

13 (2) actual direct losses of tangible personal property as a result of moving or
14 discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable
15 expenses that would have been required to relocate the property as determined by the state
16 agency; and

17 (3) actual reasonable expenses in searching for a replacement business or farm.

18 * Sec. 13. AS 34.60.050 is amended to read:

19 Sec. 34.60.050. REPLACEMENT HOUSING FOR HOMEOWNERS. (a) In addition
20 to payments otherwise authorized by this chapter, the state agency shall make an additional
21 payment not to exceed \$22,500 [,] to a displaced person who is displaced from a dwelling
22 actually owned and occupied by the person for not less than 180 days before the initiation of
23 negotiations for the acquisition of the property. This additional payment must include the
24 following elements:

25 (1) the amount, if any, that when added to the acquisition or taking cost of the
26 dwelling acquired or taken by the state agency, equals the reasonable cost of a comparable
27 replacement dwelling that is a decent, safe, and sanitary dwelling adequate to accommodate the
28 displaced person, is reasonably accessible to public services and places of employment, and is
29 available on the private market; all determinations required to carry out this paragraph shall be
30 made in accordance with standards established by the state agency making the additional
31 payment;

1 (2) the amount, if any, that will compensate the displaced person for any
2 increased interest costs that the displaced person is required to pay for financing the acquisition
3 of the comparable replacement dwelling; this amount may be paid only if the dwelling acquired
4 or taken by the state agency was encumbered by a bona fide mortgage that was a valid lien on
5 the dwelling for not less than 180 days before the initiation of negotiations for the acquisition
6 or taking of the dwelling; and

7 (3) reasonable expenses incurred by the displaced person for evidence of title,
8 recording fees, and other closing costs incident to the purchase of the replacement dwelling, but
9 not including prepaid expenses.

10 (b) The additional payment authorized by (a) of this section may be made only to a
11 displaced person who purchases and occupies a replacement dwelling that is decent, safe, and
12 sanitary not later than the end of the one-year [ONE YEAR] period beginning on the date on
13 which the person receives from the state agency final payment of all costs of the acquired or
14 taken dwelling [,] or the date on which the person moves from the acquired or taken dwelling,
15 whichever is the later date.

16 * Sec. 14. AS 34.60.060 is amended to read:

17 Sec. 34.60.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In
18 addition to amounts otherwise authorized by this chapter, the state agency shall make a payment
19 to or for a displaced person displaced from a dwelling, who is not eligible to receive a payment
20 under AS 34.60.050, if the dwelling was actually and lawfully occupied by the displaced person
21 for not less than 90 days before the initiation of negotiations for the acquisition or taking of the
22 dwelling. The payment must be either

23 (1) the amount necessary to enable the displaced person to lease or rent for a
24 period not to exceed three years and six months [,] a decent, safe, and sanitary dwelling of
25 standards adequate to accommodate the displaced person in areas not generally less desirable in
26 regard to public utilities and public and commercial facilities, and reasonably accessible to the
27 person's place of employment, but not to exceed \$5,250; or

28 (2) the amount necessary to enable the displaced person to make a down payment,
29 including incidental expenses described in AS 34.60.050(a)(3), on the purchase of a decent, safe,
30 and sanitary dwelling of standards adequate to accommodate the displaced person in areas not
31 generally less desirable in regard to public utilities and public and commercial facilities, but not

1 to exceed \$5,250.

2 * Sec. 15. AS 34.60.070 is amended to read:

3 Sec. 34.60.070. EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY. The state
4 agency, as soon as practicable after the date of payment of the purchase price or the date of
5 deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to
6 acquire, take, or compensate for damage to [REAL] property, whichever is the earlier, shall
7 reimburse the owner, to the extent the department considers fair and reasonable, for expenses
8 necessarily incurred for

9 (1) recording fees, transfer taxes, and similar expenses incidental to conveying
10 the [REAL] property to the state agency;

11 (2) penalty costs for prepayment of a preexisting recorded mortgage entered into
12 in good faith encumbering the real property, if the mortgage was a valid lien on the property for
13 not less than 180 days before the initiation of negotiations for the acquisition of the property; and

14 (3) the pro rata portion of [REAL] property taxes paid that are allocable to a
15 period subsequent to the date of vesting title in the state [,] or the effective date of possession
16 of the [REAL] property by the state agency, whichever is the earlier.

17 * Sec. 16. AS 34.60.080(a) is amended to read:

18 (a) The state court having jurisdiction of a proceeding instituted by the state agency to
19 take [ACQUIRE REAL] property by condemnation shall award the owner of a [ANY] right to,
20 or title to, or interest in, the [REAL] property a sum that will in the opinion of the court
21 reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable
22 attorney, appraisal, and engineering fees [,] actually incurred because of the condemnation
23 proceedings, if

24 (1) the final judgment is that the state agency cannot take [ACQUIRE] the
25 [REAL] property by condemnation; or

26 (2) the proceeding is abandoned by the state agency.

27 * Sec. 17. AS 34.60.090(a) is amended to read:

28 (a) When the acquisition, taking, or damaging of [REAL] property for a program or
29 project undertaken by a state agency [FOR A FEDERALLY ASSISTED PROGRAM OR
30 PROJECT UNDERTAKEN BY THE STATE AGENCY] will result in the displacement of a
31 person [ON OR AFTER JANUARY 2, 1971], the state agency shall provide a relocation

1 assistance advisory program for displaced persons that [WHICH] offers the services described
2 in (c) of this section. If [THE STATE AGENCY DETERMINES THAT] a person occupying
3 property immediately adjacent to the [REAL] property acquired or taken is caused substantial
4 economic injury because of the acquisition or taking, the state agency shall [IT MAY] offer
5 the occupant relocation advisory services under the program.

6 * Sec. 18. AS 34.60.120 is amended to read:

7 Sec. 34.60.120. UNIFORM [REAL] PROPERTY ACQUISITION, TAKING, AND
8 DAMAGE COMPENSATION POLICY. (a) A state agency or other entity acquiring, taking,
9 or damaging [REAL] property for a [ANY] project or program [IN WHICH FEDERAL OR
10 FEDERAL-AID FUNDS ARE USED] shall to the greatest extent practicable comply with the
11 [FOLLOWING] policies set out in this section. [:]

12 (b) [(1)] Every reasonable effort shall be made to expeditiously acquire, take, or make
13 compensation for [REAL] property by negotiation.

14 (c) Property to be acquired, taken, or damaged [(2) REAL PROPERTY] shall be
15 appraised before the initiation of negotiations, and the owner or a designated representative shall
16 be given an opportunity to accompany the appraiser during the inspection of the property.

17 (d) [(3)] Before the initiation of negotiations for [REAL] property, an amount shall be
18 established that is reasonably believed to be just compensation for all [THE REAL] property
19 acquired, taken, or damaged, and that amount shall be offered for the property. In no event
20 may the amount be less than the approved appraisal of the fair market value of the property. A
21 decrease or increase in the fair market value of [REAL] property before the date of valuation
22 caused by the public improvement for which the property is acquired or taken or by the
23 likelihood that the property would be acquired, taken for, or damaged by the improvement,
24 other than that due to physical deterioration within the reasonable control of the owner, will be
25 disregarded in determining the compensation for the property. The owner of the [REAL]
26 property to be acquired, taken, or damaged shall be provided with a written statement of, and
27 a summary of the basis for, the amount established as just compensation.

28 (e) [(4)] An owner may not be required to surrender possession of [REAL] property
29 before the state agency concerned pays the agreed purchase price or deposits with the court in
30 accordance with applicable law, for the benefit of the owner, an amount not less than the
31 approved appraisal of the fair market value of the property [,] or the amount of the award of

1 compensation in the condemnation proceeding for the property.

2 (f) [(5)] The construction or development of a public improvement shall be so scheduled
3 that [, TO THE GREATEST EXTENT PRACTICABLE,] a person lawfully occupying [REAL]
4 property is not required to move from a dwelling, assuming a replacement dwelling will be
5 available, or to move the person's business or farm operation, without at least 90 days' written
6 notice of the date by which the move is required and until at least 90 days have elapsed after
7 a court

8 (1) determines that the prerequisites under AS 09.55.270 have been met; or
9 (2) has ruled under AS 09.55.450(a) on any objections made to a declaration
10 of taking, or the time for filing objections under AS 09.55.450(a) has ended without an
11 objection being filed.

12 (g) [(6)] If an owner or tenant is permitted to occupy the acquired or taken [REAL]
13 property [ACQUIRED] on a rental basis for a short term or for a period subject to termination
14 by the state agency on short notice, the amount of rent required may not exceed the fair rental
15 value of the property to a short-term occupier.

16 (h) [(7)] In no event may the time of condemnation be advanced or negotiations or
17 condemnation and the deposit of funds in court for the use of the owner be deferred, nor any
18 other coercive action be taken in order to compel an agreement on the price to be paid for the
19 acquisition, taking, or damage to property.

20 (i) [(8)] If an interest in [REAL] property is to be taken or damaged [ACQUIRED] by
21 exercise of the power of eminent domain, formal condemnation proceedings shall be instituted.
22 The [ACQUIRING] state agency may not intentionally make it necessary for an owner to institute
23 legal proceedings to prove the fact of the taking or damage of the [REAL] property.

24 (j) [(9)] If the acquisition, taking, or damage of only part of the property would leave
25 its owner with an uneconomic remnant, an offer to acquire or take the entire property shall be
26 made.

27 * Sec. 19. AS 34.60.130(a) is amended to read:

28 (a) Notwithstanding another [ANY OTHER] provision of law, if a state agency acquires
29 or takes an [ANY] interest in real property, the state agency shall [MUST] acquire or take at
30 least an equal interest in all buildings, structures, or other improvements located upon the real
31 property that [WHICH] the state agency requires to be removed from the real property or that

1 [WHICH] the state agency determines will be adversely affected by the use to which the real
2 property will be put.

3 * Sec. 20. AS 34.60.130(b) is amended to read:

4 (b) For the purpose of determining just compensation to be paid for a building, structure,
5 or other improvement required to be acquired or taken under (a) of this section, the building,
6 structure, or other improvement is considered to be a part of the real property to be acquired or
7 taken notwithstanding the right or obligation of a tenant, as against the owner of another [ANY
8 OTHER] interest in the real property, to remove the building, structure, or improvement at the
9 expiration of the tenant's term, and the fair market value that [WHICH] the building, structure,
10 or improvement contributes to the fair market value of the real property to be acquired or taken,
11 or the fair market value of the building, structure, or improvement for removal from the real
12 property, whichever is the greater, shall be paid to the tenant.

13 * Sec. 21. AS 34.60.135 is amended to read:

14 Sec. 34.60.135. PLANNING LOANS FOR ADDITIONAL HOUSING. In addition to
15 the other programs authorized by this chapter, a state agency may make loans in order to
16 encourage and facilitate the construction or rehabilitation of housing to meet the needs of
17 displaced persons. These loans are a part of the [FEDERALLY ASSISTED] project cost and
18 may be made to nonprofit, limited dividend, or cooperative organizations or public bodies. The
19 loans may be made only for necessary and reasonable expenses, before construction, for planning
20 and obtaining federally insured mortgage financing for the rehabilitation or construction of
21 housing for displaced persons. The loans may not exceed 80 percent of the reasonable costs
22 expected to be incurred in planning, and in obtaining financing for housing for displaced persons.
23 Reasonable costs include [BUT ARE NOT LIMITED TO] costs for preliminary surveys and
24 analysis of market needs, preliminary architectural fees, site acquisition, application and mortgage
25 commitment fees, and construction loan fees and discounts. Loans to an organization established
26 for profit [SHALL] bear interest at a market rate established by the state agency. All other loans
27 are [SHALL BE] without interest. The state agency shall require repayment of loans made under
28 this section [,] under terms and conditions established by the state agency. Repayment shall be
29 made upon completion of the project or sooner, and except in the case of a loan to an
30 organization established for profit, the state agency may cancel a [ANY] part or all of a loan
31 following a determination by the state agency that a permanent loan to finance the rehabilitation

1 or construction of the housing cannot be obtained in an amount adequate for repayment of the
2 loan.

3 * Sec. 22. AS 34.60.137 is amended to read:

4 Sec. 34.60.137. HOUSING REPLACEMENT ASSISTANCE AS LAST RESORT. If a
5 state agency [FEDERAL AIDED] program or project cannot proceed to actual construction
6 because comparable replacement sale or rental housing is not available, and the state agency
7 determines that housing cannot otherwise be made available, the agency may take action
8 necessary or appropriate to provide the housing by use of funds authorized for the project.

9 * Sec. 23. AS 34.60.150 is amended to read:

10 Sec. 34.60.150. DEFINITIONS. In this chapter

11 (1) "business" means any lawful activity, excepting a farm operation, conducted
12 primarily

13 (A) for the purchase, sale, lease, and rental of personal and real property,
14 and manufacture, processing, or marketing of products, commodities, or other personal
15 property;

16 (B) for the sale of services to the public;

17 (C) by a nonprofit organization; or

18 (D) for assisting, solely for the purpose of AS 34.60.040(a), in the
19 purchase, sale, resale, manufacture, processing, or marketing of products, commodities,
20 personal property, or services by the erection and maintenance of an outdoor advertising
21 display, whether or not the display is located on the premises on which any of the above
22 activities are conducted;

23 (2) "displaced person" means a [ANY] any person who [, ON OR AFTER
24 JANUARY 2, 1971] moves from [REAL] property, or moves personal property from [REAL]
25 property, as a result of the acquisition or taking of the [REAL] property, in whole or in part, or
26 as a result of the written order of the state agency to vacate [REAL] property, for a program or
27 project undertaken by the state agency, and solely for the purpose of AS 34.60.040(a) and
28 34.60.090, as a result of the acquisition or taking of, or as a result of the written order of a state
29 agency to vacate other [REAL] property on which the person conducts a business or farm
30 operation for the program or project;

31 (3) "farm operation" means any activity conducted solely or primarily for the

1 production of one or more agricultural products or commodities, including timber, for sale or
2 home use, and customarily producing these products or commodities in sufficient quantity to be
3 capable of contributing materially to the operator's support;

4 (4) "mortgage" means those classes of liens commonly given to secure advances
5 on, or the unpaid purchase price of, real property [,] under the law of the state in which the real
6 property is located, together with the credit instruments, if any, secured by the property;

7 (5) "person" means an individual, partnership, corporation, or association;

8 (6) "property" includes short-term and long-term business interests;

9 (7) "state agency" means a department, agency, instrumentality, corporate
10 authority of the state, or a political subdivision of the state, or a department, agency,
11 instrumentality, or authority of two or more political subdivisions of the state [PARTICIPATING
12 IN FEDERALLY ASSISTED PROGRAMS].

13 * Sec. 24. AS 34.60.100 is repealed.

14 * Sec. 25. AS 09.55.300(b), amended by sec. 1 of this Act, amends Alaska Rule of Civil Procedure
15 72(h)(2) by establishing different criteria for determining whether a master's hearing is held to determine
16 the amount to be paid by the plaintiff.

17 * Sec. 26. This Act takes effect immediately under AS 01.10.070(c).

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

May 7, 1991

SUBJECT: Sectional summary of CSSB 104 (State Affairs)
(Work Order No. 7-LS05-1, 6-91)

TO: Senator Pat Rodey
Chair, Senate State Affairs Committee

FROM: Theresa L. Bannister *TLB*
Legislative Counsel

You have requested a sectional summary of the above described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends AS 09.55.300(b) to require that all parties to an eminent domain action must agree before a master is appointed. If a party objects, the master is not appointed.

Section 2 amends AS 09.55.310(a) to require the jury or master in an eminent domain action to ascertain and assess the full amount of business loss caused by taking or damaging the property.

Section 3 amends AS 09.55.330 to establish how business loss is to be determined in an eminent domain action.

Section 4 amends AS 09.55.440(b) by directing the court in an eminent domain action to expeditiously order that deposited money be paid immediately to the persons entitled to it.

Section 5 amends AS 09.55.450(a) by adding a third situation in which a court is prohibited from granting a right of entry in an eminent domain action. The new

SECTIONAL ANALYSIS - CSSB 104 / J

provision delays the right of entry until the court determines that the deposited amount of the estimated just compensation for all property taken or damaged is substantiated by one or more appraisals prepared in good faith.

Section 6 adds four additional situations in which the plaintiff in an eminent domain action may be divested of a title or possession taken. The new situations are when the court finds that the amount of the estimated just compensation deposited under AS 09.55.440(a) is not adequate, when the state failed to comply with AS 34.60, when the plaintiff is a municipality that failed to comply with AS 34.60, and when the plaintiff failed to comply with AS 09.55.275.

Section 7 defines "business loss" and "private injury" for the eminent domain article.

Section 8 amends AS 29.10.200 to make home rule municipalities subject to the change made in sec. 9.

Section 9 adds to AS 29.35.030(a) the requirement that municipalities use the procedures set out in AS 34.60 (Relocation Assistance and Real Property Acquisition Practices), regardless of the source of funding, when exercising the powers of eminent domain and declaration of taking.

Section 10 states that the purpose of AS 34.60 is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of state agency activities.

Section 11 requires state agencies to establish and operate a relocation and payment program for persons displaced as a result of the acquisition, taking, or damaging of property for activities of state agencies.

Section 12 requires a state agency to make certain payments to displaced persons when the acquisition, taking, or damaging of property for a state agency program will displace the persons.

Section 13. Sec. 34.60.050(a) requires a state agency to make, in addition to other payments authorized by AS 34.60, an additional payment to a displaced person who meets certain requirements. The payment must include

(1) the amount that, when added to the cost of acquiring or taking the dwelling, equals the reasonable cost of a comparable replacement dwelling that meets certain criteria;

(2) the amount that will compensate the displaced person for any increased interest costs that the displaced person is required to pay for financing a comparable replacement dwelling; this amount is to be paid only if the dwelling acquired or taken

by the state agency was encumbered by a mortgage meeting certain requirements; and

(3) certain other expenses incurred by the displaced person relating to the replacement dwelling.

Sec. 34.60.050(b) limits the making of the additional payment authorized in (a) to a displaced person who purchases and occupies a replacement dwelling, which must meet certain criteria, within one year from (1) when the person receives final payment of all costs of the acquired or taken dwelling, or (2) when the person moves from the acquired or taken dwelling, whichever is later.

Section 14 requires state agencies, in addition to amounts otherwise authorized by AS 34.60, to make a specified payment to a displaced person who is not eligible for a payment under AS 34.60.050, if the dwelling was actually and lawfully occupied by the person for a certain period before the initiation of negotiations for acquiring or taking the dwelling.

Section 15 requires a state agency, as soon as practicable after paying the purchase price or depositing the funds to satisfy the award of compensation in a condemnation proceeding, whichever event is earlier, to reimburse the owner to a fair and reasonable extent for certain expenses.

Section 16 requires the state court handling a state agency condemnation proceeding to award each owner of an interest in the property a sum that the court determines will cover certain costs incurred because of the condemnation proceedings, if (1) the final judgment is that the agency cannot take the property by condemnation, or (2) the state agency abandons the proceeding.

Section 17 directs a state agency to provide a specified relocation assistance advisory program for displaced persons when the acquisition, taking, or damaging of property for a program or project undertaken by a state agency will result in the displacement of a person. Directs the state agency to offer the occupant of immediately adjacent property the relocation advisory services under the program if the person is caused substantial economic injury because of the acquisition or taking.

Section 18 directs a state agency or other entity acquiring, taking, or damaging property for a project to comply with certain listed policies to the greatest extent practicable.

Section 19 directs a state agency acquiring or taking an interest in real property to acquire or take at least the same interest as taken in the real property, in all buildings, structures, and other improvements located upon the property that are to

be removed by the state agency or that will be adversely affected by the use to which the real property will be put.

Section 20 states that for determining just compensation for a building, structure, or other improvement required to be acquired or taken under AS 34.60.130(a), the building, structure, or other improvement is considered to be a part of the real property to be acquired or taken even if a tenant eventually has the right or obligation to remove it. The tenant with the right or obligation of removal is to be paid the fair market value that the building, structure, or improvement contributes to the fair market value of the real property to be acquired or taken, or the fair market value of the building, structure, or improvement for removal, whichever is greater.

Section 21 makes technical changes and deletes the federal assistance requirement from AS 34.60.135.

Section 22 amends AS 34.60.137 to cover state agency projects, not just federal aided projects.

Section 23 adds a definition of property to include short-term and long-term business interests. Makes several changes in the definition of "displaced person" to reflect the changes in the rest of the chapter and to delete an obsolete date.

Section 24 repeals AS 34.60.100.

Section 25 describes how AS 09.55.300(b), as amended by this bill, changes a court rule.

Section 26 gives the act an immediate effective date.

If I can be of further assistance, please advise.

TLB:mi
91-086.mai

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 104

Revision Date: _____ Department Affected: Department of Law
 Title: "...taking and compensation...of BRU: Legal Services
property by state agencies...other entities Component: Operations
 Sponsor: Senator Rodey
 Requestor: Senate State Affairs COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: March 5, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: March 5, 1991

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 104

This bill makes three basic changes to state laws concerning eminent domain, and relocation assistance and real property acquisition practices.

First, the bill would extend existing relocation assistance program benefits to a person, or a person's business or farm, who are displaced by a taking or damaging of property for activities of state agencies. Currently relocation assistance is available only for state agency activities that are federally funded.

Second, the bill would make both short-term and long-term business loss compensable under eminent domain laws. Many jurisdictions do not compensate for such losses, except for losses suffered due to temporary interruptions to business operations, as is currently the case in Alaska.

Third, the bill would require that prior to filing a declaration of taking and prior to taking possession, the state or municipality must complete an expansive fact finding to prove that the amount deposited with the court for estimated compensation for business losses is adequate.

Although these changes will require additional attorney services, they will not have a fiscal impact on the Department of Law. The state's cost for any capital project involving relocation assistance or business losses will be incrementally higher. However, the total number of attorney hours provided in any given year will probably not increase, and thus the legal services costs that are reimbursed to Law by the Department of Transportation and Public Facilities will simply be redistributed for different project legal purposes. The cost that the state pays for eminent domain and relocation assistance will increase to the extent that business losses and state-funded agency activities are a part of capital improvement projects. These increased costs would occur in future capital project budgets. The Department of Transportation and Public Facilities' view on these matters may be helpful in this latter regard.

FISCAL NOTE

Revision Date: Department Affected: DOT&PF
 Title: relating to the taking and compensation for damage of property by state agencies; ... BRU: Statewide Engineering & Operations Standards
 Sponsor: Senators Rodey, Halford Component: Engr. & Operations Stand.
 Requestor: Senator Rodey Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)


GENERAL FUNDS	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0

POSITIONS

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)
See second page and department position paper.

Prepared by: Jeffery C. Ottesen, Director 

Phone: 465-2951

Division: Engineering and Operations Standards

Date: March 14, 1991

Approved by Commissioner: 
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: March 14, 1991

Distribution By Preparer: Legislative Finance, Legislative Sponsor, Requestor, OMB, Impacted Agency(ies).

ANALYSIS (cont. from page 1):

This bill will have significant direct and indirect impacts to our capital budget. All costs associated with paying business losses including direct payments, legal costs, appraisal costs, staff time and court fees will be ineligible for federal-aid (23 CFR 710.304 (h)). It is difficult to predict how much these payments will be and the extent of litigation which will ensue to interpret the various provisions of the bill. In cases where the Attorney General's office counsels against going to court we will be compelled to reach negotiated settlements. We typically do this now for dollar amounts in excess of fair market value determinations. This bill will likely expand this practice as it broadens the type of losses which can be claimed.

Direct Costs

We have based our estimate of \$2 million dollars on a number of assumptions. Each is highly variable and it would have been easy to estimate this fiscal note at a much larger figure. A single business loss claim sought during a condemnation action in 1990 sought \$2 million. Based upon actual experience, we would adjust the amount necessary to pay and defend these claims in future capital budget requests.

Assumptions:

Business loss cases settled by negotiations:	25
Average settlement	\$40,000
Average administrative cost (legal, appraisal, staff)	\$8,000
Subtotal	\$1.2 million
Business loss cases settled in court:	8
Average settlement	\$80,000
Average administrative cost (legal, appraisal, staff)	\$20,000
Subtotal	\$0.8 million
Total	\$2.0 million

Indirect Costs

As this bill has an immediate effective date, it will slow the progress of a number of ongoing projects. If these are delayed beyond the end of the federal fiscal year, we will lose the opportunity to "obligate" this money and hence this is an opportunity loss. While it does not show up in a fiscal note, this bill will have the greatest effect on urban projects which are typically the most expensive. Further, in the current fiscal year the department is required to obligate the highest level of federal funds in our history, and an amount which was revealed to us after the fiscal year began. Thus we predict that at least one or two projects will fail to obligate at a potential "cost" of \$10 to \$20 million.

Note: If appropriated, these funds could either be added to the general fund match for federal-aid highways and aviation which include money for a variety of costs not eligible for federal participation, or a separate fund could be appropriated which strictly limits the use of these funds to business loss claims and related expenses.

PLETCHER, WEINIG, LOTTRIDGE & MOSER

ASSOCIATED IN THE PRACTICE OF LAW

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ATTORNEY AT LAW

May 14, 1991

The Honorable Pat Rodey
The State Senate
P.O. Box V
Juneau, Alaska 99801

Re: S.B. 104

Dear Senator Rodey:

Tim Benintendi requested that I address the objections to S.B. 104 presented by Ronald Baird's May 8, 1991 letter and the State's Position Paper of March 19, 1991.

The Need for S.B. 104

There is great public need for such a bill. In 1976, the Alaska Supreme Court ruled that business was a form of property which cannot be taken or damaged without payment of just compensation. However, the Court limited itself to the facts of the case, five months in which a bar in Petersburg was out of business during relocation due to a state highway project. Loss of profits for this "flesh wound" were compensable. However, the Supreme Court has not ruled upon whether a "mortal wound" is also compensable, i.e., where condemnation causes total destruction of a business and the owner is not able to relocate. Superior Court Judges across the state have split evenly upon the issue of whether a "mortal wound" is compensable. S.B. 104 is necessary to correct this injustice. No property owners should be forced to pay a greater proportion of the cost of a public project than any other citizen.

While all condemning agencies are required by AS 34.60. to appraise real property prior to negotiation which proceed a condemnation action where federal funding is involved, and to deposit an estimate of just compensation in conjunction with a declaration of taking, very few condemning agencies attempt to appraise lost profit damages caused by a taking or make deposit for same. This causes severe hardship on the property owner, whose business is either destroyed or must be relocated as a consequence of condemnation because such owner must fight a war on two simultaneous fronts: litigation on the amount of just compensation; and dealing with a business which is either

Pat Rodey
May 14, 1991
Page 2

destroyed or must be relocated without having available funds derived from the condemnation deposit. In either situation, debt service on the condemned property mounts while, as a consequence of relocation of the business or total destruction of the business, there usually is no income stream to meet that debt service. S.B. 104 corrects this injustice.

S.B. 104 is not nebulous in its definition of "business loss." Section 7 of the bill defines business loss as "short term loss of profits, long term loss of profits, and loss of good will." Loss of profit damages are no more difficult to prove in a condemnation case than in a tort or contract action, in which they are routinely awarded. State v. Hammer, 550 P.2d 820, 823, 826-827 (Alaska 1976). The Alaska Supreme Court has clearly defined what loss of profit damages are and the methodology by which they might be proven. City of Palmer v. Anderson, 603 P.2d 495, 500 (Alaska 1979); Guard v. P&R Enterprises, 631 P.2d 1068, 1071-1072 (Alaska 1981); City of Whittier v. Whittier Fuel & Marine Corp., 577 P.2d 216, 222, 225 (Alaska 1978). The Supreme Court of the United States has also defined what loss of profit damages are and the methodology by which they might be proved. Eastman Kodak Co. v. Southern Photo Materials Co., 37 S.Ct. 400, 405 (1927). These cases hold that the burden of proof of lost profits damages is upon the claimant and that such damages may not be speculative; they must be established with reasonable certainty. S.B. 104 requires this.

Lost profit damages are not duplicative of just compensation awarded for land, whether it is uniquely situated or not. They are projection of future lost profits based upon the historical operation of the business, a well established business appraisal technique. Lost profit damages are not the same as the "good will" concept advocated by the State and utilized by the California statute. To establish good will, there must be showing of "excess earnings," those which are greater than that of comparable enterprises. Limiting the property the owner to loss of good will will necessarily restrict compensation for business loss to only certain, select businesses: those more successful than their competitors. Even if a business is not more successful than its competitors, that business owner is entitled to lost profits if such loss is legally caused by a constitutionally taking or damage. Otherwise he would be forced to bear a larger proportion of the cost of a public project than would other citizens.

Objections of Ronald Baird

Mr. Baird has three objections:

(1) "Business damages" for fast food or other consumer-oriented businesses located along a major arterials constitute a duplication of payment for just compensation for real property, awarded as a consequence of the unique location of the land.

(2) Business loss is already available for temporary loss during relocation of the business;

(3) "Business Loss" or "business damage" are not terms with clear meaning to condemnation lawyers, appraisers, business valuation experts, or the accounting profession.

My reply is this:

(1) Valuation of uniquely situated property and lost profit are as different as apples and oranges. If a property is uniquely situated, so as to have enhanced value, that is compensable as just compensation for the real property taken and damaged. However, lost profit damages do not constitute a duplication of recovery. Lost profit damages, as defined by the Alaska Supreme Court and the Supreme Court of the United States are loss to the business owner of projected profits for a reasonable period of time, based upon historical performance of the business and similarly situated businesses. Arguments have been made in condemnation cases, attempting to tie lost profits to the uniqueness of the business location. This is an argument which has been offered primarily because the state and other condemnors have routinely insisted that business loss is compensable only as a part of just compensation of the value of extraordinarily located real property. S.B. 104 clearly differentiates between just compensation for real property taken or damaged, where

ever located, and lost profit damages attributable to the business itself.

(2) Mr. Baird is correct in asserting that current law allows compensation for temporary lost profit damages during relocation of the business. This is a "flesh wound" to the business. However there is no compensation reliably available under existing law for a "mortal wound" to the business, where the business owner is unable to relocate the business. This is a major injustice.

(3) Business loss is defined in Section 7 of S.B. 104 to be "short term loss of profits, long term loss of profits, and loss of good will." These concepts have been well defined by the Supreme Court of Alaska and the Supreme Court of the United States. They are well understood by business valuation experts and the accounting profession. The projection of future lost profits, based upon historical data of the business and those similarly situated, has been deemed to be the most reliable method of appraising lost profit damages by the Institute of Business Appraisers.

State's Position Paper Objections

The State's Position Paper of March 19, 1991 is correct in suggesting that lost profit damages are not compensable through federal funding and must be paid by the general fund. Even so, a condemning agency and the citizens of the state should not have a free lunch at the expense of a single taxpayer, operating a business upon land which the condemning agency covets. The property owner must be made whole for all loss.

The State alleges that millions of dollars of federal-aid highway funds would be lost in the current fiscal year if the effective date of the bill was the date upon which it was signed by the Governor. This could be cured easily by provision for an effective date, beginning at the close of the construction season of the year in which the bill is enacted, such as November 1, 199___. S.B. 104 should have no impact upon those projects which must be "obligated" (which requires that right-of-way acquisition is 100 percent complete). The declaration of taking is still available to condemning agencies and all these agencies must do is to perform good faith written appraisals of business loss and deposit the amount of those appraisals in court in conjunction with the declaration of

Pat Rodey
May 14, 1991
Page 5

taking. Allowing loss of profit damages has no effect upon this procedure, other than requiring a business loss appraisal and deposit based on that appraisal. The platting requirements prior to acquisition imposed by AS 09.55.275, to which the State objects, have been existing law since 1975.

Objections that compensation might be required for increasing or decreasing traffic flow, prohibiting certain turning movements, temporarily closing roads to traffic for maintenance or construction, regulating the size and weight of vehicles used by businesses, and condition or denial of certain driveway applications will open new causes of action are unfounded. The constitutional standard for "taking or damage" has been well defined by the Alaska Supreme Court. It is whether the property owner has been denied reasonable access for the type of business conducted on the property. B&G Meats, Inc. v. State, 601 P.2d 252 (Alaska 1979); Ault v. State, 688 P.2d 951 (Alaska 1984); and Alson v. State, 586 P.2d 1236 (Alaska 1978).

Contrary to the State's assertion, use of a declaration of taking procedure for accelerating transfer of title is not threatened by S.B. 104. All that is required is that the State or other condemning agency appraise lost profits, prior to filing a declaration of taking, as it does concerning just compensation for real property and deposit that amount in court along with the declaration of taking. The judge's discretion is limited to determining whether the appraisal was written, made in good faith, and whether a deposit for loss profit damages has been made. By utilizing the same planning techniques which have worked effectively in real property acquisitions, any condemning authority should have no more problem with providing appraisal of lost profit damages than it does, presently, with appraisal of real property values. The only problems which would be encountered by a condemning authority are those, such as the State's, concerning the Jewel Lake service station condemnations in Anchorage, where the State steadfastly refused to even analyze the potentiality for lost profit damages. A condemning authority should not be rewarded for such abuse of discretion.

On page 7 of the State's Position Paper, the State argues that S.B. 104 creates "time pressures" with disruptive impacts "to the construction and transportation industries." This is nothing more than an argument similar to that offered by the testimony of Joe Geldorf, Assistant Attorney General, at the Senate Affairs Committee hearing of March 6, 1991, to the effect that: "We know that the bill would be fair. But if we are fair, we can't afford to pour enough concrete." Neither the State nor any other condemning agency should treat the citizens of Alaska with such a cavalier attitude.

Pat Rodey
May 14, 1991
Page 6

Conclusion

A "flesh wound" to a business is a compensable at the present time. A "mortal wound," where the business cannot relocate, should also be compensable. S.B. 104 accomplishes this purpose.

My Best Regards,

PLETCHER, WEINIG,
LOTTRIDGE & MOSER

Richard A. Weinig
Richard A. Weinig

RAW/jv
22L.18

BRADBURY, BLISS & RIORDAN

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RONALD L. DAIRD

May 8, 1991

State Affairs Committee
c/o The Honorable Pat Rodey, Chairman
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Re: SB 104, Condemnation Practices

Dear Committee Member:

I am an attorney who has practiced condemnation law representing both condemnors and landowners. I wish to comment on SB 104. The views expressed herein are not those of any client but rather are my own.

I am opposed to the imposition of a requirement for paying "business damages" because I believe in the vast majority of instances where such damages will be asserted, compensation for them will essentially be duplicative of the compensation paid for the real property. I have been involved in a number of cases involving such claims. Typical of these is the taking of a fast food or other consumer-oriented business located along a major arterial. The landowner usually claims that his property is uniquely profitable because of its location. Such profitability almost always can be shown to affect the value of the real property and the landowner is compensated for this "business damage" when he receives fair market value for his land. Legislative recognition of "business loss" will in these scenarios simply invite creative ways to recover compensation for the taking of this type of property right more than once.

Additionally, the principal reason why the courts have been reluctant to extend constitutionally required compensation to "business loss" is the perception that in most instances, the business can be relocated particularly if adequate time is allowed for such relocation. Alaska case law already requires compensation for temporary loss of profits occasioned by the necessity of setting up a new place of business following the taking of the old operation. Proponents of this bill simply have not made the case

that there are a significant number of additional situations where the existing law works unfairly. When balanced against the additional cost which the requirement of compensation for "business loss" will impose on public projects, I do not believe sound policy requires the adoption of this bill.

Even if one concludes that expansion of the types of compensation to be paid is warranted, the current bill is not the answer. "Business loss" or "business damage" are not terms which have clear meaning to condemnation lawyers, appraisers, business valuation experts or the accounting profession. Though it is against my personal interest to say so, SB 104 is a lawyer employment bill if there ever was one. The various disciplines I have referenced simply have not reached a consensus on defining this term or developing a methodology for measuring it. In the absence of theoretical and conceptual consensus in the various disciplines, it is unrealistic to expect a sound approach to emerge from a judicial definition of the term. Given time, it is conceivable that your staff in consultation with the condemnation bar could develop more narrowly drawn categories of loss which should be compensated but are not currently. Those definitions cannot be developed in the time frame of this legislature.

Finally, to the extent that you are considering revisions to compensation requirements in condemnation, I would urge the committee to consider the following proposed statute dealing with compensation for easement takings:

Compensation for Easement Takings.

Whenever an easement is taken for a public use, it shall be presumed that just compensation for such taking is equal to _____% of the fair market value of the fee simple interest in the portion of the parcel of land subject to the easement. Any party with an interest in the compensation to be awarded for such easement acquisition may extinguish the presumption created hereby in any proceeding for the determination of the amount to be paid for the interest by giving written notice to the court and the parties at such reasonable time as may be determined by the court by rule or otherwise.

This statute is designed to result in fair and uniform compensation for the taking of easements for utility facilities and other similar uses. The unfairness of the current system as well as the manner in which this statute would work are discussed at length in my article, Easement Condemnation in State v Dovle, Fair Market Value Without a Market which appears in the December 1989 issue of the Alaska Law Review. Enactment of this statute would provide a

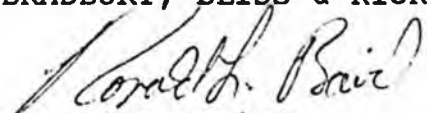
May 8, 1991
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uniform policy for utilities throughout the state and insure uniform compensation to landowners throughout the state. Many utilities already have similar policies requiring the payment of ten percent (10%) of the fee value of the land affected by easements which they are acquiring.

I appreciate this opportunity to present my views.

Sincerely,

BRADBURY, BLISS & RIORDAN



Ronald L. Baird

RLB2:ss
rlb2\memo100

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

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

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

MEMORANDUM

DATE: May 10, 1991

TO: Committee Members
Senate State Affairs Committee

FROM: Senator Patrick M. Rodey, Chair
Senate State Affairs Committee

Pat

SUBJ: Proposed CSSB 104 (State Affairs)

7-LS0554\J

For your consideration today is the referenced version of SB 104, relating to condemnation practices by state agencies and municipalities.

The CS under consideration includes business loss and how it is to be determined in an eminent domain action (Section 3).

It defines "business loss" and "private injury" (Section 7).

The bill adds a definition of property to include short-term and long-term business interests over and above realty interests, and makes changes in the definition of a "displaced person" (Section 23).

It makes no new provisions for the valuation of "business goodwill".

These highlight the changes recommended in testimony in two previous hearings. The CS has an immediate effective date.

It requires state agencies to establish and operate relocation and payment programs (Section 11).

PMR/tb/memo002

PLETCHER, WEINIG, LOTTRIDGE & MOSER

ASSOCIATED IN THE PRACTICE OF LAW

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ATTORNEY AT LAW

TASHA M. PORCELLO
ATTORNEY AT LAW

April 19, 1991

The Honorable Pat Rodey
The State Senate
P.O. Box V
Juneau, Alaska 99801

Re: S.B. 104

Dear Senator Rodey:

I have examined Joseph W. Geldhof's letter to you of April 18, 1991, outlining the problems with S.B. 104 which are perceived by the Attorney General's office. There are only four objections, each of which is easily addressed.

OBJECTION NUMBER 1

Objection Number 1 states: "Payment of 'business loss' beyond the requirements of the Hammer case, i.e., where there is 'interruption' of the business, is not warranted;"

The term "interruption" is confusing because that term does not appear in the bill. Perhaps the Department of Law is referring to a question raised in the Senate Affairs Committee hearing of March 6, 1991, in which Senators Pourchot and Uehling inquired whether temporary closure of a road for a few hours would require compensation for business loss. As my testimony explained, the terms "taking" or "damage" are concepts of constitutional law which are well defined by the courts. "Damage," in the constitutional sense, is serious, substantial damage to a property right which is not de minimus. This is a matter to be determined by the court, not a jury. It is a concept governed by constitutional standards, which differ from the layman's interpretation of "damage," i.e., that if traffic is temporarily diverted from a business or that if there is a ten hour road closure, there is "damage." The Alaska Supreme Court's standard for "damage" in the constitutional sense is highly exacting and well defined. It is whether the property owner has been denied reasonable access for the type of business conducted on the property. B&G Meats, Inc. v. State, 601 P.2d 252 (Alaska 1979); Ault v. State, 688 P.2d 951 (Alaska 1984); Alsop v. State, 586 P.2d 1236 (Alaska 1978). If there is constitutional

RESPONSE TO CONCERNS

Pat Rodey
April 19, 1991
Page 2

"damage," payment of business loss is warranted. The Alaska Supreme Court, in State v. Hammer, has held that the Alaska Constitution requires full indemnification to the owner for property taken or damaged. Lost profit damages are property. State v. Hammer, 550 P.2d 820, 826 (Alaska 1976).

OBJECTION NUMBER 2

The second objection is that "business loss is not obviously defined in S.B. 104." This objection can be met easily by a slight amendment to Section 7 of the Committee Substitute bill, concerning AS 09.55.465(1). The Alaska Supreme Court has defined business loss as loss of profits. State v. Hammer, 550 P.2d 820, 823, 826, 827 (Alaska 1976); City of Palmer v. Anderson, 603 P.2d 495, 500 (Alaska 1979); Guard v. P&R Enterprises, 631 P.2d 1068, 1071-1072 (Alaska 1981); City of Whittier v. Whittier Fuel v. Marine Corp., 577 P.2d 216, 222, 225 (Alaska 1978). The State's objection could be met by clarification of the term "business loss" in light of those Supreme Court opinions:

- (1) "Business Loss" includes short-term loss of profits, [business loss] long-term loss of profits, [business loss,], and loss of good will;

OBJECTION NUMBER 3

Objection Number 3 states:

Proof of business loss, particularly loss of so-called 'good will' is difficult to establish and will result in protracted litigation;

The Alaska Supreme Court disagrees. In State v. Hammer, 550 P.2d 820, 824-825 (Alaska 1976)

Loss of profit damages have been awarded in a variety of civil contexts, including tort actions (both personal and business), breach of contract actions, anti-trust suits, and suits for infringement of a patent or a trademark. . . . Loss of profits damages are as susceptible of proof in an eminent domain case as in any other . . .

Pat Rodey
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OBJECTION NUMBER 4

Objection number 4 states:

requirements that increase the time before a condemning authority takes "possession," e.g., proposed Section 3 and 4 will result in unacceptable delay and essentially eviscerate the so-called "quick take" condemnation provisions.

Sections 3 and 4 of S.B. 104 are Sections 5 and 6 of the committee substitute bill. Neither will create undue delay or eviscerate quick take actions. They simply clarify a question, unresolved by the courts, concerning whether a court has the authority to determine whether the deposit of estimated just compensation in a declaration of taking action has been substantiated by one or more appraisals in good faith, whether the condemning authority has failed to comply with the Uniform Property Acquisition Act, or whether the condemning authority has failed to comply with the plating requirements of AS 09.55.275. AS 09.55.275 has been in effect since 1975. So long as the condemning authority has not grossly infringed upon constituents rights and tries to cut no corners, it is inconceivable how these provisions would "eviscerate" a declaration of taking action.

RELOCATION ARGUMENT

Jeffrey Ottesen suggests that the business compensation provisions of this bill be reincorporated into yet an unknown bill concerning revision of relocation statutes. I have reviewed Jeffrey Ottesen's fax of April 18, 1981 concerning these proposals. The items listed as "Relocation and Moving Expenses" and "Reestablishment Expenses" are desirable and should be statutorily enacted regardless of the status of S.B. 104 or the committee substitute. The provisions concerning Payment In Lieu of relocation are desirable, at the sole option of the condemnee.

However, the provisions concerning "Business Loss" are a poor substitute for S.B. 104 and, particularly, the committee substitute bill. Short term business loss is limited to \$50,000. Long term business loss is compensable only as a part of good will. Good will, if that is the condemnee's only remedy for lost profits or business loss, is contradictory to the holding in Hammer, that loss profits are a form of property which cannot be damaged without just compensation. The rationale for the Hammer, holding is that no individual property owner must be required to make a larger contribution to a public project than that of the general populace. The concept of good will is based upon "excess earnings," those which are greater than that of comparable enterprises. Limiting

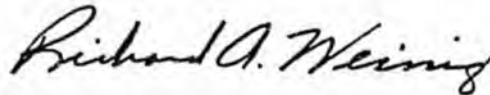
Pat Rodey
April 19, 1991
Page 4

the property owner to loss of good will necessarily restricts compensation for loss of profits to only certain, select, businesses: those more successful than their competitors. Even if a business is not more successful than its competitors, that business owner is entitled to lost profits and the business loss if such loss is legally caused by a constitutional taking or damage. Otherwise, he would be forced to bear a larger proportion of the cost of a public project than would other citizens.

In short, I recommend that the committee substitute for S.B. 104 be aggressively pursued, incorporating the change in definition of business loss which I have referenced previously.

My Best Regards,

PLETCHER, WEINIG,
LOTTRIDGE & MOSER



Richard A. Weinig

RAW/jv
cc: William Satterburg
22L.16

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 18, 1991

REPLY TO:

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P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

(907) 465-3603

The Honorable Pat Rodey
Alaska State Senator
P.O. Box V
Juneau, AK 99811

Re: SB 104

Dear Senator Rodey:

You requested the Attorney General's office provide you with a summary of problems we perceive with the current SB 104 legislation. Here are the problems we have with the bill in its current form:

1. Payment of "business loss" beyond the requirements of the Hammer case, i.e., where there is "interruption" of the business, is not warranted;
2. business loss is not obviously defined in SB 104;
3. proof of business loss, particularly loss of so-called "goodwill," is difficult to establish and will result in protracted litigation;
4. requirements that increase the time before the condemning authority takes "possession," e.g., proposed Section 3 and 4, will result in unacceptable delay and essentially eviscerate the so-called "quick take" condemnation provisions.

The Attorney General's office believes relatively minor alterations to the existing relocation statutes can solve many of the problems which gave rise to this legislative proposal. In that sense, we support the intent of Sections 7 and 8 in SB 104. We would be pleased to work with you and your staff on an amended

The Honorable Pat Rodey
Alaska State Senator
Re: SB 104

April 18, 1991
Page 2

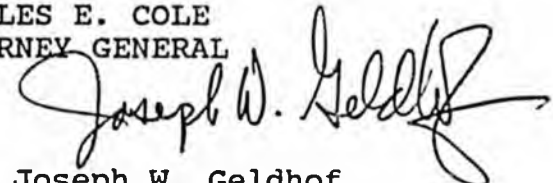
version of SB 104 which alters the existing relocation statutes
contained in AS 29.35.

Please call if we can be of additional assistance.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:



Joseph W. Geldhof
Assistant Attorney General

JWG:ae

cc: Jeffrey W. Bush, Legislative/Regulations Attorney, Juneau AGO
Dwayne W. McConnell, Supervising Attorney, Transportation
Section, Anchorage AGO
Jeffrey C. Ottesen, Director, Equipment & Operations, DOT & PF
James Rockwell, Special Projects, Special Projects, Office of
the Governor
Catherine McHugh, Office of the Commissioner, DOT & PF

Alternate to SB 104

Attached is a summary of what can be paid now under relocation and what we would propose. In many instances, the only real change needed is an expansion of the dollar limits. It is important to note that these benefits are administered by staff, subject to fairly simple standards of proof on the part of the business, such as business records, receipts for equipment cost and estimates for relocation expenses.

<u>Relocation Item</u>	<u>Current Law</u>	<u>Proposed Law</u>
Relocation and Moving Expenses:		
Personal property lost or damaged during relocation	Actual cost.	No change.
Personal property which cannot be reused.	Fair market value.	No change.
Moving related costs	Actual cost.	No change.
Storage of business property	Actual cost.	No change.
Licenses, permits, or certificates	Actual cost.	No change.
Insurance connected with move or storage.	Actual cost.	No change.
Consultant services for moving or reinstalling business equipment.	Actual cost.	No change.
Substitute personal property.	Actual cost.	No change.
Searching for replacement location	Actual cost up to \$1k.	Increase to \$10k.

Reestablishment Expenses

Repairs or improvements to meet laws.	Covered, subject \$10k limit for all reestablishment expenses.	Increase limit to \$50k for reestablishment expenses.
Modifications to make property suitable.	Covered, subject \$10k limit.	Increase limit to \$50k.
Changes or replacement to signs.	Not to exceed \$1.5k for this item and total \$10k limit.	Not to exceed replacement of existing signs.
Provision of utility connections.	Covered, subject to \$10k limit.	Increase limit to \$50k.
Redecoration or replacement of soiled or worn surfaces at replacement site.	Covered, subject to \$10k limit.	Increase limit to \$50k.
Licenses, fees and permits when not covered by moving expenses.	Covered, subject to \$10k limit.	Increase limit to \$50k.
Surveys, soil testing, market studies.	Covered, subject to \$10k limit.	Increase limit to \$50k.
Advertising to notify patrons of new location.	Covered, subject to \$10k limit.	Increase limit to \$50k.
Increased cost of operation due to high taxes, insurance premiums, utility charges.	Not to exceed \$5k for this item and total \$10k limit.	Remove limit on this item and increase total limit to \$50k.
One time utility impact fees.	Covered, subject to \$10k limit.	Increase limit to \$50k.

Note: The total for reestablishment expenses is now \$10,000 for all categories, regardless of how many such expenses are necessary. We would propose expanding these to an upper limit of \$50,000.

DOT CONCERNS WITH SB 104

Business Losses

Short Term Business Losses	Partially covered in reestablishment expenses.	Covered by increase in up to \$50k allowed for reestablishment.
Long Term Business Losses:	Not covered.	With proper definition it should be compensable as part of loss of good will.
Loss of Good Will	Not covered.	Make compensable based upon tests similar to California law. Such payments should be non-redundant; verifiable and owner should be responsible to take steps to reasonably avoid these losses. Upset limit is fair market value.

Payment in Lieu of Relocation.

A lump sum payment in lieu of moving and reestablishment expenses (and business losses).	Equal to average annual net earnings, up to a maximum of \$20,000	Equal to average annual net earnings for past three years. Payable for 2 years of net earnings up to \$100,000 maximum.
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Division of Engineering and Operations Standards
Alaska Department of Transportation
and Public Facilities

PO Box Z
3132 Channel Drive, Room 200
Juneau, Alaska 99801-2500

Voice (907) 465-2951

Facsimile Transmittal Form

Our FAX number is (907) 465-2460

Addressed to: Tim B. Senator Rodeg's office

Fax #: 463 3144

Voice #: _____

- From:
- Jeffery C. Ottesen, Director
 - Cathi Burger, Admin. Assistant
 - Bruce Bowler, Acting Chief, Right-of-Way
 - Loren Rasmussen, Chief, D&C Standards
 - Bruce Freitag, Chief, M&O Standards
 - Larry Carlson, Acting Chief, Bridge Design & Inspection
 - _____

Total number of pages (including this sheet): 3

If there are problems with transmission, please call Cathi Burger at (907) 465-2951

Comments: It's been reviewed and a few changes made. It would still require several funds that would not slow projects or add to the current caseload back log.
Thanks for working with us.

Date: March 6, 1991

To: Senator Pat Rodey
Members, Senate State Affairs Committee

From: Jim Morgan
Anchorage, AK

Re: SB-104, compensation for taking of or damage to
property by public agencies and other entities.

Written testimony from Mr. Morgan

I wish to make known my support of SB-104. My partner and I bought Sand Lake Texaco in July, 1979. We acquired a seven year SBA Loan and an additional eight year loan carried by the previous owner. We paid them off in full and on time. These loans only bought the business. The real estate improvements are owned by Texaco who in turn leases them to us.

When we were first notified about the Raspberry Road Project we were told by DOT that our business would be taken completely. There is no other place in the Sand Lake area to re-establish this business. We were informed that the only compensation we would receive was moving expenses and \$1000 to find another location. This stance by DOT remained until they were forced to deposit for short term loss by a court decision. DOT was denied possession to the Chevron property for this reason. They were then denied possession to our property for lack of deposit for long term loss; two times by Judge Gonzales. DOT filed a third motion for possession after a change in judges and was granted possession under the same circumstances they were denied possession before.

We then had a masters hearings and we were awarded short and long term business loss. The amounts awarded were not even close to realistic and we appealed asking for a jury trial. We are waiting for that at this time.

The cost of this litigation has been astronomical and eventually will have to be paid for by the State. The pressures put on us and everyone else

impacted by condemnation are enormous and in my feeling, borders on being criminal. No one should have to go through what we have in the past few years.

I believe that we will do very well in a jury trial. I believe this because of the absolute shock and horror of many of the people I have discussed this with. I have made presentations to eight different community councils so far and have received resolutions of support from all of them for this legislation. These councils include, Sand Lake, Spenard, Turnagain, Taku-Campbell, Rabbit Creek, Abbott Loop, Mid-Hillside, and Airport Heights. All their resolutions were unanimous except for Airport Heights, where one person was against it.

The State and Municipality should not be adversaries when involved in condemning property. The Raspberry Road project has been delayed for several years because of DOT's actions. The negative effect of the citizens involved has been enormous. At least \$4 million has been wasted on this project because of the State's attitude and actions. The State is going to have to pay for this in the long run.

We need a law that is strong enough to force the State and municipalities to deal honestly and fairly with people impacted by condemnation. It should not be necessary for citizens to have to revert to expensive litigation to force the State or municipality to do what it should do in the first place. Projects will be cheaper, they will get done faster and citizens will not be faced with fighting for their rights against unlimited funding.

The time is now. Make SB-104 a law.

signed / Jim Morgan

SB 104

Michael G. Cluff

March 5, 1991

D.B.A. Jewel Lake Tastee-Freez

6707 Jewel Lake Rd.

Anchorage, Alaska 99502

Subject;

Senate bill # 104

Senators;

I am presently going through the ordeal of condemnation.

The property that I lease is being taken for the Raspberry Road project. I can truly say this legislation is necessary to help someone who is forced to move his business and no location is available within the customer base area where the business has been established. Many business are very area specific and can not survive in just any location.

The day before a project is public knowledge a business has a market value equal to it's long term value. That is, the amount someone would pay to receive the long term profit potential of the business. The day after the project starts this value is zero if that business can not be reestablished.

I feel the taking entity should look at displaced business on a case by case bases, and be required to compensate for all the damages and loses not only to the property owners, but the business in those properties as well.

Sincerely,

Michael G. Cluff


To whom it may concern,

Mar 5, 1991

In regard to Senate Bill 104 I would like to offer the following brief testimony.

In July of 1981 I purchased a restaurant located in the 2500 block of W. Northern Lights Blvd. for \$70,000.00. Hard work and an excellent location allowed me to increase sales from \$300,000.00 in 1981 to \$500,000.00 by December of 1984. During this same period I invested an additional \$100,000.00 in new equipment and upgrades to the restaurant.

In May of 1985 I was advised the property I was located on would be taken for the widening of West Northern Lights Blvd. I was further told I would have 60 days to vacate the property and compensation would be forthcoming.

To my amazement, the compensation offered was \$53,000.00 which at the time would not have begun to cover the costs of relocation let alone outstanding debt and loss of livelihood. After litigation, which lasted until 1989 I received an additional \$80,000.00. If one were to deduct legal expenses, I received a net of \$107,000.00 all of which went to pay outstanding debt and living expenses until I was able to secure fulltime employment in August of 1986.

I was amused to read an interview in the Daily News in April of 1985 that told of the Municipality's desire to leave business's and private homeowners affected by condemnation in the same situation they were in prior to the taking of their assets. Simple mathematics would indicate this was hardly the case in my situation.

Sincerely,



Michael K. Anderson

(907) 248-2201

February 25, 1991

Representative Betty Bruckman
Post Office Box V
Juneau, Alaska 99811

MAR 1 1991

re: Senate Bill 104, Resolution to Support

Dear Representative Bruckman,

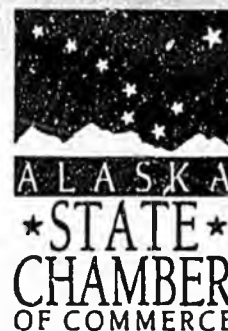
Please note that on February 20, 1991, the Mid-Hillside Community Council passed a resolution to support Senate Bill 104 dealing with property/business owner's rights when their property is condemned due to road projects.

Sincerely,

Mary Ann Bullock

Mary Ann Bullock, President
Mid-Hillside Community Council
PO Box 112011,
Anchorage, AK 99511
345-7115

217 Second Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323
FAX (907) 463-5515



April 3, 1991

Senator Pat Rodey
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Pat:

Several months ago we were informed about the rather extensive background to the problems of condemnation practices as those practices impact businesses caught up in a property condemnation proceeding. As a consequence, we were quite pleased to note the appearance of SB 104 and we wish to go on record of being in strong support of this legislation. Just compensation and action for a business which has been taken or damaged is both fair and humane.

We listened with great interest to the testimony offered in the initial hearings (L & C) on this matter and would have no objection should the bill be modified to accommodate the concern raised by DOTPF in relation to construction projects which are currently underway.

The members of the Alaska State Chamber of Commerce want to thank you for your role as a sponsor of SB 104 and are reassured that you share in our concern for the legitimate concerns of the business community.

Cordially,

A handwritten signature in black ink, appearing to read "George Krusz". The signature is written in a cursive style with a large initial "G" and "K".

George Krusz
President

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

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

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

SPONSOR SUMMARY

Senate Bill 104

SB 104 proposes to amend several statutes dealing with the taking of property under eminent domain proceedings. The bill provides for more thorough determination of business loss caused by the taking or damaging of property, to include short and long term loss, and the loss of goodwill.

It provides new responsibilities for masters in eminent domain actions. It directs a court, upon a motion of an interested party, to order the payment of deposited money to the person or persons entitled, immediately, where now the courts simply MAY order payment.

The bill provides for delays in the right of entry, and for courts to determine estimated just compensation substantiated by appraisals prepared in good faith. Under SB 104, state agencies will be required to establish and operate relocation and payment programs for persons displaced. There are changes to the definitions of "displaced persons".

SB 104 will address issues affecting many small businesses and franchisees in the state. It will provide a more realistic evaluation of business loss, and provide for better procedures and review opportunity for those persons suffering a loss due condemnation.



Senate

**SUMMARY OF CALIFORNIA'S PROVISION
FOR LOSS OF BUSINESS GOODWILL**

Section 1263.510 (Burden of Proof) (page 343 attached):

California defines goodwill as consisting of "the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old, or acquisition of new, patronage."

The owner of a business on the impacted property shall be compensated for loss of goodwill if the owner proves all of the following:

1. The loss is caused by the taking of the property.
2. The loss cannot reasonably be prevented by a relocation, or by taking steps that a reasonably prudent person would take in adopting procedures to preserve the goodwill.
3. Compensation for the loss will not be included in other state program payments.
4. Compensation for the loss will not be duplicated in awards otherwise due the owner.

The burden of proof of loss is on the property or business owner. The concept of determining "fair market value" was sanctioned by the legislature. The determination of loss of goodwill is governed by the "rules of evidence", not by special rules relating to valuation in eminent domain law.

California law provides for compensation for loss of goodwill only to the extent it cannot reasonably be prevented by relocation or other efforts by the owner to mitigate.

The California Legislature intended for payment of loss of goodwill to be discretionary, and such an increased cost so incurred as a result of the enactment of the revised eminent domain laws was not a cost which municipalities were required or mandated to incur.

Section 1263.520 (State Tax Returns) (page 345 attached):

The owner of a business who claims compensation under this article shall make available to the court , and the court shall, upon such terms and conditions as will preserve their confidentiality, make available to the plaintiff, the state tax returns of the business for audit for confidential use solely for the purpose of determining the amount of compensation under this article. Nothing in this section affects any right a party may otherwise have to discovery or to require the production of documents, papers, books, and accounts.

Section 1263.530 (Scope of Article) (page 345 of attached):

Nothing in this article is intended to deal with compensation for inverse condemnation claims for temporary interference with, or interruption of, business.

PMR/tb

Comparison of Alaska and California Concerning Business Losses

California is the only state known to have a statutory requirement for compensation of certain types of business loss not otherwise compensable under eminent domain proceedings. Because the California law is exceptional in character, it is felt a good benchmark by which the proposed legislation may be compared. Following is a side-by-side comparison of a number of characteristics of the California law with the proposed bill.

	California	Alaska
Consideration	Title 7, Chp. 9, Art. 6, Sec. 1263.510 - 530	SB 104
What is Compensable:	Loss of business goodwill, such as decline or temporary dropoff in patronage. Temporary interference loss or loss by interruption is specifically excluded.	Loss of short & long term business losses, loss of goodwill and private injury.
Definitions	Goodwill is defined in some detail by legislation.	Above terms are not defined.
How claimed.	Business owner is notified of opportunity to make claim; Caltrans then prepares goodwill appraisal. Only a small fraction of businesses file goodwill loss claim.	State <u>must</u> prepare appraisal before negotiations. State will incur costs on all businesses, regardless of presence of actual loss.
Required information	State granted access to prior 3 years tax records plus uses voluntary questionnaire.	State has no legal access to any business information or records except that which is volunteered.
Funding	Use state general fund; FHWA will not participate.	Use state general fund; FHWA will not participate.
Quicktake Procedure	No change in Quicktack procedures	Additional time factors and burdens placed on process render it ineffective.
Definition of "Real Property"	Not changed.	Changed considerably by exchanging term "real property" with just "property".
Changes in Uniform Relocation Requirements.	Not changed.	Intertwined with eminent domain process and process appears cumbersome in consequence.